

Taxation Agreement with Belgium

Introduction

- 4.1 *The Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income will update the Exchange of Information (EOI) provisions (Article 26) in the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.*
- 4.2 The provisions are intended to improve the ability of the Australian Taxation Office (ATO) to exchange information with Belgium authorities by:
- expanding the taxes in respect of which information may be exchanged to all federal taxes rather than just the income taxes covered under the existing Agreement; and
 - ensuring that neither Belgium nor Australia's tax authorities can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar institution holds the information.¹

¹ National Interest Analysis (NIA), para 5.

Obligations

- 4.3 Article 1(1) obliges both Parties to exchange information where such information is foreseeably relevant for carrying out the provisions of the Agreement or to the administration and enforcement of each Party's domestic tax laws.²
- 4.4 Such information shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, information received may be used for other purposes when the laws of both countries permit this and the tax authority supplying the information authorises this (Article 1(2)).³
- 4.5 Article 1(3) provides for either Party to decline a request for information in certain circumstances, for example, if the information would disclose a trade or business secret or breach human rights obligations.⁴

Reasons to take treaty action

- 4.6 Treasury submitted that the Second Protocol will update the current Agreement with Belgium and bring it into line with the internationally agreed tax standards developed by the OECD. Treasury considered that Belgium's commitment to implement full EOI on tax matters is a positive step in its relationship with Australia.⁵
- 4.7 Treasury also considered that this Protocol further demonstrates the Australian Government's commitment to supporting global action on improving information exchange and transparency.⁶
- 4.8 Treasury told the Committee that the updated Protocol will help to counteract existing bank secrecy provisions which contribute to tax evasion by compelling each tax administration to supply relevant information even if it is not required for their domestic taxation purposes.⁷

2 NIA, para 9.

3 NIA, paras 10 and 13.

4 NIA, para 11.

5 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 7

6 NIA, para 8.

7 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 7.

Exchange of information

- 4.9 The Committee requested clarification on the mechanics of the exchange of taxation information between Australia and Belgium. Treasury advised that the exchange is usually on an *ad hoc* basis but that tax authorities in either country may decide to pass on relevant information if they are aware that it is of interest to tax authorities in the other country.⁸
- 4.10 Treasury further advised that to ensure security and privacy provisions are met, the exchange of taxpayer data is done in accordance with the Protective Security Manual published by the Attorney-General's Department and the Australian Government Information and Communication Technology Security Manual (ACSI33) published by the Defence Signals Directorate.⁹

Costs and implementation

- 4.11 Treasury advised that the estimated revenue impact of the updated EOI Article in the Second Protocol is unquantifiable. However, since the Second Protocol seeks to expand the scope of taxpayer information available to the Australian Taxation Office, the proposal is expected to increase taxpayer compliance and therefore tax revenue.¹⁰
- 4.12 As the existing Exchange of Information Unit within the ATO will be able to handle any EOI requests there will only be minimal increases in administrative costs to the ATO as a result of the enhanced information exchange between Australia and Belgium. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers.¹¹
- 4.13 The implementation of the Second Protocol will require amendment to the *International Tax Agreements Act 1953* to give the Second Protocol the force of law in Australia. The amendment will be effected prior to the Second Protocol entering into force in Australia. The implementation of the Protocol will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.¹²

8 Mr Michael Atfield, *Transcript of Evidence*, 14 September 2009, p. 8.

9 Treasury, *Submission No. 2*.

10 NIA, para 17.

11 NIA, paras 18 and 19.

12 NIA, paras 14 and 16.

Consultations

- 4.14 Relevant Commonwealth Ministers, the ATO and State/Territory Governments were consulted in development of the Agreement. No public consultation took place as the negotiations for the Agreement were not public.¹³

Conclusions and recommendations

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

Recommendation 4

The Committee supports the *Second Protocol amending the Agreement between the Kingdom of Belgium and Australia 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.

13 NIA, paras 23 to 26.