

Protocol amending the Agreement with New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Introduction

- 5.1 The Protocol¹ revises the Exchange of Information Article of the existing Australia-New Zealand tax Agreement in line with the new OECD² standard. In addition, the Protocol inserts two new articles: assistance in the collection of taxes;³ and a Most Favoured Nation (MFN)⁴ article covering withholding⁵ taxes.⁶

1 *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.*

2 Organisation for Economic Co-operation and Development

3 This article will assist in the recovery of tax debts from Australian taxpayers who migrate to New Zealand. NIA, para. 16.

4 The MFN article will ensure that if New Zealand enters into a treaty with another country where it reduces withholding tax rates on dividend payments, interest and royalties to levels below those in the existing Australia-New Zealand tax agreement, that it will enter into negotiations with Australia to provide the same treatment for Australia. NIA, para. 6; Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 14.

5 Withholding tax is a tax on dividends and interest sent abroad to non residents. Both taxing earnings are paid to foreign lenders or investors. Withholdings tax is deducted when the payment is sent overseas. Carew, E, *The Language of Money*, ANZ Bank, viewed 13 March 2006, <www.anz.com>

6 NIA, para. 4.

- 5.2 The Information Exchange and Assistance in Collection provisions will extend to all federal taxes administered by the Commissioner of Taxation. This will assist in the administration and collection of Goods and Services Tax (GST) and the extension of the benefits of Australia's Wine Equalisation Tax (WET)⁷ rebate to New Zealand.⁸ The new Assistance in Collection provision will aid in the recovery of tax debts from Australian taxpayers who relocated thus ensuring tax compliance.⁹
- 5.3 Australia's tax agreements with other jurisdictions allocate taxing rights between Parties so that Australian taxpayers investing offshore will not be subject to double taxation.¹⁰
- 5.4 The revision of the Agreement with New Zealand will enhance Australia's competitive and modern tax agreement network, ensure it remains relevant for emerging issues¹¹ and improve the level of cooperation between the two jurisdictions.¹²
- 5.5 Australia currently has approximately 40 comprehensive tax treaties with other countries.¹³ In recent years, Australia has also revised its tax agreements with the United States of America (US) and the United Kingdom of Great Britain (UK).¹⁴
- 5.6 In addition, Australia agreed to lower withholding tax rates with the US and include a non-discrimination article in the UK agreement. This obliges Australia to negotiate the same deal with its MFN countries¹⁵ in addition to its key investment partners.¹⁶

7 WET is applied at a rate of 29% at the wholesale level to alcoholic beverages such as grape, fruit and vegetable wines, cider, perry, mead, sake and grape wine products like marsala, vermouth, wine creams and cocktails. WET is included in the price for which retailers purchase the wine and is passed on to the end consumer. For the domestic market, WET liability is remitted to the Australian Taxation Office or for imports to the Australian Customs Service. Exports of wine are not subject to WET. Australian Taxation Office, viewed 13 March 2006, <www.ato.gov.au>; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

8 NIA, para. 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

9 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

10 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 14.

11 NIA, para. 8.

12 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

13 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

14 NIA, para. 9.

15 These countries include: Korea, Finland, Norway, Switzerland, Austria, Italy, France, Spain, Romania, Mexico, South Africa and Taipei. Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 20.

16 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 20.

- 5.7 The Protocol is a more limited outcome than that sought by Australia as New Zealand is in the process of finalising its tax treaty policy in a number of critical areas,¹⁷ in particular, withholding taxes.¹⁸

Obligations

- 5.8 Under the Protocol Australia is obliged to:
- exchange information relevant for administration or enforcement of domestic law concerning all Federal tax laws administered by the Commissioner of Taxation
 - treat information received through exchange as secret in the same manner as information obtained under its own domestic law
 - collect information if requested by New Zealand even where it is not needed for Australia's own taxation purposes
 - assist New Zealand in the collection of revenue claims where amounts owed in respect of taxes of every kind and description are imposed under New Zealand law
 - where requested by New Zealand collect a revenue claim owed to New Zealand as if it were an Australian revenue claim.¹⁹
- 5.9 Either Party, in line with OECD model guidelines, may not supply information where:
- a trade or business secret may be disclosed
 - disclosure of information is contrary to public policy such as a breach of human rights policy.²⁰

17 NIA, para. 17.

18 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, p. 16.

