

Two taxation agreements with the British Virgin Islands

Introduction

3.1 This chapter considers two treaties:

- *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes; and*
- *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals.*

3.2 The purpose of the first agreement, commonly referred to as a Tax Information Exchange Agreement or TIEA, is to establish a legal basis for the exchange of tax information between Australia and the British Virgin Islands (BVI).

3.3 The second agreement is part of a package of benefits that is being offered to the BVI to encourage it to conclude the TIEA.¹ The agreement will relieve double taxation of certain cross-border income derived by the residents of both countries.²

3.4 The BVI is a self-governing crown colony of the United Kingdom, located in the north-eastern Caribbean Sea. It has a low-tax structure and is known internationally as a centre for incorporating 'offshore companies'. Low-tax jurisdictions can be used in arrangements designed to avoid paying tax

1 Allocation of Taxation Rights Agreement NIA, para 7.

2 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 19.

elsewhere. In particular, assets and income that are subject to Australian tax can be concealed by their secrecy laws.³

- 3.5 The level and type of economic activity between Australia and the BVI is not fully known, however data held by the Australian Transaction Reports and Analysis Centre (AUSTRAC) indicates a relatively high flow of funds between the two countries.⁴

Reasons to take treaty action

- 3.6 The TIEA is the fifth agreement of this kind for Australia. Other agreements have been signed with Bermuda, Antigua and Barbuda, the Netherlands Antilles and the Isle of Man, and negotiations are underway for a further six agreements with Aruba, Granada, Guernsey, Jersey, Nauru and the Marshall Islands.⁵
- 3.7 The TIEA is considered an important component in efforts to combat offshore tax evasion. It will broaden the effectiveness of Australia's ability to administer and enforce its domestic tax laws, by making it harder for taxpayers to avoid or evade Australian tax. It will also discourage taxpayers from participating in abusive tax arrangements by increasing the probability of detection.⁶ Representatives of the Australian Taxation Office informed the Committee that these agreements are useful in obtaining information where a taxpayer or transaction of interest has been identified.⁷
- 3.8 Both agreements are considered important elements of Australia's ongoing commitment to the OECD's efforts to curb tax avoidance and evasion through international cooperation.⁸ The BVI is one of 35 countries working with the OECD under the auspices of the Global Forum on Taxation to develop international standards of transparency and effective information exchange to eliminate harmful tax practices.⁹
- 3.9 Treasury considered that the BVI is interested in concluding the proposed agreements because:

3 TIEA NIA, paras 4, 12.

4 TIEA NIA, para 12.

5 Mr Malcolm Allen, *Transcript of Evidence*, 23 February 2009, pp. 20, 21.

6 TIEA NIA, para 14.

7 Mr Malcolm Allen, *Transcript of Evidence*, 23 February 2009, p. 21.

8 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 19.

9 TIEA NIA, para 10.

The reputation issue is important for them. They do not want to be identified as a tax haven which is implicated in hiding fraudulent or criminal activity.¹⁰

- 3.10 In addition, Treasury identified the work being undertaken by the G20 on the extent to which tax havens have contributed to the global financial crisis through a lack of transparency, particularly in the financial system, as well as measures in the United States and Europe to counter tax havens, as contributing to the BVI's willingness to conclude the agreement.¹¹
- 3.11 The Committee received a submission from the Victorian and Tasmanian Synod of the United Church of Australia supporting Australia's entry into these agreements. The Synod emphasised to the Committee the importance of global efforts to combat corruption facilitated by the harmful tax practices of tax havens.¹²

Taxation Information Exchange Agreement (TIEA)

- 3.12 This agreement will help Australia to protect its revenue base and improve the integrity of the Australian taxation system by allowing the Commissioner for Taxation to request and receive certain information held in the BVI.¹³
- 3.13 Article 1 obliges both parties to exchange information where the information is relevant to the administration and enforcement of the parties' domestic tax laws, including the collection of taxes and the investigation and prosecution of tax matters.
- 3.14 The parties are obliged to provide such information when requested to do so in writing (Article 5(1)). There is no provision in the agreement to authorise voluntary or unsolicited exchange of information between the parties.¹⁴
- 3.15 Where the Commissioner of Taxation does not hold the information necessary to comply with the request, Australia must use all relevant information gathering measures to provide the requested information even if not required for domestic tax purposes (Article 5(2)).

