

Amendment to the Double Taxation Agreement with Malaysia

Introduction

- 6.1 The *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* updates the Exchange of Information provisions (Article 25) in the existing double taxation agreement with Malaysia.
- 6.2 The Third Protocol will align the exchange of information provisions with the internationally agreed OECD standard on tax information exchange and enhance the ability of Australia and Malaysia to exchange tax information by:
- providing that neither tax authority can refuse to provide requested information on the basis that they do not have a domestic interest in such information or because a bank or other financial institution holds the information;
 - expanding the range of taxes in respect of which information can be exchanged to include all federal taxes; and
 - permitting information received by a tax authority to be used for other purposes when allowed by law and the tax authority of the other country.¹

¹ National Interest Analysis (NIA), para. 4.

Reasons to take treaty action

- 6.3 The Third Protocol was proposed by Malaysia soon after it endorsed the OECD standard in March 2009, and is consistent with Australia's support for global action to improve information exchange and transparency.²
- 6.4 Treasury informed the Committee that the enhanced provisions will contribute to Australia's efforts to combat offshore tax evasion by increasing the probability of detecting abusive tax arrangements.³ The amendments are consistent with other recently upgraded treaties with Belgium and Singapore considered by this Committee.⁴

Obligations

- 6.5 The obligations in the Third Protocol are:
- Article 25(1) creates reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the Agreement or to the administration and enforcement of domestic tax law;⁵
 - Article 25(2) obliges the Parties to treat information received through exchange as secret, protecting the legitimate interests of taxpayers;⁶ and
 - Article 25(3) provides for certain circumstances where a party may decline to provide information, such as where inconsistent with a country's laws or administrative practice, where not obtainable under laws or in normal administrative practice, or where it would disclose a trade or business secret or would be contrary to public policy.⁷

Costs and implementation

- 6.6 The revenue impact of the Third Protocol has been assessed by Treasury as unquantifiable. However, as the Third Protocol is expected to expand the taxpayer information available to the Australian Taxation Office, it is

2 NIA, para. 7 and Consultation Attachment.

3 Mr Michael Atfield, *Transcript of Evidence*, 21 June 2010, p. 25.

4 JSCOT Reports 107 and 110.

5 NIA, para. 8.

6 NIA, para. 9.

7 NIA, para. 10.

anticipated that it will result in enhanced taxpayer compliance and increased tax revenue.⁸

- 6.7 Implementation of the Third Protocol will result in a minimal increase in the ATO's administrative costs. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers.⁹
- 6.8 The Third Protocol will be implemented through amendment to the *International Tax Agreements Act 1953* and will not affect the existing taxation roles of the Commonwealth and States and Territories.¹⁰

Conclusion and recommendation

- 6.9 The Committee recognises the importance of updating and enhancing taxation agreements with countries such as Malaysia in the interests of increasing tax transparency. The Committee therefore supports binding treaty action being taken.

Recommendation 5

The Committee supports the *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and recommends that binding treaty action be taken.

8 NIA, para. 15.

9 NIA, paras 16 and 17.

10 NIA, paras 12-14.

