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Tax Information Exchange Agreements with:

- the Government of the Principality of Liechtenstein;
- the Government of Costa Rica;
- the Government of the Macao Special Administrative Region of the People's Republic of China; and
- the Government of Liberia.

Introduction

5.1 This Chapter discusses the latest four Tax Information Exchange Agreements the Australian Government has entered into. The agreements are:

- the *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes* done at Vaduz on 21 June 2011;
- the *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes* done at Mexico City on 1 July 2011;
- the *Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for*

the Exchange of Information Relating to Taxes done at Macao on 12 July 2011; and

- the *Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes* done at Monrovia on 11 August 2011.

5.2 These agreements are being considered together because they are all part of Australia's implementation of the Organisation for Economic Development and Cooperation (OECD) standards on the elimination of harmful tax practices.

OECD Standards on the Elimination of Harmful Tax Practices

5.3 Since 2000, the OECD has worked with non-OECD low tax countries to address harmful tax practices through the Global Forum on Transparency and Exchange of Information for Tax Purposes.[1] The OECD identifies the following as harmful tax practices:

- no or low taxation of income;
- a lack of transparency in relation to which persons or organisations are subject to the low tax regime and the amount of income concerned;
- little or no exchange of information with countries from which persons or organisations transfer income to the low tax economy; and
- a low or no tax regime that does not extend to persons or organisations within the low tax economy.[2]

5.4 The Global Forum established a set of standards on the elimination of harmful tax practices that provide the basis for the OECD's work with low tax countries. In summary, the standards require low tax countries which are members of the Global Forum to:

- refrain from adopting new measures that extend the scope of, or strengthen existing provisions that constitute harmful tax practices;

1 Organisation for Economic Development and Cooperation (OECD), *Global Forum on Transparency and Exchange of Information for Tax Purposes Information Brief*, September 2011, <http://www.oecd.org/dataoecd/32/45/43757434.pdf>, viewed 18 September 2011.

2 OECD, *The OECD's Project on Harmful Tax Practices: 2006 Update on Progress in Member Countries*, 2006, p. 3.

- review their existing measures for the purpose of identifying and removing legislation or administrative practices that could constitute harmful tax practices;
- remove features of their tax regime that have been identified by the OECD as harmful;
- ask other members of the Forum to review their tax provisions that could constitute a harmful tax practice;
- coordinate their national treaty responses to harmful tax practices adopted by other countries; and
- encourage non members to associate themselves with these standards.[3]

5.5 More than 60 low tax countries have joined the Global Forum and committed to the implementation of OECD standards on the elimination of harmful tax practices. The OECD claims that every country identified as a low tax country when the Global Forum commenced its work in 2000 has now agreed to cooperate with the OECD to remove harmful tax practices.[4]

Australian TIEAs

5.6 Australia has signed 33 TIEAs to date.[5] The Committee has previously reviewed Australian TIEAs in Reports 73, 87, 99, 102, 107, 112, 114 and 120.

5.7 According to the National Interest Analysis (NIA):

> The proposed Agreements will help Australia protect its revenue base by allowing the Commissioner of Taxation to request and receive tax and income related information held in the Marshall Islands, Mauritius or Montserrat, and will discourage tax evasion by individuals and other entities in Australia.[6]

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3 OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998, p. 71.

4 OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Information Brief*, September 2011, <http://www.oecd.org/dataoecd/32/45/43757434.pdf>, viewed 18 September 2011.

5 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 24.

6 *National Interest Analysis* [2011] ATNIA 29, for the following Agreements:

- *the Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes* done at Vaduz on 21 June 2011 [2011] ATNIF 10;

5.8 In relation to the parties to the TIEA's being considered here, Australian Transaction Reports and Analysis Centre (AUSTRAC) data indicates that the flow of funds is relatively small between Australia, Liechtenstein, Costa Rica and Liberia. On the other hand, a significant flow of funds does occur between Australia and Macao.[7]

5.9 While most funds flowing to and from low tax countries are legitimate, the legal frameworks and systems that make low tax countries attractive may also be used to evade paying tax.[8]

5.10 Australia will fulfil its obligations under the proposed agreements using existing legislation, specifically, section 23 of the *International Tax Agreements Act 1953*. No further legislation or regulation is required in order to implement the proposed Agreements.[9]

