

**National Interest Analysis [2011] ATNIA 17**

**with attachment on consultation**

**Agreements between**

**the Government of Australia and the  
Government of the Republic of the Marshall Islands  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Majuro on 12 May 2010  
[2010] ATNIF 36**

**the Government of Australia and the Government of the Republic of Mauritius  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Port Louis on 8 December 2010  
[2010] ATNIF 53**

## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

#### Agreements between

**the Government of Australia and the  
Government of the Republic of the Marshall Islands  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Majuro on 12 May 2010  
[2010] ATNIF 36**

**the Government of Australia and the Government of the Republic of Mauritius  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Port Louis on 8 December 2010  
[2010] ATNIF 53**

#### Nature and timing of proposed treaty action

1. The proposed treaty action is to bring the *Agreement between the Government of Australia and the Government of the Republic of the Marshall Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* (the proposed Marshall Islands Agreement) and the *Agreement between the Government of Australia and the Government of the Republic of Mauritius for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments* (the proposed Mauritius Agreement) into force. The two agreements are hereinafter referred to collectively as “the proposed Agreements”.

#### Marshall Islands

2. Pursuant to its Article 10, the proposed Marshall Islands Agreement will enter into force on the date of last notification through the diplomatic channel between Australia and the Marshall Islands establishing that the respective constitutional and legal procedures for entry into force have been completed.

3. The proposed Marshall Islands Agreement will have effect for any year of income beginning on or after 1 July (in respect of Australian tax) or 1 October (in respect of Marshalllese tax) in the calendar year following the date of entry into force, provided the *Agreement between the Government of Australia and the Government of the Republic of the Marshall Islands on the Exchange of Information with Respect to Taxes* (the proposed Marshall Islands Tax Information Exchange Agreement, [2010] ATNIF 34, hereinafter referred to as “the proposed Marshall Islands TIEA”) has entered into force. The proposed Marshall Islands TIEA provides for the exchange of such information as is foreseeably relevant for carrying out the provisions of the proposed Agreement.

## Mauritius

4. Pursuant to its Article 10, the proposed Mauritius Agreement will enter into force on the date of last notification through the diplomatic channel between Australia and Mauritius establishing that the constitutional and legal procedures for entry into force have been completed.

5. The proposed Mauritius Agreement will have effect for any year of income beginning on or after 1 July (in respect of Australian tax) or 1 January (in respect of Mauritius tax) in the calendar year following the date of entry into force, provided the *Agreement between the Government of Australia and the Government of the Republic of Mauritius on the Exchange of Information with Respect to Taxes* (the proposed Mauritius Tax Information Exchange Agreement, [2010] ATNIF 52, hereinafter referred to as “the proposed Mauritius TIEA”) has entered into force. The proposed Mauritius TIEA provides for the exchange of such information as is foreseeably relevant for carrying out the provisions of the proposed Mauritius Agreement.

6. Further information on the proposed Marshall Islands TIEA and the proposed Mauritius TIEA is provided in [2011] ATNIA 16, tabled in parallel with this National Interest Analysis.

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

7. The proposed Agreements provide for the allocation of taxing rights between Australia and the Marshall Islands and between Australia and Mauritius with respect to certain income of certain classes of individuals who are residents of Australia, the Marshall Islands, or Mauritius. This will help to prevent double taxation of the same income, as well as assist to combat offshore tax evasion. The proposed Agreements also establish a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made to taxpayers’ income by the revenue authorities of Australia, the Marshall Islands or Mauritius. The proposed Agreements are consistent with provisions contained in Australia’s comprehensive bilateral tax treaties.

8. The proposed Agreements are part of a package of benefits offered to the Marshall Islands and Mauritius as part of negotiations to conclude their individual TIEAs with Australia. The proposed Marshall Islands TIEA was signed simultaneously with the proposed Marshall Islands Agreement on 12 May 2010. The proposed Mauritius TIEA was signed simultaneously with the proposed Mauritius Agreement on 8 December 2010.

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

9. The proposed Agreements support Australia’s efforts to combat offshore tax evasion through the establishment of transparency measures and effective information exchange arrangements with low-tax jurisdictions. They will also assist to prevent double taxation of the same income.

