

Agreement between the Government of Australia and the Government of the Oriental Republic of Uruguay on the Exchange of Information with Respect to Taxes

Introduction

- 4.1 This chapter considers the *Agreement between the Government of Australia and the Government of the Oriental Republic of Uruguay on the Exchange of Information with Respect to Taxes* (the Uruguay Tax Information Exchange Agreement).¹
- 4.2 The proposed Agreement was initially tabled on 18 June 2013 during the 43rd Parliament. Consideration of the proposed Agreement was suspended without taking evidence when Parliament was prorogued on 5 August 2013. The proposed treaty was referred to the current Committee on 15 January 2014.

¹ National Interest Analysis [2013] ATNIA 12 with attachment on consultation *Agreement between the Government of Australia and the Government of the Oriental Republic of Uruguay on the Exchange of Information with Respect to Taxes*, done at Montevideo, 10 December 2012 [2012] ATNIF 32 (hereafter referred to as 'NIA'), para 1.

Background

- 4.3 Tax Information Exchange Agreements like the proposed Uruguay Tax Information Exchange Agreement are bilateral Agreements that establish a legal basis for the exchange of tax information relating to persons and entities between the signatories.²
- 4.4 These Agreements are the result of an initiative by the Organisation for Economic Cooperation and Development (OECD) to improve the transparency of financial flows between countries.³
- 4.5 The National Interest Analysis (NIA) indicates that:
- While most financial flows to and from low-tax jurisdictions are legitimate, the legal framework and systems that make low-tax jurisdictions attractive for legitimate purposes may also be used in arrangements designed to evade paying tax elsewhere. In particular, the use of secrecy laws to conceal assets and income that are subject to Australian tax is of concern to Australia.⁴
- 4.6 The OECD established the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2002 as a mechanism to eliminate harmful tax practices that contribute to international tax evasion. The Forum has 121 members. Australia has played a leadership role in the Forum, including as the Chair of the Forum, until that position was taken over by South Africa in 2013.⁵
- 4.7 In 2002, the OECD released a model Tax Information Exchange Agreement to facilitate negotiations between OECD members and low tax jurisdictions. In 2003, Australia adopted its own model Tax Information Exchange Agreement based on the OECD model Agreement.⁶
- 4.8 Since the development of the OECD model Agreement, 100 jurisdictions, including Uruguay, have committed to eliminating harmful tax practices.⁷
- 4.9 Implemented Agreements support tax authorities by ensuring those authorities have all the available information to determine a taxpayer's correct liability.⁸

2 NIA, para 3.

3 NIA, para 3.

4 NIA, para 10.

5 Mr Greg Wood, Manager, Tax Treaties Unit, Tax System Division, The Treasury, *Committee Hansard*, Canberra, 10 February 2014, p. 15.

6 NIA, para 9.

7 NIA, para 8.

8 NIA, para 8.

4.10 The proposed Uruguay Tax Information Exchange Agreement is one of 36 bilateral Tax Information Exchange Agreements signed by Australia,⁹ of which 33, according to the NIA, have entered into force.¹⁰ The Committee has previously reviewed Australian Tax Information Exchange Agreements in Reports 73, 87, 99, 102, 107, 112, 114, 120, 123 and 129.¹¹

4.11 Experience has shown Australia's tax information exchange agreements to be effective. The Australian Taxation Office (ATO) provided some tangible examples to the Committee at a public hearing in 2012:

Our main tax information exchange agreement partners are the British Virgin Islands, Bermuda, the Isle of Man and Jersey. As of this month, fifty-three exchange of information requests had been issued under the tax information exchange agreements. Ten are currently active and five were withdrawn. That leaves thirty-eight requests which have been finalised; and, on the basis of those cases, we have issued six amended assessments to the value of \$52 million. Our auditors have also identified a further \$127 million as potential omitted income via request[s] made under the tax information exchange agreements.¹²

