

## Two Tax Information Exchange Agreements

### Introduction

- 3.1 The proposed treaty actions are to bring into force the *Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011* and the *Agreement between the Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011*.<sup>1</sup>
- 3.2 Australia has signed 33 Tax Information Exchange Agreements (TIEAs) to date.<sup>2</sup> The Committee has previously reviewed Australian TIEAs in Reports 73, 87, 99, 102, 107, 112, 114, 120 and 123.

### Overview and national interest summary

- 3.3 The key objective of the TIEAs is to establish a legal basis for the exchange of tax information between the Australia and Bahrain, and Australia and Andorra.<sup>3</sup> Both Andorra and Bahrain are, in a general sense, considered

---

1 National Interest Analysis [2012] ATNIA 12 with attachment on consultation *Agreements between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011* [2011] ATNIF 34; and the *Government of Australia and the Government of the Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011* [2011] ATNIF 20 (hereafter referred to as 'NIA'), para 1.

2 The full list of countries can be found at: <http://www.ato.gov.au/content/00161158.htm>, accessed 17 July 2012. Further additional information can be found at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Aus-Tax-Treaties/HTML/Tax-Information-Exchange-Agreements>, accessed 17 July 2012.

3 NIA, para 4.

to be low-tax jurisdictions and this makes these two Agreements desirable from an Australian perspective.<sup>4</sup>

- 3.4 The Agreements will help Australia protect its revenue base by allowing the Commissioner of Taxation to request and receive information held in Bahrain and Andorra and will help improve the integrity of the tax system by discouraging tax evasion by individuals and other entities. The Agreements also incorporate a number of important safeguards to protect the legitimate interests of taxpayers, including requirements in relation to confidentiality and legal privilege.<sup>5</sup>
- 3.5 The Agreements are part of Australia's efforts to conclude TIEAs with jurisdictions that have committed to work with member countries of the Organisation for Economic Cooperation and Development (OECD) to improve transparency and establish effective procedures for the exchange of tax information.<sup>6</sup>
- 3.6 While some countries have expressed no desire to enter into TIEA negotiations,<sup>7</sup> this work is on-going. The Treasury explained:

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 [Australian Tax Office] 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.<sup>8</sup>

## Reasons for Australia to take the proposed treaty action

- 3.7 The following information of the claimed benefits to Australia of the proposed treaty action is taken from the National Interest Analysis (NIA).

---

4 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, pp. 9-10.

5 NIA, para 5.

6 NIA, para 6.

7 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, pp. 10-11.

8 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, p. 10.

- 3.8 TIEAs are an important tool in Australia's efforts to combat offshore tax evasion. The Agreements promote fairness and enhance Australia's ability to administer and enforce its domestic tax laws.<sup>9</sup>
- 3.9 The Agreements are part of Australia's ongoing commitment to the OECD's work on eliminating harmful tax practices that contribute to international tax avoidance and evasion.<sup>10</sup> Australia has taken a leadership role in this work and is currently the Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which has a membership of more than 100 jurisdictions.<sup>11</sup> The Treasury explained further:
- ...the fundamental purpose of the Global Forum [is] to get as many countries as possible to sign agreements of this type, which are generally bilateral agreements. Since about 2009, 700 or 800 tax information exchange agreements have been signed on a worldwide basis. The Global Forum can take a lot of credit for that result, and Australia has shown a leadership role in acting as the Chair of the Global Forum and promoting standards and helping the countries who are members of the Global Forum to achieve those outcomes.<sup>12</sup>
- 3.10 Since 2002, more than 100 jurisdictions have committed to the implementation of OECD standards of transparency and tax information exchange. These standards, when implemented, help to ensure the availability of information needed by tax authorities to determine a taxpayer's correct tax liability. TIEAs are the key bilateral means that facilitate the provision of such information by low-tax jurisdictions.<sup>13</sup>
- 3.11 Experience has shown the TIEAs to be effective. The Australian Taxation Office (ATO) provided some tangible examples to the Committee.
- 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

---

9 NIA, para 7.

10 Further information can be found at 'OECD - Tax Information Exchange Agreements': [http://www.oecd.org/document/7/0,3746,en\\_2649\\_33767\\_38312839\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/7/0,3746,en_2649_33767_38312839_1_1_1_1,00.html), accessed 17 July 2012.