### **Obligations**

10. Article 1 of the respective proposed Agreements provides that they apply only to persons who are residents (as defined in Article 4) of either or both of the Contracting States. The proposed Marshall Islands Agreement applies to persons who are residents of Australia and/or the Marshall Islands. The proposed Mauritius Agreement applies to persons who are

residents of Australia and/or Mauritius. This precludes persons who are not a resident of Australia, the Marshall Islands or Mauritius from obtaining the benefits of the proposed Agreements. Pursuant to Article 4, a resident is a person who is a resident in Australia or the Marshall Islands for taxation purposes for the proposed Marshall Islands Agreement, or a person who is a resident in Australia or Mauritius for taxation purposes for the proposed Mauritius Agreement. However, a person is not a resident of a Contracting State for the purposes of the proposed Agreements if they are only liable to tax in that Contracting State in respect of income from sources in that Contracting State, or in the case of the Marshall Islands, if they are not subject to the most comprehensive taxation provided under the national tax laws of the Marshall Islands.

11. Article 2 of the respective proposed Agreements provides that, for Australia, the proposed Agreements only apply to federal income tax. Consequently, for Australia, the proposed Agreements do not apply to taxes imposed by States, Territories, municipalities, local authorities or other political subdivisions, or possessions of Australia.

12. Under Articles 5, 6 and 7 of the respective proposed Agreements, each Contracting State is obliged to forego its taxing rights over certain income derived by retirees, pensioners, government employees, students and business apprentices, where they are residents of the other Contracting State.

13. Article 5 of the respective proposed Agreements obliges Australia not to tax Australian source pensions and retirement annuities paid to residents of the Marshall Islands or residents of Mauritius, provided such income is subject to tax in the Marshall Islands or in Mauritius. Article 5 permits Australia to tax Marshallese or Mauritian source pensions and retirement annuities paid to Australian residents, where such income is not subject to tax in the other Contracting State.

14. Article 6 of the respective proposed Agreements obliges Australia not to tax the salaries of government employees of the Marshall Islands or of Mauritius working in government service, for non-commercial purposes, in Australia. This would apply, for example, to Marshallese residents or Mauritian residents who staff representative offices established in Australia. Reciprocal obligations apply in respect of Australian government employees working in the Marshall Islands or in Mauritius. This approach provides Australia, the Marshall Islands and Mauritius with sole taxing rights over the salaries they pay to individuals undertaking governmental functions.

15. Article 7 of the respective proposed Agreements obliges Australia not to tax maintenance, education or training payments received by students or business apprentices from the Marshall Islands or from Mauritius who are temporarily studying in Australia, where those payments arise from sources outside Australia. Other income will remain liable to Australian tax as required under Australian law. Reciprocal obligations apply to payments received by Australian students or business apprentices temporarily studying in the Marshall Islands or in Mauritius.

16. Article 8 of the respective proposed Agreements establishes a mechanism to assist in the resolution of disputes arising from transfer pricing adjustments made to taxpayers' income by the competent authorities of Australia or the Marshall Islands or Mauritius. Transfer pricing involves the sale or purchase of goods and/or services between related parties at non-market prices in order to diminish profits (through inflating costs and/or reducing receipts). The relevant competent authority may make a transfer pricing adjustment where it considers that the taxable profits in its own jurisdiction have been underestimated or artificially reduced

by a taxpayer charging unreasonable or non-arm's length prices on its cross-border related-party transactions (i.e. prices inconsistent with what parties acting independently would charge each other). Article 8 permits taxpayers affected by the actions of one Contracting State to present a case to the competent authority of the other Contracting State and obliges Australia and the Marshall Islands and Australia and Mauritius respectively to endeavour to resolve such disputes. Affected taxpayers must invoke this process within three years of the first notification of the relevant adjustment.

17. Article 9 of the respective proposed Agreements obliges the Contracting States to exchange information that is foreseeably relevant for the purposes of carrying out the proposed Agreements. Article 9 of the respective proposed Agreements specifies that information may be exchanged pursuant to the provisions of the proposed Marshall Islands TIEA and the proposed Mauritius TIEA.