4.12 In addition, the ATO provided evidence that Tax Information Exchange Agreements were deterring Australian tax payers from using low tax jurisdictions:

From 2005 to 2011 there was a decrease in the entities transacting, for example, with Vanuatu from around 2,600 to around 300. This tells us that those previously involved in arrangements in Vanuatu have discontinued their dealings and also that they have not moved to another secrecy jurisdiction. Since the financial year 2007-2008 there has been a \$12 billion reduction in fund flows to thirteen high-risk secrecy jurisdictions and fund flows returning to Australia from the same secrecy jurisdictions have increased by seven per cent, or around \$5 billion in the 2010-11 financial year as compared to 2007-08.¹³

9 Mr Wood, The Treasury, *Committee Hansard*, Canberra, 10 February 2014, p. 15.

10 NIA, para 5.

11 Joint Standing Committee on Treaties, *Report 129*, Tabled 10 September 2012, p. 17.

12 Miss Anna Cyran, Exchange of Information Officer, Transparency Practice – Large Business & International, Australian Taxation Office (ATO), *Committee Hansard*, Canberra, 13 August 2012, p. 10.

13 Miss Cyran, ATO, *Committee Hansard*, Canberra, 13 August 2012, p. 10.

Overview and national interest summary

- 4.13 The proposed Uruguay Tax Information Exchange Agreement follows the format of the Australian model Tax Information Exchange Agreement.¹⁴
- 4.14 The NIA claims that the proposed Uruguay Tax Information Exchange Agreement will help improve the integrity of Australia's tax system by discouraging tax evasion.¹⁵
- 4.15 The proposed Uruguay Agreement will allow the Australian Commissioner for Taxation to request and receive certain information held by Uruguay.¹⁶
- 4.16 According to the NIA, the proposed Agreement contains a number of privacy safeguards to protect the legitimate interests of taxpayers, including requirements in relation to confidentiality and legal privilege.¹⁷
- 4.17 Data from the Australian Transaction Reports and Analysis Centre (AUSTRAC) indicates that there are relatively small flows of money between Australia and Uruguay.¹⁸
- 4.18 Evidence from AUSTRAC and the ATO indicates that in the 2012/13 financial year, AUSTRAC was provided with 9,801 reports of financial transfers between Australia and Uruguay totalling nearly AU\$95m.¹⁹ A similar analysis of financial transfers between Australia and Switzerland indicates that AUSTRAC was provided with 189,405 reports of financial transfers totalling nearly AU\$42b.²⁰
- 4.19 The data also indicates that 2,254 unique entities made transfers between Australia and Uruguay, with 1,915 of those entities being individuals. In terms of the sums transferred, the 290 companies that made transfers made up about half the total money transferred (AU\$47m), generating 1,081 reported transfers. Individuals, by contrast, transferred only AU\$12m, generating 6,302 reported transfers.²¹

14 NIA, para 8.

15 NIA, para 4.

16 NIA, para 4.

17 NIA, para 4.

18 NIA, para 10.

19 Australian Taxation Office (ATO), *Submission 2*, p. 2.

20 ATO, *Submission 2*, p. 1.

21 ATO, *Submission 2*, p. 2.

Reasons for Australia to take the proposed treaty action

- 4.20 The NIA states that the proposed Uruguay Tax Information Exchange Agreement will combine with Australia's other bilateral Tax Information Exchange Agreements to form an important tool combating offshore tax evasion.²²
- 4.21 The proposed Agreement will also, according to the NIA, improve Australia's ability to enforce its domestic tax laws by making it harder for taxpayers to avoid or evade Australian tax and discourage those taxpayers from participating in illegitimate tax arrangements by increasing the probability of detection.²³
- 4.22 The NIA notes that:
- Uruguay's commitment to implement the proposed Agreement is a positive step in its relationship with Australia.²⁴