How the information is obtained

5.11 Parties to a TIEA must provide on request information relevant to the administration of the other party's tax laws.[10]

5.12 Where the requested information is not in possession of the party, it must use its information gathering powers to obtain the requested information. The information gathering powers must include the authority to obtain information held by financial institutions and any person acting in an agency or fiduciary capacity, as well as information concerning ownership of companies, partnerships, trusts, foundations, and other persons.[11]

5.13 The information must be provided as witnessed and authenticated copies of original records. Witnessed and authenticated copies will enable the

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- *the Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes* done at Mexico City on 1 July 2011 [2011] ATNIF 14;
- *the Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes* done at Macao on 12 July 2011 [2011] ATNIF 11*; and*
- *the Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes* done at Monrovia on 11 August 2011. [2011] ATNIF 15, para. 6.

7 NIA, para. 14.

8 NIA, para. 13.

9 NIA, para. 27.

10 NIA, para. 16.

11 NIA, para. 16.

requesting party to satisfy evidentiary requirements in domestic tax proceedings.[12]

5.14 In certain circumstances, the requesting party may be permitted to interview individuals and examine records in the jurisdiction of the party holding the information.[13]

Privacy safeguards

5.15 The proposed agreements incorporate two mechanisms for protecting the private information of individuals or organisations subject to a request for information.

5.16 Firstly, a party may refuse a request if the request is not in conformity with the proposed agreement or if the requesting party would be unable to obtain the requested information under its own laws.[14]

5.17 Secondly, in instances where information is provided by one party to the other, the information provided is to be considered confidential. Confidential information may be disclosed only to persons or authorities concerned with the administration or enforcement of taxation covered by the proposed agreement, although this may include public court proceedings or in judicial decisions.[15]

The effectiveness of Tax Information Exchange Agreements

5.18 As indicated above, the Committee has inquired into a significant number of TIEAs. The Committee was interested in examining whether the treaties of this sort that have been in place for some time are performing as intended.

5.19 Mr Goodwin, from the Australian Tax Office advised the Committee that:

> In terms of the outcomes, we have had 41 specific requests to the TIEA partners in respect of the agreements which are in force. Eighteen of those specific requests have been finalised. We

12 NIA, para. 18.

13 NIA, para. 18.

14 NIA, para. 22.

15 NIA, para. 23.

> estimate in the vicinity of $120 million in omitted income has resulted from tax adjustments if that exchange of information had not been available.[16]

5.20 The Committee was also advised that the Department of the Treasury believes that Australia now has TIEAs with more than half of the low tax jurisdictions with which Australia would like to reach agreement. Australia is currently negotiating TIEAs with four jurisdictions, and has identified a further 21 jurisdictions that are potential targets for negotiating a bilateral TIEA.[17]

5.21 The Department of the Treasury noted that of the 21 potential jurisdictions, a small number might not be willing to negotiate a TIEA. The Committee was advised that the question of sanctions against these jurisdictions would not be considered until TIEAs were in place with all the low tax jurisdictions that were willing to negotiate one.[18]

5.22 In the interim, the Committee continues to support the negotiation of TIEAs.

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the Principality of Liechtenstein on the Exchange of Information on Taxes done at Vaduz on 21 June 2011* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports the *Agreement between the Government of Australia and the Government of Costa Rica on the Exchange of Information with Respect to Taxes done at Mexico City on 1 July 2011* and recommends that binding treaty action be taken.

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16 Mr Grant Goodwin, Senior Director, Australian Taxation Office, *Committee Hansard*, 6 February 2012, p. 25.

17 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 24.

18 Mr Gregory Wood, Manager, International Tax Treaties Unit, International Tax and Treaties Division, Department of the Treasury, *Committee Hansard*, 6 February 2012, p. 25.

Recommendation 6

The Committee supports the ***Agreement between the Government of Australia and the Government of the Macao Special Administrative Region of the People's Republic of China for the Exchange of Information Relating to Taxes done at Macao on 12 July 2011*** **and recommends that binding treaty action be taken.**

Recommendation 7

The Committee supports the ***Agreement between the Government of Australia and the Government of Liberia on the Exchange of Information with Respect to Taxes done at Monrovia on 11 August 2011*** **and recommends that binding treaty action be taken.**