### **Implementation**

18. Minor amendments to the *International Tax Agreements Act 1953* will be necessary to give effect to the proposed Agreements, including the insertion of each proposed Agreement as a Schedule to that Act. Legislation for this purpose is expected to be introduced into Parliament in 2011, pending approval by the Joint Standing Committee on Treaties (JSCOT) of the proposed Agreements' entry into force.

19. The implementation of the proposed Agreements will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.

### **Costs**

20. The proposed Agreements will have a financial impact on the Australian Taxation Office (ATO), which will administer the Agreements. However, the small number of taxpayers likely to be affected by the proposed Agreements ensures that this impact will be minimal.

21. Affected Australian residents are unlikely to incur any significant compliance costs in relation to the proposed Agreements, which may provide them with benefits.

22. Overall, it is estimated that the administrative and financial impact of concluding the proposed Agreements will be minimal and can be absorbed into existing administrative arrangements relating to Australia's bilateral comprehensive tax treaties.

### **Regulation Impact Statement**

23. The Treasury has assessed the implementation of the proposed Agreements against criteria in the *Best Practice Regulation Handbook* and has concluded that the regulatory options have no/low impact on businesses and individuals or on the economy. The Office of Best Practice Regulation has been consulted and confirms that Regulation Impact Statements are not required.

### **Future treaty action**

24. The proposed Agreements do not provide for amendments or for the negotiation of future legally binding instruments. Pursuant to international law, in the absence of specific procedures, the Contracting States may amend the proposed Agreements by mutual consent at any time. Any such amendments would be subject to Australia's domestic treaty-making

process, including tabling and consideration by JSCOT. Any future amendments to the proposed Agreements may be considered in line with Australian policy for tax treaty negotiations current at that time.

### **Withdrawal or denunciation**

25. Termination of the proposed Agreements by Australia would be subject to Australia's domestic treaty-making process, including tabling and consideration by JSCOT.

#### Marshall Islands

26. Article 11(1) provides that the proposed Marshall Islands Agreement shall remain in force indefinitely unless either Contracting State provides written notice of termination through diplomatic channels.

27. Article 11(2) provides that in respect of Australian tax, such termination would take effect from 1 July in the calendar year following that in which the notice of termination is given. Termination would take effect from 1 October in respect of Marshallese tax in the calendar year following that in which the notice of termination is given.

28. Article 11(3) provides that the proposed Marshall Islands Agreement will also terminate and cease to be effective six months after the written notice of termination from either Contracting State terminating the related proposed Marshall Islands TIEA.

#### Mauritius

29. Article 11(1) provides that the proposed Mauritius Agreement shall remain in force indefinitely unless terminated by written notice of termination from either Contracting State. A Contracting State may not terminate the proposed Mauritius Agreement until after the expiration of three years from the date of the proposed Mauritius Agreement's entry into force.

30. Article 11(2) provides that such termination would take effect in respect of Australian tax from 1 July in the calendar year following that in which notice of termination is given. In respect of Mauritian tax, termination would take effect from 1 January in the calendar year following that in which notice of termination was given.

31. Article 11(3) provides that the proposed Mauritius Agreement will also terminate and cease to be effective six months after the written notice of termination from either Contracting State terminating the related proposed Mauritius TIEA.

### **Contact details**

International Tax Framework Unit  
Department of the Treasury

## **ATTACHMENT ON CONSULTATION**

### **Agreements between**

**the Government of Australia and the  
Government of the Republic of the Marshall Islands  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Majuro on 12 May 2010  
[2010] ATNIF 36**

**the Government of Australia and the Government of the Republic of Mauritius  
for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and  
to Establish a Mutual Agreement Procedure in Respect of  
Transfer Pricing Adjustments  
done at Port Louis on 8 December 2010  
[2010] ATNIF 53**

### **CONSULTATION**

32. The proposed Agreements with the Marshall Islands and Mauritius address principally administrative matters which are not in the public domain and, consequently, the public was not consulted.
33. The Australian Taxation Office was involved in the negotiation of the proposed Agreements and will administer them.
34. In addition to the Assistant Treasurer, the Minister for Foreign Affairs, the Minister for Trade and the Prime Minister have agreed to the proposed treaty actions.