

Joint Standing Committee on Treaties

**Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base
Erosion and Profit Shifting**

ANSWERS TO QUESTIONS ON NOTICE

Division/Agency: Tax Analysis Division, Treasury

Reference: Hansard page 3-4 (11 September 2017)

Question:

Mr JOSH WILSON: Has there been an assessment made of the revenue consequences of this multilateral tax treaty?

Mr Wood: Yes. I think I answered that question a couple of minutes ago. The revenue consequences have been identified as unquantifiable but revenue positive. Our costings area hasn't been able to put an exact number on the revenue consequences, but they regard the consequences to be revenue positive.

Mr JOSH WILSON: You would hope they would be revenue positive. I understand you wouldn't be able to put a figure on it, but it seems a bit odd that there is not some sort of guidance or estimate around what the value might be.

Mr Wood: The simple answer is no. We don't have a number on that.

Mr JOSH WILSON: Was that view just formed internally? Was there any independent assessment or modelling done as part of the process? Was that outsourced in any way to an independent tax assessment body?

Mr Wood: As far as I'm aware, the modelling was done internally by our tax analysis division.

Mr JOSH WILSON: Can you take that on notice just in case there was some external consideration of that?

Mr Wood: Yes.

Answer:

The revenue impact of the Multilateral Instrument was costed by Treasury in consultation with the Australian Taxation Office (ATO).

Division/Agency: Tax Analysis Division, Treasury

Reference: Hansard page 4 (11 September 2017)

Question:

Mr JOSH WILSON: Is that the kind of thing that gets considered as a matter of course—whether things like that should be double checked, one internal and one external assessment?

Mr Wood: I couldn't answer that specifically. I'm not sure what data sources our tax analysis division relies on, so it could well use external sources.

Mr JOSH WILSON: External sources would be used sometimes in these cases where we are looking at tax arrangements, particularly by treaty action?

Mr Wood: I would have to take that on notice.

Mr JOSH WILSON: If you wouldn't mind. Thank you.

Answer:

The ATO was consulted in forming the expected revenue impact of the Multilateral Instrument. The ATO has detailed information on the tax affairs of companies operating in Australia which is generally not available to external sources.

Division/Agency: Tax Analysis Division, Treasury

Reference: Hansard page 4 (11 September 2017)

Question:

Mr JOSH WILSON: I should have asked this in my earlier set of questions. In addition to the information that you provide on notice, I am interested in knowing whether the modelling included any case studies of relevant entities?

Answer:

An assessment of how certain entities would be affected by the Multilateral Instrument was generally considered by the ATO and informed the costing. Specific cases were not disclosed to Treasury as they are protected by taxpayer confidentiality.

Division/Agency: Corporate and International Tax Division, Treasury

Reference: Hansard page 4 (11 September 2017)

Question:

Ms TEMPLEMAN: Just on the arbitration clauses, could you spell out in really simple terms who we are aware of that has signed up for that, how we've reached our position on it and where it might apply to Australia to have that arbitration process externally when there hasn't been resolution of something after two years?

Mr Wood: Under tax treaties, if a taxpayer considers that they have been taxed by one of the two countries in a way that is not consistent with the treaty, they can instigate a process called the Mutual Agreement Procedure, which is a dispute resolution procedure. That already exists in our treaties. Generally speaking, the treaty requires the two countries to consult with each other to endeavour to resolve the dispute, but there is no obligation to actually resolve it. That can mean in practice that disputes remain unresolved and the taxpayer might suffer double taxation, for example. In about 2010, or possibly 2008, the OECD introduced an arbitration provision into its model tax convention, which allows the taxpayer then to refer that dispute to independent arbitration, if it remains unresolved after two years. So we already have arbitration rules in three of our bilateral treaties—with New Zealand, Germany and Switzerland. But under the multilateral instrument it was an opportunity to implement arbitration rules much more broadly with other countries. I'll just have to tally them up. I think 13 of our treaty partners have also picked up arbitration.

Answer:

Most Signatories (including Australia) signing the Multilateral Instrument notified their adoption positions on a provisional basis, to be confirmed as final on ratification.

Based on other Signatories' adoption positions notified on signature, the Multilateral Instrument will modify 13 of Australia's bilateral tax treaties to provide for dispute resolution

through mandatory binding arbitration. These treaties are those with: Belgium, Canada, Fiji, Finland, France, Ireland, Italy, Malta, the Netherlands, New Zealand, Singapore, Spain and the United Kingdom.