11 NIA, para 8.

12 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax & Treaties Division, Treasury, *Committee Hansard*, 13 August 2012, p. 11.

13 NIA, para 9.

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.<sup>14</sup>

- 3.12 Furthermore, the TIEAs act as a deterrent to those individuals who would otherwise seek to minimise their taxation commitments through transfers to low-taxation jurisdictions. The ATO commented:

There is a deterrent effect. Many individuals who previously used secrecy jurisdictions to avoid their tax obligations are abandoning them. 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.<sup>15</sup>

- 3.13 Although there may be other reasons for this decline – such as the global financial crisis<sup>16</sup> – the Committee recognises that these figures are quite significant.
- 3.14 The Australian Transaction Reports and Analysis Centre (AUSTRAC) reports a small flow of funds between Australia and Andorra and a significant flow of funds between Australia and Bahrain. While most financial flows to and from low-tax jurisdictions are legitimate, the legal frameworks 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.<sup>17</sup>
- 3.15 It is in Australia's interest to continue to develop its network of TIEAs with low-tax jurisdictions as it will make 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.
- 

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

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

16 Mr Neil Cossins, Director, Exchange of Information Unit, Transparency Practice – Large Business & International, Australian Taxation Office, *Committee Hansard*, 13 August 2012, p. 10.

17 NIA, para 11.

This will help protect Australia's revenue base and improve the integrity of the tax system while enhancing the reputations of Bahrain and Andorra as locations for legitimate business activity.<sup>18</sup>

- 3.16 Bahrain and Andorra's commitment to implement the Agreements is a positive step in their respective relationships with Australia. The OECD has identified Bahrain and Andorra as jurisdictions that have committed to and substantially implemented the internationally agreed standard for the exchange of information relating to tax.<sup>19</sup>

## Obligations

- 3.17 The Andorra Agreement uses the term 'Contracting Parties'. The Bahrain Agreement uses the term 'Contracting States' but otherwise impose the same obligations.<sup>20</sup>
- 3.18 **Article 5(1)** obliges the competent authorities of the Contracting Parties (or States) to provide, on request, information that is foreseeably relevant to the administration and enforcement of the other Party's domestic tax laws, including the collection of taxes and the investigation or prosecution of tax matters.<sup>21</sup>
- 3.19 **Article 5(2)** provides that where the information in the possession of the Requested Party (or State) is insufficient to comply with a request, the Requested Party (or State) must use its powers to obtain and provide the information, even if it is not needed for the Requested Party's (or State's) domestic tax purposes.<sup>22</sup>
- 3.20 **Article 5(3)** requires the provision of information in the form of depositions of witnesses and authenticated copies of original records if specifically requested by the competent authority of an Applicant Party (or State), to the extent allowable under the laws of the Requested Party (or State).<sup>23</sup>
- 3.21 **Article 5(4)** obliges each Contracting Party (or State) to ensure its competent authority has the authority to obtain and provide information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity, as well as information regarding ownership

---

18 NIA, para 12.

19 NIA, para 13.

20 NIA, para 14.

21 NIA, para 15.

22 NIA, para 16.

23 NIA, para 17.

of companies, partnerships, trusts, foundations, 'Anstalten'<sup>24</sup> and other persons.<sup>25</sup>