Obligations

- 4.23 The proposed Uruguay Tax Information Exchange Agreement will apply to all Australian taxes imposed under federal laws and administered by the Commissioner for Taxation. Article 3 of the Agreement, which deals with these taxes, will also apply to any similar future taxes imposed after the Agreement is signed.²⁵
- 4.24 Article 5 of the proposed Agreement obliges the competent authorities in Australia and Uruguay to provide, on request, information that is foreseeably relevant to the administration and enforcement of the other Party's domestic tax laws. This obligation applies irrespective of whether the conduct being investigated would constitute a crime under the laws of the requested Party.²⁶
- 4.25 A request for information must contain a standard set of information, including:
- the identity of the person under investigation;
 - a statement of the information sought;
 - the tax purposes for which the information is sought;

22 NIA, para 6.

23 NIA, para 11.

24 NIA, para 12.

25 NIA, para 13.

26 NIA, para 14.

- the grounds for believing the requested country can provide the requested information;
 - to the extent known, the name and address of any persons who may be in possession of the requested information;
 - a statement that the request for information is in conformity with the laws of the requesting Party; and
 - a statement that the requesting Party has pursued all known avenues for obtaining the requested information in its own territory.²⁷
- 4.26 A Party can also request interviews with individuals or examinations of records within the jurisdiction of the requested Party. Interviews can only take place if the individual concerned provides written consent.²⁸
- 4.27 Information obtained through a request is confidential, and can be disclosed only to people involved in the administration or enforcement of taxes covered by the proposed Agreement. Court proceedings are the only exception to this requirement.²⁹
- 4.28 A Party may refuse a request: if it does not conform to the proposed Agreement; if the laws of the requested Party will not allow the information to be obtained; or if the information may reveal trade or professional secrets.³⁰

Implementation

- 4.29 No legislative change will be required to implement the proposed Uruguay Tax Information Exchange Agreement. The NIA indicates that Australia will be able to fulfil its obligations under the proposed Agreement with existing legislation, specifically, the *International Tax Agreements Act 1953*.³¹
- 4.30 The proposed Agreement will not change the existing roles of the Commonwealth, or the States or Territories, in tax matters.³²

27 *Agreement between the Government of Australia and the Government of the Oriental Republic of Uruguay on the Exchange of Information with Respect to Taxes*, done at Montevideo, 10 December 2012 [2012] ATNIF 32 (hereafter referred to as the 'Uruguay Agreement'), Article 5(5).

28 Uruguay Agreement, Article 6.

29 Uruguay Agreement, Article 8.

30 Uruguay Agreement, Article 7.

31 NIA, para 24.

32 NIA, para 25.

Costs

- 4.31 The proposed Agreement states that the requested Party bears the ordinary costs of requests, but the requesting Party must bear any extraordinary costs unless both Parties agree otherwise.³³ However, because Uruguay is unlikely to routinely need Australian information for its own tax purposes, it is likely that most requests made under the proposed Agreement will come from Australia.³⁴ The ATO and the competent authority in Uruguay are in the process of negotiating a Memorandum of Understanding to enable Australia to contribute to the cost of requests made by Australia.³⁵
- 4.32 The estimated cost of the proposed Agreement is expected to be absorbed into the ATO's existing exchange of information program. In addition, the NIA points out that in the long run, the costs of the proposed Agreement should be recouped through the reduction in avoidance and evasion by Australian tax payers.³⁶

Recent developments in international tax information exchange

- 4.33 At a public hearing into Tax Information Exchange Agreements in 2012 Mr Greg Wood, from the Treasury, indicated that:

We have an ongoing negotiation program which consists of around thirty-nine countries and jurisdictions. There are a few jurisdictions, three in particular – Cyprus, Panama and the Seychelles – that we are interested in signing agreements with. Those efforts to talk to those countries are ongoing. The ATO is performing a risk analysis to determine which of those countries that are on the list might present the greatest problems so that they can be prioritised in terms of negotiations. We have a list. We are not talking to everybody at this point. There are some countries that we are particularly interested in and it is just a matter of giving each of those jurisdictions priority.³⁷

