

## Agreements for the Exchange of Information with respect to Taxes with Antigua and Barbuda and with the Netherlands in respect of the Netherlands Antilles

### Introduction

- 4.1 This chapter contains the Committee's findings in relation to two agreements:
- *Agreement between the Government of Australia and the Government of Antigua and Barbuda on the Exchange of Information with Respect to Taxes, Saint John's, Antigua 30 January 2007; and*
  - *Agreement between the Government of Australia and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles for the Exchange of Information with Respect to Taxes, Canberra, 1 March 2007*
- 4.2 The Agreements enable information to be exchanged on criminal and civil tax matters between Australia and the Netherlands Antilles and Australia and Antigua and Barbuda.<sup>1</sup> The Agreements also incorporate safeguards to protect the legitimate interests of taxpayers.

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<sup>1</sup> National Interest Analysis (NIA), Antigua and Barbuda Agreement NIA, para. 6, Antilles Agreement NIA, para. 6.

As the obligations contained in both treaties are largely the same, this chapter will discuss both.<sup>2</sup>

## Background

4.3 The Organisation for Economic Cooperation and Development (OECD) has developed a model Tax Information Exchange Agreement (TIEA) to facilitate effective exchange of information between countries. The model TIEA is designed to facilitate negotiations between OECD member countries and the 33 low tax jurisdictions which are collectively known as 'participating partners'. Australia's agreements with the Netherlands Antilles and with Antigua and Barbuda are based on the model TIEA.<sup>3</sup>

4.4 The Committee was informed by representatives from the Department of the Treasury that:

We have contacted 31 countries in this program. Of those 31 countries, we have signed agreements with three to date. Of the remaining countries, you could say that we are in substantive negotiations with them and are very close to finalisation; there might be a few issues outstanding. We have had preliminary discussions with another five countries about tax information exchange agreements. For the others, a handful have said they are not interested and others have said they want double tax agreements. It is not current government policy to offer those agreements and that is certainly not compatible with the position that the OECD and our colleagues in the OECD have been taking.<sup>4</sup>

4.5 The Committee was informed that an estimated \$5 billion is moved out of Australia each year to tax havens around the world.<sup>5</sup> Most of this amount is legitimate but a tax haven's legal framework and communication systems can also be used in arrangements designed to avoid paying tax elsewhere.<sup>6</sup> TIEAs assist in the investigation of tax evasion and money laundering by establishing mechanisms to

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2 Antigua and Barbuda Agreement NIA, para. 6, Antilles Agreement NIA, para. 6.

3 Antigua and Barbuda Agreement NIA, paras 10-11, Antilles Agreement NIA, paras 10-11.

4 Mr Michael Rawstron, *Transcript of Evidence*, 22 June 2007, p. 30.

5 Antigua and Barbuda Agreement NIA, para. 13, Antilles Agreement NIA, para. 13.

6 Antigua and Barbuda Agreement NIA, para. 13, Antilles Agreement NIA, para. 13.

exchange information to establish the extent and nature of the tax evaded.<sup>7</sup>

- 4.6 The two agreements currently before the Committee are the second and third agreements of this kind. The first was signed with Bermuda in 2005 but has not yet entered into force.<sup>8</sup>

## Obligations

- 4.7 The primary obligation between Australia and the Netherlands Antilles and between Australia and Antigua and Barbuda is to exchange information, upon request, where the information is relevant to the:
- Determination, assessment and collection of taxes;
  - Recovery and enforcement of tax claims; or
  - Investigation or prosecution of tax matters.<sup>9</sup>
- 4.8 Each party must do so irrespective of whether the conduct being investigated is a crime under its domestic law.<sup>10</sup>
- 4.9 There is no provision in either Agreement for the routine or voluntary exchange of information between the two parties.<sup>11</sup>
- 4.10 If requested by the other party in either Agreement, Australia is obliged to supply information on any federal taxes administered by the Commissioner of Taxation.<sup>12</sup> To enable this obligation to be fulfilled, Australia must ensure the Commission of Taxation has the necessary authority to obtain and provide information held by banks, other financial institutions and a range of other bodies.<sup>13</sup> The

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7 Antigua and Barbuda Agreement NIA, para. 13, Antilles Agreement NIA, para. 13.

8 See JSCOT Report 73; see Mr Graham Whyte, *Transcript of Evidence*, 22 June 2007, p. 31.

9 Antigua and Barbuda Agreement NIA, para. 18, Article 1 of the Treaty; Antilles Agreement NIA, para. 18, Article 1 of the Treaty.

10 Antigua and Barbuda Agreement NIA, para. 18, Article 5(2) of the Treaty; Antilles Agreement NIA, para. 18, Article 5(1) of the Treaty.

