

Joint Standing Committee on Treaties

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the Convention between Australia and Iceland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance and its Protocol

2022 - 2023

Agency: Australian Taxation Office
Topic: Foreign Tax Collection
Reference: Spoken (10 February 2023)
Member: Josh Wilson

Question:

Mr Dowie: That's right, and I'll talk about what that means. There's a well-established principle in international tax treaties that that is an appropriate part of what tax treaties should look like. It's been part of the OECD model tax convention for over two decades, and our tax treaty is based on that. It's contained in seven of Australia's tax treaties, not including this one. If you include Iceland, eight of the 46 have this particular clause in it. We've signed up to the OECD's multilateral convention on mutual administrative assistance, which also generally provides for assistance in the collection of taxes. So the concept of assistance in collection of taxes is certainly not new.

CHAIR: Not to interrupt you, but just out of interest, you say that this will be the eighth—so there are seven. Is it true that we commonly in any given year collect tax due to some or all of those other seven nations?

Mr Dowie: I don't have in front of me the exact information about what the number of cases are where this clause is enlivened or the sum of revenue that is there.

CHAIR: Are you able to say that it has occurred? This is not a completely theoretical thing. There would be some instances where we have essentially undertaken foreign tax collection.

Mr Manley: Yes, it does occur. We can take on notice how often it does.

Answer:

Since 2014, the Australian Taxation Office has accepted 181 requests for assistance from other jurisdictions as of 13 February 2023.

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Agency: Australian Taxation Office
Topic: Dispute resolution examples
Reference: Spoken (10 February 2023)
Member: Josh Wilson

Question:

CHAIR: So this agreement will have an arbitration feature within the mechanism, but some don't?

Mr Dowie: Under article 23—this one is under article 23(5)—any unresolved issues arriving from the case shall be submitted to arbitration if the person so requests in writing.

CHAIR: What's the arbitration body? Does that need to be created specifically, or is there some pre-existing tribunal or something that gets used for these things?

Mr Dowie: No, we would need to create it. In fact, it's spelt out on page 26 of the treaty, in article 23(5):

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

That basically means that in the event there is a dispute that needs to go to arbitration, Australia and Iceland would settle the terms of what that would look like.

CHAIR: It might be interesting for the committee if you could, on notice, give us perhaps an example or two of how that has happened in the past. Presumably that same thing has occurred where a dispute arises, there is not a pre-existing tribunal or mechanism, and they then agree on a mechanism by which it would be resolved where they can't resolve it themselves. I assume that's sort of what happens. You first of all have an intergovernmental conversation, and if you can work it out, that's good, and if you can't, you have to agree on some sort of arbitration mechanism. Then a panel is appointed, they consider the matter, they provide a determination, and the two countries agree—something like that.

Mr Dowie: We can certainly give you some examples of how arbitration has worked in the past under some of our treaties, noting that all of our treaties are slightly different, so they will work slightly differently. We can certainly draw on some practical examples of where some of the most recent ones have operated.

Answer:

Arbitration is currently a feature of 16 of Australia's double tax agreements ('DTAs'). If a mutual agreement procedure ('MAP') case remained unresolved after the requisite period of time (dictated by the DTA in question but typically two years), the taxpayer would be eligible to request outstanding issues in the case be resolved via arbitration. The Australian Taxation Office has not yet had a matter to proceed to arbitration under a DTA and so is not able to provide examples of how arbitration has happened in the past.