- 4.34 At the hearing into the proposed Uruguay Tax Information Exchange Agreement, Mr Grant Goodwin, from the ATO, advised the Committee

33 Uruguay Agreement, Article 9.

34 NIA, para 26.

35 NIA, para 27.

36 NIA, para 29.

37 Mr Wood, The Treasury, *Committee Hansard*, Canberra, 13 August 2012, p. 10.

that, to date, of the three jurisdictions identified in the 2012 public hearing, only Panama had indicated any interest in negotiating a Tax Information Exchange Agreement.³⁸

4.35 Mr Goodwin, advised that the risk analysis discussed in 2012 had not been undertaken, and that:

... events really have overtaken some of the urgency around such a process in the sense that many of the low-income countries who would otherwise negotiate a [Tax Information Exchange Agreement] have now agreed to sign the multilateral agreement for tax cooperation matters, which has similar exchange-of-information powers contained therein.³⁹

4.36 Mr Goodwin is referring to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), which was developed by the OECD and the Council of Europe in 1988.⁴⁰

4.37 The Convention was significantly amended in 2010 to align it with the international standard on exchange of information on request and to open it for ratification to all countries. According to the OECD:

Since 2009 the G20 has consistently encouraged countries to sign the Convention including most recently at the meeting of the G20 Leaders Summit in September 2013 where the communique stated “We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay.” Currently over 60 countries have signed the Convention and it has been extended to over 10 jurisdictions. This represents a wide range of countries including all G20 countries, all BRIICS,⁴¹ almost all OECD countries, major financial centres and a growing number of developing countries.⁴²

38 Mr Grant Goodwin, Executive Director, Exchange of Information Unit, Transparency Practice, Internationals, Public Groups and International, Australian Taxation Office (ATO), *Committee Hansard*, Canberra, 10 February 2014, p. 14.

39 Mr Goodwin, ATO, *Committee Hansard*, Canberra, 10 February 2014, p. 14.

40 Organisation for Economic Cooperation and Development (OECD), *Exchange of Information: Convention on Mutual Administrative Assistance in Tax Matters*, <<http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>> accessed 7 March 2014.

41 As defined by the OECD, BRIICS refers to: Brazil, Russia, India, Indonesia, China and South Africa.

42 OECD, *Exchange of Information: Convention on Mutual Administrative Assistance in Tax Matters*, <<http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>> accessed 7 March 2014.

4.38 Further:

The amended Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.⁴³

4.39 Mr Wood advised the Committee that the multilateral Convention was better than the bilateral Tax Information Exchange Agreements, and that as a consequence, Australia would only be ratifying a small number of additional Tax Information Exchange Agreements before relying on the multilateral Convention as a tool for tax information exchange.⁴⁴

4.40 Australia ratified the multilateral Convention in 2012.⁴⁵ The Committee's Report on the Multilateral Convention is contained in Report 127.

4.41 Cyprus and the Seychelles, identified in 2012 as priority jurisdictions for Tax Information Exchange Agreements, have not ratified the Multilateral Convention.⁴⁶

Conclusion

4.42 The Committee supports Australia's ratification of the proposed Agreement and recommends that binding treaty action be taken.

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of the Oriental Republic of Uruguay on the Exchange of Information with Respect to Taxes* and recommends that binding treaty action be taken.

43 OECD, *Exchange of Information: Convention on Mutual Administrative Assistance in Tax Matters*, <<http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>> accessed 7 March 2014.

44 Mr Wood, The Treasury, *Committee Hansard*, Canberra, 10 February 2014, p. 14.

45 OECD, *Status of the Convention on Mutual Administrative Assistance in Tax Matters and Amending Protocol – 23 December 2013*, <http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf> accessed 7 March 2014.

46 Mr Wood, The Treasury, *Committee Hansard*, Canberra, 10 February 2014, p. 14.