19 NIA, paras 18-22.

20 NIA, para. 23; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 15.

Overview

5.10 New Zealand is Australia's fifth largest merchandise export market and Australia is New Zealand's largest merchandise export market. New Zealand is the sixth largest foreign investor in Australia and Australia is the largest investor in New Zealand with investment between nations at \$A61.8 billion in 2004.²¹ Both Australia and New Zealand are committed to working towards a trans-Tasman single Economic Market. In addition to the Australia New Zealand Closer Economic Relations Trade Agreement,²² this Agreement will serve to signify the importance Australia places on closer economic and administrative relations with New Zealand.²³

Consultation

5.11 State and Territory Governments were consulted through the Commonwealth-State/Territory Standing Committee on Treaties. Australian business was consulted through the Tax Treaties Advisory Panel and the Australia-New Zealand Business Council. Issues that arose were administrative in nature and include:

- tax exemptions for temporary migrants
- interaction of debt equity rules
- treatment of trusts and hybrid entities
- the interaction of the superannuation systems of both countries in promoting the mobility of labour and their implications for cross-border pensions.²⁴

5.12 The Committee was informed that the issues raised could be dealt with administratively or legislatively and were outside the Agreement context.²⁵

21 NIA, para. 12.

22 NIA, para. 11.

23 NIA, para. 7.

24 NIA, paras 1-2.

25 Mr Paul McBride, *Transcript of Evidence*, 27 February 2006, pp. 17-18.

Costs

- 5.13 The Assistance in Collection Article will have a positive effect on revenue collection and improve international tax compliance.²⁶
- 5.14 In addition, the Protocol may create minimal increases in administrative costs for the Australian Taxation Office (ATO) as a result of the enhanced information exchange between Australia and New Zealand.²⁷
- 5.15 The Assistance in Collection Article is likely to have cost implications for the ATO. These costs may arise from the extra human and financial resources required to handle inbound and outbound requests for debt collection. The exact costs associated with the Assistance in Collection Article are currently unknown as the Article will be added to existing and future tax treaties. The ATO has informed the Committee that it may need to expand its operations as the number of tax agreements Australia enters into increases.²⁸
- 5.16 Concerns were raised about the lack of financial modelling undertaken by the ATO in relation to administrative costs arising from the Agreement. The ATO responded with:

Based on our experience around exchange of information, we already have in place the infrastructure and the people to do this type of work. We already have in place, as was mentioned, over 40 treaties...In that area I do not believe that there will be need for a great increase or there will be a great burden, as we already have the infrastructure in place. Assistance in collection is new for us but it is something that will assist us. There will be some increased administrative costs around this area. It is one of those things where we do not know quite yet how much activity we will have and how much we will need to put into it. It is virtually impossible at this stage to do any models or anything like that on the costs.²⁹

26 NIA, para. 25.

27 NIA, para. 26.

28 NIA, paras 26-28.

29 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 16.

Legislation

- 5.17 The *International Tax Agreements Act 1953* (Cth) will be amended to give effect to Australia's obligations under the Protocol.³⁰

Entry into force and withdrawal

- 5.18 The Agreement will enter into force on the date of the last notification in writing by both Parties. Article 4 (Assistance in the Collection of Taxes) will take effect from the date agreed in a subsequent exchange of notes. This notification may not coincide with entry into force of the other Articles of the Protocol.³¹
- 5.19 As the Agreement has been in force for more than five years, either Australia or New Zealand can give a notice of termination of the Agreement in writing through diplomatic channels in any calendar year on or before 30 June.³²
- 5.20 In the case of a notice of termination being given, the Agreement would cease to be effective in Australia for:
- withholding tax on income derived by a non-resident and fringe benefits tax provided on or after 1 April in the calendar year after the year the notice of termination was given
 - other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year after the year the notice of termination was given.³³

Conclusion and recommendation

- 5.21 The Committee acknowledges that the Protocol will assist in bringing the tax Agreement with New Zealand into line with the OECD standard and serve to strengthen Australia-New Zealand ties.

30 NIA, para. 24.

31 NIA, para. 2.

32 NIA, para. 35.

33 NIA, para. 36.

Recommendation 3

The Committee supports the *Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income* and recommends that binding treaty action be taken.