- 3.22 **Article 5(6)** obliges the Contracting Parties (or States) to provide the requested information as promptly as possible. Additionally, the Agreements oblige the Contracting Parties (or States) to acknowledge receipt of requests for information.<sup>26</sup>
- 3.23 **Article 6** provides that one Contracting Party (or State) may, on request, permit interviews with individuals and the examination of records within its jurisdiction by officials of the other Contracting Party (or State), with the written consent of the persons concerned.<sup>27</sup>
- 3.24 **Article 7** provides the grounds for the refusal of requests, including where requests are not in conformity with the respective Agreement or if the Applicant Party (or State) would be unable to obtain the requested information under its own laws.<sup>28</sup>
- 3.25 **Article 8** obliges the Contracting Parties (or States) to keep information received under the proposed Agreements confidential.<sup>29</sup>
- 3.26 **Article 9** provides that, unless the competent authorities of the Contracting Parties (or States) otherwise agree, the Requested Party (or State) will bear the ordinary costs associated with responding to requests for information, with extraordinary costs to be borne by the Applicant Party (or State).<sup>30</sup>
- 3.27 **Article 10** requires the Contracting Parties (or States) to implement legislation necessary to give effect to the Agreements.<sup>31</sup>
- 3.28 **Article 11** obliges each Contracting Party (or State) to refrain from imposing prejudicial or restrictive measures on residents or nationals of either Contracting Party (or State) on the basis that the other Contracting Party (or State) does not engage in effective exchange of information and/or because it lacks transparency in the operation of its law, regulations or administrative practices.<sup>32</sup>
- 3.29 **Article 12** requires the Contracting Parties (or States) to jointly endeavour to resolve difficulties concerning the interpretation or application of the
- 

24 Institutions similar to trusts or foundations.

25 NIA, para 18.

26 NIA, para 19.

27 NIA, para 20.

28 NIA, para 21.

29 NIA, para 22.

30 NIA, para 23.

31 NIA, para 26.

32 NIA, para 24.

proposed Agreements and provides that they may also decide upon other forms of dispute resolution.<sup>33</sup>

## Implementation

- 3.30 No further legislation or regulation is required in order to implement the proposed Agreements, as Australia is able to fulfil its obligations under existing legislation, specifically, Section 23 of the *International Tax Agreements Act 1953*.<sup>34</sup>
- 3.31 The implementation of the proposed Agreements will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.<sup>35</sup>

## Costs

- 3.32 The Agreements will have a small administrative and financial impact on the ATO. Neither country is likely to routinely need Australian information for their own tax purposes. It is likely that most requests for information will originate from Australia. Some resources may need to be allocated by the ATO to provide technical assistance to these jurisdictions in relation to their exchange of information procedures.<sup>36</sup>
- 3.33 The ATO and the relevant authorities of Bahrain and Andorra have negotiated Memoranda of Understanding, under which certain costs associated with Australian requests for information will be borne by the ATO.<sup>37</sup>
- 3.34 Australian residents are unlikely to incur significant compliance costs as it is unlikely Australia will receive many requests for information from either country and consequently, be required to collect information from Australian residents.<sup>38</sup>
- 3.35 Overall, it is estimated that the administrative and financial impact of the proposed Agreements will be absorbed by the ATO's existing exchange of information program, which currently administers similar arrangements (TIEAs and double-taxation agreements) with more than seventy

---

33 NIA, para 25.

34 NIA, para 26.

35 NIA, para 27.

36 NIA, para 28.

37 NIA, para 29.

38 NIA, para 30.

countries. As the proposed Agreements are intended to help reduce tax avoidance and evasion by Australian taxpayers, they could result in the generation of additional revenue for Australia.<sup>39</sup>

## Conclusion

- 3.36 The Committee has examined a number of these Agreements, and understands their utility. The evidence provided by both the Treasury and the ATO provides substance to this view. There is tangible evidence that funds have been recovered, and that these Agreements have a deterrent effect which causes individuals to reconsider transferring their assets to low-taxation jurisdictions.
- 3.37 The Committee supports the continued negotiation of TIEAs and recommends that binding action be taken on both these Agreements.

### Recommendation 2

**The Committee supports the Agreement between the Government of Australia and the Government of the Kingdom of Bahrain on the Exchange of Information with Respect to Taxes done at Manama on 15 December 2011 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 Principality of Andorra on the Exchange of Information with Respect to Taxes done at New York on 24 September 2011 and recommends that binding treaty action be taken.**

---

<sup>39</sup> NIA, para 31.