11 Antigua and Barbuda Agreement NIA, para. 18; Antilles Agreement NIA, para. 18.

12 Antigua and Barbuda Agreement NIA, para. 19, Article 5(4) of the Treaty; Antilles Agreement NIA, para. 19, Article 5(3) of the Treaty.

13 Antigua and Barbuda Agreement NIA, para. 19; Antilles Agreement NIA, para. 19.

Netherlands Antilles and Antigua and Barbuda have a corresponding obligation for requests by Australia.

- 4.11 Where the information available to the Commissioner of Taxation is insufficient to enable compliance with the request, Australia must use all relevant information gathering methods to furnish details to the other party, even where it is not needed for domestic tax purposes. This is consistent with the model TIEA.<sup>14</sup>
- 4.12 Information provided under the Agreements must be treated confidentially by all parties, can only be revealed to specified persons or authorities concerned with the taxation matters covered by the Agreement and can only be used for such purposes. All parties remain bound by confidentiality provisions of the Agreement even after the termination of the Agreements.<sup>15</sup>
- 4.13 The Committee was informed by representatives from the Department of the Treasury that the Agreements contain appropriate safeguards:

In particular, countries cannot engage in fishing expeditions or request information that is unlikely to be relevant to the tax affairs of the specific taxpayer, and any information exchanged must be treated as confidential. The safeguards also confirm when a request for information can be reasonably denied. Implementation of these proposed agreements will have a negligible cost. Broader revenue impacts are unquantifiable because the level of revenue that may be reclaimed from taxpayers avoiding their tax liabilities or the level of lost revenue that may be prevented in the future are currently unknown.<sup>16</sup>

## Costs

- 4.14 It is likely that Australia will be making requests rather than receiving them under the Agreement. As a result, the financial costs of the Agreements are likely to be associated with the administration of

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14 Antigua and Barbuda Agreement NIA, para. 21, Article 5(2) of the Treaty; Antilles Agreement NIA, para. 21, Article 5(2) of the Treaty. This is consistent with Article 26 of the *OECD Model Convention on Income and on Capital*, which was updated in 2005.

15 Antigua and Barbuda Agreement NIA, para. 23, Article 8 of the Treaty; Antilles Agreement NIA, para. 23, Article 8 of the Treaty.

16 Mr Michael Rawstron, *Transcript of Evidence*, 22 June 2007, p. 28.

requests to the Netherlands Antilles and Antigua and Barbuda and the analysis of information by the ATO.<sup>17</sup>

4.15 The ATO has entered into a Memorandum of Understanding with both the Netherlands Antilles Ministry of Finance and the Antiguan and Barbudan Ministry of Finance under which the ATO will pay for certain extraordinary costs borne by the other party.<sup>18</sup> Some examples are:

- Reasonable costs of engaging experts, interpreters or translators;
- Reasonable litigation costs in relation to a specific request for information; and
- Reasonable costs for obtaining depositions or testimony.

4.16 The Committee was informed that overall, the cost of the TIEA program will be approximately equivalent to one additional full time employee.<sup>19</sup> This will be absorbed into the ATO's existing exchange of information program.<sup>20</sup>

## Implementation and consultation

4.17 The obligations found in both Agreements are met through existing legislation, the *International Tax Agreements Act 1953 (Cth)*.<sup>21</sup>

4.18 No public consultation was undertaken prior to the conclusion of either agreement.<sup>22</sup>

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17 Antigua and Barbuda Agreement NIA, paras 25-28; Antilles Agreement NIA, paras 25-28.

18 Antigua and Barbuda Agreement NIA, paras 25-28; Antilles Agreement NIA, paras 25-28.

19 Antigua and Barbuda Agreement NIA, para. 28; Antilles Agreement NIA, para. 28.

20 Antigua and Barbuda Agreement NIA, para. 28; Antilles Agreement NIA, para. 28.

21 Antigua and Barbuda Agreement NIA, para. 24; Antilles Agreement NIA, para. 24.

22 Antigua and Barbuda Agreement NIA Consultation annex; Antilles Agreement, NIA Consultation annex.

## Conclusion and recommendations

4.19 The Committee supports the Agreements as

These agreements are an important tool in Australia's efforts to combat offshore tax evasion. The proposed agreements will provide for effective exchange of information between Australia and these countries, promoting fairness and enhancing Australia's ability to administer and enforce its domestic tax laws.<sup>23</sup>

4.20 As such, the Committee considers that the Agreements are in the national interest.

### Recommendation 3

**The Committee supports the Agreement between the Government of Australia and the Government of Antigua and Barbuda on the Exchange of Information with Respect to Taxes, Saint John's, Antigua 30 January 2007 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 Kingdom of the Netherlands in Respect of the Netherlands Antilles for the Exchange of Information with Respect to Taxes, Canberra, 1 March 2007 and recommends that binding treaty action be taken.**

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<sup>23</sup> Mr Michael Rawstron, *Transcript of Evidence*, 22 June 2007, p. 30.