

## **DOCUMENTS TABLED ON 25 NOVEMBER 2009:**

- **National Interest Analysis [2009] ATNIA 21**  
**with attachment on consultation**
  
- **Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989, done at Canberra on 8 September 2009. [2009] ATNIF 20**



## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

#### **Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989, done at Canberra on 8 September 2009, [2009] ATNIF 20.**

#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the *Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989* (the Second Protocol). The Second Protocol will enter into force, pursuant to Article II, on the thirtieth day after the date of the last notification confirming that each Party has completed the necessary domestic requirements to bring it into force.
2. The Second Protocol will update the Exchange of Information (EOI) provisions (Article 19) in the *Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* signed at Canberra on 11 February 1969 [1969] ATS 14, as amended by the Protocol signed at Canberra on 16 October 1989, [1990] ATS 3 (the existing Agreement).

#### **Overview and national interest summary**

3. The Second Protocol will update the legal basis for the exchange of tax information between Australia and Singapore by replacing the EOI provisions (Article 19) in the existing Agreement. This will align the EOI provisions in the Agreement with the internationally agreed standard on tax information exchange developed by the Organisation for Economic Cooperation and Development (OECD).
4. The new EOI provisions enhance the ability of the tax authorities of Australia and Singapore to exchange tax information. In particular, the new provisions provide that neither tax administration can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar financial institution holds the information. It also expands the taxes in respect of which information may be exchanged to all federal taxes, rather than just income taxes covered under the existing Agreement. At the same time, the enhanced EOI provisions maintain important safeguards to protect the legitimate interests of taxpayers.
5. Australia enjoys a positive and constructive relationship with Singapore, with a growing bilateral commercial relationship. The Second Protocol will help protect Australia's revenue base by expanding the scope of taxpayer information available to the Australian Taxation Office (ATO). This is expected to improve the integrity of the tax system by increasing taxpayer compliance and tax revenue.

## **Reasons for Australia to take the proposed treaty action**

6. The enhanced EOI provisions in the Second Protocol will be an important tool in Australia's efforts to combat offshore tax evasion. They will make it harder for taxpayers to evade Australian tax and will discourage taxpayers from participating in abusive tax arrangements by increasing the probability of detection. The provisions will improve the ability of the ATO to exchange tax information by:

- expanding the taxes in respect of which information may be exchanged to all federal taxes, rather than just the income taxes covered under the existing Agreement; and
- ensuring that neither Singapore nor Australia's tax administration can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar financial institution holds the information.

Accordingly the Second Protocol will enhance Australia's ability to administer and enforce its domestic tax laws.

7. The Second Protocol aligns the EOI provisions with the internationally agreed standard on tax information exchange, which was developed by the OECD. This standard was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the United Nations Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting. It is in Australia's interest to utilise EOI treaty provisions that meet the internationally agreed standard to combat tax avoidance and evasion, and to continue the Government's support of global action to improve information exchange and transparency.

## **Obligations**

8. Article I(1) of the Second Protocol creates reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the provisions of the Agreement or to the administration and enforcement of domestic law concerning all taxes of the Parties imposed consistently with the Agreement (in Australia's case, all federal taxes).

9. Article I(2) obliges the Parties to treat information received through exchange as secret in the same manner as information obtained under their domestic laws. This is an essential feature which ensures that adequate protection is provided to information exchanged between the two countries. The respect for confidentiality of information is necessary to protect the legitimate interests of taxpayers.

10. Either Party may decline to supply information in certain circumstances. Specifically, Article I(3) provides that a request may be denied where: (i) it would require implementation of administrative measures at variance with the Party's domestic law or administrative practice; (ii) the information requested is not obtainable under the laws or in the normal course of administration of the Party; or (iii) it would involve disclosure of a trade or business secret or would be contrary to public policy (for example, if it would breach human rights obligations). These circumstances, which act as a safeguard to protect Australia's interests and taxpayer's rights, accord with the OECD Model Tax Convention on Income and on Capital.

11. These obligations are generally equivalent to Australia's current obligations under Article 19 of the Agreement. However, Article I expands on the requirements of the existing Article 19 by specifically providing that neither Party may decline to provide requested information solely on the grounds that the information is not required for its domestic law purposes or because the information is held by a bank or financial institution.

### **Implementation**

12. The implementation of the Second Protocol will require amendment to the *International Tax Agreements Act 1953* to give it the force of law in Australia. The amendment will be effected prior to the Second Protocol entering into force in Australia.

13. The legislative framework required for Australia to fulfil its obligations under the enhanced EOI provisions in the Second Protocol is contained in section 23 of the *International Tax Agreements Act 1953*.

14. The implementation of the Protocol will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.

### **Costs**

15. Treasury has estimated the revenue impact of the updated EOI provisions in the Second Protocol as unquantifiable. However, since the Second Protocol seeks to expand the scope of taxpayer information available to the ATO, the proposal is expected to increase taxpayer compliance and therefore tax revenue.

16. The section of the ATO dealing with international issues already has an Exchange of Information Unit which handles EOI requests with Australia's tax treaty partners, including Singapore. It is envisaged that there will only be minimal increases in administrative costs to the ATO as a result of the enhanced information exchange between Australia and Singapore flowing from the Second Protocol.

17. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers from the Second Protocol.

### **Regulation Impact Statement**

18. The Office of Best Practice Regulation in the Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

19. The Second Protocol does not provide for the negotiation of future legally binding instruments. Neither the Second Protocol nor the existing Agreement contain formal amendment procedures. However, Article 39 of the *Vienna Convention on the Law of Treaties* provides that a treaty may be amended by agreement between the parties. Any future amendments to the existing Agreement would be subject to Australia's domestic treaty processes, including tabling and consideration by the Joint Standing Committee on Treaties.

### **Withdrawal or denunciation**

20. Article III of the Second Protocol provides that the Protocol shall form an integral part of the existing Agreement and that it shall remain in force as long as the existing Agreement remains in force and shall apply as long as the Agreement itself is applicable. The Agreement may be terminated by either Party by written notice (Article 22).

### **Contact details**

Tax Treaties Unit  
International Tax & Treaties Division  
Department of the Treasury

## **ATTACHMENT ON CONSULTATION**

**Second Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Protocol of 16 October 1989, done at Canberra on 8 September 2009.  
[2009] ATNIF 20**

### **CONSULTATION**

21. The Second Protocol addresses only administrative matters, namely facilitating the full exchange of information between tax authorities. Accordingly, the public was not consulted.
22. The ATO was consulted about the Second Protocol and will administer the Exchange of Information provisions. Given that the Second Protocol upgrades those provisions to align with the international standard on tax information exchange and with Australia's recent bilateral tax treaty practice, the ATO were supportive of the proposed action to update the existing Australia-Singapore Agreement.
23. The Second Protocol was proposed by Singapore soon after it endorsed the Organisation for Economic Cooperation and Development's (OECD) 2008 standard for the effective exchange of information in March 2009. As the proposed treaty text was able to be agreed quickly, the proposed treaty action has not appeared on the schedules of treaties to State and Territory representatives, which is updated six-monthly.
24. In addition to the Assistant Treasurer, the Minister for Foreign Affairs and the Minister for Trade approved the treaty action.