

Documents tabled on 3 February 2009:

National Interest Analysis [2009] ATNIA 4

with attachment on consultation

**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, done at London on 27 October 2008
[2008] ATNIF 19**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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, done at London on 27 October 2008 ([2008] ATNIF 19)

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring 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 (the Agreement) into force. Pursuant to Article 8, the Agreement will enter into force on the date of the latter notification in writing through the appropriate channel between Australia and the British Virgin Islands (BVI) giving notice that constitutional and legal procedures for the entry into force of this Agreement have been completed.
2. The Agreement will then have effect:
 - in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date of entry into force; and
 - in respect of BVI tax, for any year of income beginning on or after 1 January in the calendar year next following the date of entry into force.
3. In relation to Australia, the Agreement only applies to the external territories specifically listed in Article 3(1).

Overview and national interest summary

4. The Agreement provides for the allocation of taxing rights between Australia and the BVI with respect to certain income of individuals that are residents of Australia or the BVI, helping to prevent double taxation. The Agreement is the first of its kind for Australia but its operative provisions are consistent with provisions contained in Australia's bilateral tax treaties.
5. The BVI is a self-governing crown colony of the United Kingdom located in the north-eastern Caribbean Sea. The BVI has a low-tax structure and is known internationally as a centre for incorporating 'offshore companies'.
6. Information detailing the level and type of economic activity between Australia and the BVI is not available. However, data held by the Australian Transaction Reports and Analysis Centre indicates that a significant amount of funds flow between Australia and the BVI.
7. The Agreement is part of a package of benefits offered to the BVI to encourage it to conclude a Tax Information Exchange Agreement (TIEA) with Australia. That agreement – the *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes* - was also signed on 27 October 2008.

Reasons for Australia to take the proposed treaty action

8. The Agreement supports Australia's efforts to combat offshore tax evasion through the establishment of transparency measures and effective exchange of information arrangements with low-tax jurisdictions. The Agreement was signed in conjunction with a TIEA between Australia and the BVI on 27 October 2008. Australia has a significant interest in concluding TIEAs with certain low-tax jurisdictions. TIEAs are the key bilateral means that facilitate the provision of information by low-tax jurisdictions that enhances Australia's ability to protect its revenue base and improve the integrity of the tax system. The BVI would not have signed the TIEA without this Agreement (among other benefits) being offered by Australia.

9. The BVI's commitment to implement effective exchange of information is a positive step in its relationship with Australia. It will also be seen by the international community as a positive step towards good governance. A media release issued by the OECD on 30 October 2008 describes the Agreement with the BVI (among others) as an important step forward in efforts to bring greater transparency to cross-border financial transactions.

Obligations

10. The Agreement provides for the allocation of taxing rights between Australia and the BVI over certain income of certain individuals, specifically government employees and students. Under these provisions, Australia is obliged to forgo its taxing rights over certain income derived by government employees and students who are residents of the BVI. The Agreement would remain in force for as long as the TIEA between Australia and the BVI remains in force, unless either Party terminates the Agreement as provided for in Article 9.

11. Article 1 provides that the Agreement applies only to persons who are residents, for taxation purposes, of Australia or the BVI. This precludes non-residents from obtaining the benefits of the Agreement. For Australia, the Agreement only applies to the federal income tax, and does not apply to sub-federal taxes (Article 2).

12. Article 5 obliges Australia to not tax the salaries of government employees of the BVI working, in government service for non-commercial purposes, in Australia. This would apply, for example, to BVI residents who staff representative offices established in Australia to provide information on investment opportunities in the BVI. This approach provides Australia and the BVI with sole taxing rights over the salaries they pay to individuals undertaking governmental functions.

13. Article 6 obliges Australia to not 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 as provided for under Australian law.

Implementation

14. To give effect to the Agreement, minor amendments to the *International Tax Agreements Act 1953* will be necessary, including the insertion of the Agreement as a schedule to that Act. Legislation for this purpose is expected to be introduced into Parliament in March 2009.

Costs

15. The Agreement will have a financial impact on the Australian Taxation Office (ATO), which will administer the Agreement. However, the small number of taxpayers likely to be affected by the Agreement ensures that the financial impact will be minimal. Actual impacts are difficult to estimate but will be absorbed into existing arrangements relating to the administration of Australia's bilateral comprehensive tax treaties.

16. Affected Australian residents are unlikely to incur any significant compliance costs in relation to the Agreement, which may provide them with benefits.

17. Overall, it is estimated that the administrative and financial impact of concluding this agreement will be minimal and can be absorbed into existing ATO administrative arrangements.

Regulation Impact Statement

18. The Treasury has assessed the implementation of the Agreement against criteria in *The Best Practice Regulation Handbook*. This regulatory option has no/low impact on businesses and individuals or on the economy and a Regulation Impact Statement is not required.

Future treaty action

19. The Agreement does not provide for the negotiation of future legally binding instruments, amendments or appendices to the existing Agreement. However, this does not preclude the two Parties from agreeing in the future to amend the existing Agreement. The Agreement does not have an amendment clause, but Article 39 of the *Vienna Convention on the Law of Treaties 1969* provides that a treaty may be amended by agreement between the Parties. Any such agreement would be subject to the normal treaty process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT). Any amendments to the Agreement may be considered in the future in line with Australian policy for TIEA negotiations current at that time.

Withdrawal or denunciation

20. Article 9(1) provides that the Agreement shall remain in force until terminated by either Party. Termination would be initiated by written notice of termination through the appropriate channel.

21. Article 9(2) provides that such termination would take effect, for Australia, from 1 July in the calendar year following that in which the notice of termination is given. The Agreement would also terminate upon termination of the related *Agreement between the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes* (the TIEA). In that event, the Agreement would terminate six months after receipt of notification of termination of the TIEA (Article 9(3)).

22. Termination by Australia would be subject to the normal treaty process, including tabling and consideration by JSCOT.

Contact details

International Tax and Treaties Division
Department of the Treasury

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CONSULTATION

23. The Taxation Information Exchange Agreement negotiations with the BVI were not in the public domain and, consequently, the public was not consulted.
24. The Australian Taxation Office (ATO) was consulted in the development of the Australian model 'additional benefits' agreement, which was used as a basis for this Agreement, and ATO officials negotiated the text of this Agreement with the BVI. The ATO will administer the Agreement.
25. The State and Territory Governments are being consulted through the Commonwealth-State/Territory Standing Committee on Treaties. Information on the negotiation of this treaty is being included in the six-monthly schedules of treaties to State and Territory representatives.
26. In addition to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Minister for Foreign Affairs, the Minister for Trade and the Prime Minister agreed to this treaty.