

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF SAMOA
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**

(Canberra, 16 December 2009)

Not yet in force

[2009] ATNIF 33

The Government of Australia and the Government of Samoa,

Recognising that the two Governments have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement 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,

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1 The existing taxes to which this Agreement shall apply are:

- (a) in Australia, the income tax imposed under the federal law of Australia;
(hereinafter referred to as "Australian tax").
- (b) in Samoa, income tax;
(hereinafter referred to as "Samoan tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting State.

ARTICLE 3

DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

(b) the term " Samoa" means the Independent State of Samoa and the territorial waters thereof;

(c) the term "competent authority" means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Samoa, the Minister of Revenue or an authorised representative of the Minister of Revenue;

(d) the term "Contracting State" means Australia or Samoa, as the context requires;

(e) the term "national", in relation to a Contracting State, means any individual possessing the nationality or citizenship of that Contracting State;

- (f) the term "person" includes an individual, a company and any other body of persons;
- (g) the term "tax" means Australian tax or Samoan tax as the context requires; and
- (h) the term "transfer pricing adjustment" means an adjustment made by the competent authority of a Contracting State to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that State regarding transfer pricing.

2 As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State, for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1 For the purposes of this Agreement, the term "resident of a Contracting State" means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of Samoa, a person who is a resident of Samoa for the purposes of Samoan tax.

2 A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the State in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- (c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

4 Where, by reason of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

PENSIONS AND RETIREMENT ANNUITIES

1 Pensions (including government pensions) and retirement annuities paid to an individual who is a resident of a Contracting State shall be taxable only in that State. However, pensions and retirement annuities arising in a Contracting State may be taxed in that State where such income is not subject to tax in the other Contracting State.

2 The term "retirement annuity" means:

- (a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;
- (b) in the case of Samoa, a superannuation annuity payment; and
- (c) any other similar periodic payment agreed upon by the competent authorities.

ARTICLE 6

GOVERNMENT SERVICE

1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Contracting State.

ARTICLE 7

STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided such payments arise from sources outside that State.

ARTICLE 8

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

1 Where a resident of a Contracting State considers the actions of the other Contracting State results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the first-mentioned State. The case must be presented within 3 years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting State regarding transfer pricing

adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9

EXCHANGE OF INFORMATION

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Contracting States (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting State).

ARTICLE 10

ENTRY INTO FORCE

The Government of Australia and the Government of Samoa shall notify each other, in writing, through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement on the Exchange of Information with Respect to Taxes is in force between Australia and Samoa, thereupon have effect for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 11

TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Contracting States may give to the other Contracting State through the diplomatic channel written notice of termination.

2 Such termination shall become effective in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement on the Exchange of Information with Respect to Taxes between the Contracting States, terminate and cease to be

effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Canberra on this sixteenth day of December 2009, in duplicate.

FOR THE GOVERNMENT OF
AUSTRALIA:

The Hon. Nick Sherry
Assistant Treasurer

FOR THE GOVERNMENT OF
SAMOA:

The Hon. Tuuu Anasii Leota
Minister of Revenue