10 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 23.

11 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 23.

12 Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission No. 2*.

13 TIEA National Interest Analysis (NIA), paras 4, 6.

14 TIEA NIA, para 16.

- 3.16 Information must be provided as promptly as possible (Article 5(6)) and must be kept confidential (Article 8).
- 3.17 Under Article 11, both countries are obliged not to apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either country while the agreement is in force. This means that once the mechanisms are in place to exchange information, Australia agrees not to take further defensive measures against the BVI.¹⁵ Treasury indicated that in addition to protecting their reputation, countries such as the BVI that enter into a TIEA want assurance that Australia is not going to take action against them even though they have entered into an agreement.¹⁶

Implementation and costs

- 3.18 No further legislation is required to implement the agreement.
- 3.19 The agreement will have a small administrative and financial impact on the Australian Taxation Office (ATO) as it is likely that most requests for information will originate from Australia. A Memorandum of Understanding will be concluded between the two countries to clarify costs that will be borne by the ATO.¹⁷
- 3.20 The Committee also notes that the package of additional benefits that Australia is offering to countries concluding a TIEA includes technical assistance in establishing the processes they will need to be able to exchange information with Australia. The costs associated with this are just over \$100,000 per year.¹⁸

Agreement for the allocation of taxing rights with respect to certain individuals

- 3.21 This agreement is the first of its kind for Australia but its operative provisions are consistent with provisions contained in Australia's more comprehensive bilateral tax treaties.¹⁹

15 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 23.

16 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 24.

17 TIEA NIA, paras 24 and 25.

18 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2008, p. 22.

19 Allocation of Taxing Rights Agreement NIA, para 4.

- 3.22 The Agreement provides for the allocation of taxing rights over certain income of certain individuals. It only applies to persons who are residents for taxation purposes of Australia or the BVI.
- 3.23 Australia is obliged to forego its taxing rights over certain income derived by government employees and students who are residents of the BVI:
- Under Article 5, Australia cannot tax the salaries of government employees of the BVI working in Australia in government service for non-commercial purposes. Australia and the BVI will therefore have sole taxing rights over the salaries that they pay to individuals undertaking government functions.²⁰
 - Under Article 6, Australia cannot tax maintenance, education or training payments received by students or business apprentices from the BVI who are temporarily studying in Australia, where those payments are made from outside Australia. Other income will remain liable to Australian tax.²¹

Implementation and costs

- 3.24 Minor amendments will be required to the *International Tax Agreements Act 1953* to give effect to the agreement. Treasury has indicated this legislation is expected to be introduced into Parliament in March 2009.²²
- 3.25 The agreement will have a financial impact on the ATO, however this is expected to be minimal given the small number of taxpayers likely to be affected by the Agreement.²³

Consultation

- 3.26 Relevant Commonwealth Ministers, the Australian Taxation Office and State and Territory Governments were consulted in development of the both agreements. Public consultation was not undertaken.²⁴

20 Allocation of Taxing Rights Agreement NIA, para 12.

21 Allocation of Taxing Rights Agreement NIA, para 13.

22 Allocation of Taxing Rights Agreement NIA, para 14.

23 Mr Mike Rawstron, *Transcript of Evidence*, 23 February 2009, p. 19.

24 NIAs, Consultation Attachment.

Conclusion and recommendations

- 3.27 The Committee recognises the importance of international efforts to combat offshore tax evasion and to establish consistent standards of tax governance between Australia and countries such as the British Virgin Islands. The Committee also recognises the domestic tax benefits arising from taxation agreements that discourage the use of certain countries as tax havens. The Committee therefore supports binding treaty action being taken.

Recommendation 3

The Committee supports the *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes* and recommends that binding treaty action be taken.

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals* and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair