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Business and investment regulation

4.1 Underpinning any analysis on business and investment regulation between Australia and New Zealand is the long term goal, articulated in January 2004 by the Australian Treasurer and the New Zealand Minister of Finance, of achieving a single economic market based on common regulatory frameworks.

Memorandum of Understanding on Business Law Coordination

4.2 The MOU was first signed in 2000 and covered the following areas as suitable for coordination:

- Cross recognition of companies;
- Financial product disclosure regimes;
- Cross border insolvency;
- Stock market recognition;
- Consumer issues;
- Electronic transaction; and
- Competition law.[1]

4.3 A revised MOU, reaffirming original principles and acknowledging changes in the business environment, was signed in February 2006.

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1 Department of the Treasury, *Submission 4, Vol 1,* p. 21.

4.4 New items on the work program include:

- Exploring the desirability of mutual disqualification of persons from managing corporations;
- Coordination of anti-money laundering supervisory framework; and
- Coordination of insurance regulation.[2]

4.5 The following four areas of the work program have progressed significantly:

- Accounting standards;
- Cross-recognition of companies;
- Mutual recognition of securities offerings; and
- Cross-border insolvency.

Accounting standards

4.6 The Trans-Tasman Accounting Standards Advisory Group (TTASAG) (see chapter 2) has made a number of cross-appointments between Australian and New Zealand oversight and standard setting bodies.[3] A cooperation and coordination Memorandum of Understanding has been agreed to and signed.[4]

4.7 The Group will be moving from a focus on standards to barriers to a single set of accounts for Australia and New Zealand.[5]

Cross-recognition of companies

4.8 Under the common law systems of Australia and New Zealand companies are already recognised as distinct entities.

4.9 New Zealand and Australian companies who are trans-Tasman operators must still comply with the full suite of reporting required of any foreign company.

4.10 The Australian Government has approved amendments to the *Corporations Act 2001* to eliminate duplication of New Zealand

2 Department of the Treasury, *Submission 4, Vol 1,* p. 21.
3 Department of the Treasury, *Submission 4, Vol 1,* p. 23.
4 NZ Government, *submission 9, Vol 1,* p. 110.
5 NZ Government, *submission 9, Vol 1,* p. 110.

company reporting in Australia. This needs to be consented to by the States before coming into law. New Zealand has indicated that they will be able to enact similar legislation in the future.[6]

4.11 Discussions between Australian and New Zealand company regulators on technical aspects of providing a secure link between databases are ongoing and initial progress has been made on options for change.[7]

Mutual recognition of securities offerings

4.12 A treaty for the mutual recognition of securities offerings was signed on 22 February 2006. This will allow an offer of securities being made in one country to be made in the other country with the same offer document provided that:

- The entry criteria for the recognition regime are satisfied; and,
- The offeror complies with the ongoing requirements of the recognition regime.

4.13 This treaty is not yet in force as domestic legislation in Australia and regulations in New Zealand need to be enacted.[8]

Cross border insolvency

4.14 The Australian Government will adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law on cross-border insolvency. The Model Law will provide effective and efficient mechanisms for dealing with cases of cross-border insolvency.[9] A draft bill for public comment is due to be released later in 2006.

4.15 New Zealand officials are currently developing draft legislation and have offered information sharing and further cooperation in streamlining procedures under the Model Law.[10]

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6 Department of the Treasury, *Submission 4, Vol 1,* p. 25.

7 Department of the Treasury, *Submission 4, Vol 1,* p. 25.

8 Department of the Treasury, *Submission 4, Vol 1,* p. 25.

9 http://www.treasury.gov.au/documents/1022/PDF/Corporate_Insolvancy_Reform_attachment.pdf 12 October 2005.

10 Department of the Treasury, *Submission 4, Vol 1,* p. 25.

Banking supervision

4.16 The Joint Trans-Tasman Council on Banking Supervision (chapter 2) has recommended changes to Australian and New Zealand legislation in order to ensure that the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of New Zealand (RBNZ) can support each other in performance of their regulatory responsibilities. These legislative changes are supported by both governments.

4.17 The committee was made aware of the following situation involving ANZ Bank:

> The ANZ Bank recently merged with the Bank of New Zealand. Because of the way the regulator wanted things to happen prior to the agreement signed in Melbourne in February, ANZ was going to have to spend $57 million this year and then another $136 million over a period of three years to meet New Zealand banking regulations because it was a merger and not an acquisition. It defies the intelligence as to why the New Zealand regulators required ANZ to place a certain functioning part of their operation in a specific place in New Zealand when that function could take place within existing facilities within ANZ in Australia.[11]

4.18 The committee is confident that the Joint Trans-Tasman Council on Banking Supervision will be able to look at situations such as this and address the underlying regulatory issues.

Competition policy

4.19 The Australian Government has provided in-principle support for recommendations made in the Productivity Commission's report *Australia and New Zealand Competition and Consumer Protection Regimes*.[12] The Australian Government sees progress as possible in the following areas:

- Improving the information sharing of the respective regulators;

11 Mr C Mackay, Executive Director, Australia New Zealand Business Council, *Evidence*, 12/05/06, p. 23.

12 http://www.pc.gov.au/study/transtasman/finalreport/index.html 13 January 2005

- ⇒ Statutory impediments in the *Trade Practices Act 1974* will be removed.
- ⇒ Confidential or protected information will remain protected from unauthorised use or disclosure.[13]

- Formalising existing policy dialogue;
  - ⇒ The Australian Competition and Consumer Commission (ACCC) and New Zealand Commerce Commission (NZCC) have proposed formal annual meetings.
- Exploring options for greater dialogue between the regulators;
  - ⇒ The ACCC and NZCC have agreed to develop a protocol to enhance cooperation in relation to the approval of merger applications involving trans-Tasman issues.[14]

4.20 It is noted that Competition policy harmonisation is not specifically addressed and this is discussed below in the "Issues arising" section.

Taxation

4.21 The approach to the harmonisation of Australia and New Zealand's taxation regimes has focussed on:

- Joint negotiation of tax information exchange agreements;
- Triangular taxation reforms;
  - ⇒ Currently businesses in each country are able to participate in the imputation systems of the other.
- Australia – New Zealand Tax Treaty
  - ⇒ The tax information exchange provisions of the treaty have been update to OECD standards by the protocol to the Australia - New Zealand tax treaty.
  - ⇒ This is the first tax treaty whereby Australia has agreed to assist the other jurisdiction in the collection of outstanding tax debts.

4.22 Imputation and franking credits and withholding tax issues are dealt with in greater detail below in the in the "Issues arising" section.

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13 Department of the Treasury, *Submission 4, Vol 1,* p. 29.

14 Department of the Treasury, *Submission 4, Vol 1,* p. 29.

Issues arising

4.23 The committee had particular issues bought to its attention. These are:

- Investment protocol harmonisation;
- Imputation credits;
- Withholding taxes alignment;
- Common currency; and,
- Competition policy harmonisation.

Investment protocol harmonisation

4.24 CER has resulted in a increase in trans – Tasman investment. Investment between Australia and New Zealand was A$61.8 billion in 2004. Australian investment in New Zealand was estimated at A$39.4 billion, while New Zealand's in Australia was A$22.4 billion.[15]

4.25 New Zealand is Australia's third most important destination for foreign investment, and the sixth largest source of foreign investment in Australia. Australia is also the largest foreign investor in New Zealand. New Zealand and Australian investment in each other's countries contributes to economic growth and productivity.[16]

4.26 The committee notes that the Australian and New Zealand Finance Ministers have agreed to commence negotiations on the inclusion of an Investment Protocol in the CER. It is hoped that these negotiations will be completed by early 2007.[17] The committee fully supports this initiative.

Imputation credits

4.27 The current treatment of imputation credits allows businesses in each country to participate in the imputation systems of the other. Relief from double taxation of dividends was given but the separation of the two tax systems was maintained.

4.28 The Australia New Zealand Business Council would like to see mutual recognition of franking and imputation credits and stated:

15 NZ Government, *Submission 9, Vol 1,* p. 103.

16 NZ Government, *Submission 9, Vol 1,* p. 103.

17 DFAT, *submission 7,Vol 1*, p.89.

> Three years ago both governments introduced rules relating to trans-Tasman imputations such that the imputation of franking credits could be passed out from both countries' tax systems back to shareholders in their own jurisdictions. But that was on a pro rata basis and it really has had very little impact on business. What we are advocating is that both governments move towards looking at mutual recognition of franking and imputation credits such that tax paid in one country is treated as tax paid in the other and can be distributed as franking credits to shareholders in that country.[18]

4.29 The committee sought the view of the Department of the Treasury on this issue and found that mutual recognition of franking and imputation credits would result in lower tax receipts for Australia and could not be just offered to New Zealand. Treasury stated:

> If you start recognising tax paid offshore and let that flow through to the shareholder level, then you lose that driver for companies to pay tax in Australia. Our concern was that it would be very difficult to just offer it to New Zealand. New Zealand are an important investment partner, but they are not our strongest. If we offered it to New Zealand, what would stop the US, the UK and other key investment partners asking for the same? Our colleagues sitting behind us said about $1 billion in the New Zealand context. If you start looking at our serious investment partners, then you are looking at enormous amounts of money in terms of not just the tax you give up immediately but the restructuring that would result, meaning that there would no longer be the incentive to base and pay tax in Australia. On that basis it was not given a favourable response in the review of international tax arrangements.[19]

4.30 It was the view of the Australia New Zealand Business Council that detailed costings of mutual recognition of franking and imputation credits should be undertaken by both countries.[20]

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18 Mr T Walton, Representative, Australia New Zealand Business Council, *Evidence,* 12/05/06, p. 17.

19 Mr P McBride, Manager, Tax Treatises Unit, Department of the Treasury, *Evidence,* 12/05/06, p. 34.

20 Mr T Walton, Representative, Australia New Zealand Business Council, *Evidence,* 12/05/06, p. 17.

Withholding taxes alignment

4.31 During the negotiations that resulted in the amending Protocol to the Australia – New Zealand Tax Treaty, Australia suggested lowering the current rates of dividend, interest and royalty withholding tax between the two countries. New Zealand advised that the relevant policy is under review and is likely to be finalised in the near future. The amending protocol includes a most favoured nation clause which entitles Australia to a lower rate of withholding taxes should New Zealand agree to such a rate in any of its future tax treaties.[21]

4.32 The Australia New Zealand Leadership Forum (ANZLF) considers withholding tax to be one of the priority issues for the establishment of a Single Economic Market (SEM).[22]

Common currency

4.33 The issue of a single currency is one that is perennially on the table for discussion between Australia and New Zealand. It is not currently a priority for either the Australian or New Zealand Governments.[23]

4.34 The committee notes that in New Zealand there is a small but dedicated lobby group suggesting a common currency. Their suggestion however is that the US currency be used by both Australia and New Zealand.[24]

Competition policy harmonisation

4.35 Qantas informed the committee that lack of competition policy harmonisation has cost the company an estimated AUD$25 million.[25]

4.36 The Productivity Commission's report *Australian and New Zealand Competition and Consumer Protection Regimes* released in December 2004 found that "major changes to the two regimes were not

21 Department of the Treasury, *Submission 4, Vol 1,* p. 33.

22 DFAT, *submission 7,Vol 1*, p.88 – 89.

23 Her Excellency Mrs K Lackey, High Commissioner, New Zealand High Commission, *Evidence,* 16/06/06, p. 52.

24 Mr C Mackay, Executive Director, Australia New Zealand Business Council, *Evidence,* 12/05/06, p. 20.

25 Qantas, *submission 11,Vol 1*, p. 142.

warranted" as "the regimes are not significantly impeding businesses operating in Australasian markets".[26]

4.37 The report further found that:

> Full integration, requiring identical laws and procedures and a single institutional framework, would have implementation and ongoing costs, change the operation of existing national regimes and achieve only moderate benefits.[27]

The committee view

4.38 It is the view of the committee that the mutual recognition of franking and imputation credits should not be re-reported on and should not be included on the work agenda of CER. The committee points to the following 3 reasons for its conclusion:

- This issue has already been analysed by the Department of the Treasury in the review of international tax arrangements and need not be scrutinised again under CER;
- the "significant cost to Australian revenue"[28] mutual recognition would have; and,
- the difficulty in offering mutual recognition to one country only.

4.39 There is still a case to be made that withholding tax alignment would be "a net benefit to Australia"[29] and New Zealand, whilst currently reviewing their policies on withholding tax, are focusing on other Single Economic Market (SEM) issues where they believe progress can be made.[30]

4.40 The committee believes that the issue of withholding tax should be placed on the Work Program for Coordination of Business Law at the

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26 Productivity Commission, *Australian and New Zealand Competition and Consumer Protection Regimes*, 16/12/2004, p. XIV.

27 Productivity Commission, *Australian and New Zealand Competition and Consumer Protection Regimes*, 16/12/2004, p. XIV.

28 Mr P McBride, Manager, Tax Treatises Unit, Department of the Treasury, *Evidence,* 12/05/06, p. 35.

29 Mr P McBride, Manager, Tax Treatises Unit, Department of the Treasury, *Evidence,* 12/05/06, p. 34.

30 Her Excellency Mrs K Lackey, High Commissioner, new Zealand High Commission, *Evidence,* 16/06/06, p. 47.

earliest opportunity to facilitate research and policy analysis on the benefits of withholding tax alignment.

Recommendation 5

The committee recommends that withholding tax alignment be placed on the Work Program for Coordination of Business Law at the earliest opportunity.

4.41 The committee does not recommend the adding of a common currency to the CER Agenda. Specifically the committee endorses the view held by Mr Mackay of the Australia New Zealand Business Council, that "When you adopt another country's currency or a world currency then effectively you give away monetary policy"[31]. The committee does not believe the environment, either politically or economically, exists that would drive this issue in any meaningful way.

4.42 Much of the current work on trans-Tasman Competition Policy relates to information sharing and dialogue and the committee, whilst accepting what the Productivity Commission's report *Australian and New Zealand Competition and Consumer Protection Regimes* says on the costs and impediments to full harmonisation of Competition policy, feels that the integration process would be furthered by adding Competition Policy to the CER agenda.

Recommendation 6

The committee recommends that Competition Policy Harmonisation be placed on the Work Program for Coordination of Business Law.

31 Mr C Mackay, Executive Director, Australia New Zealand Business Council, *Evidence,* 12/05/06, p. 20.