

Documents tabled on 20 August 2009:

National Interest Analysis [2009] ATNIA 16

with attachment on consultation

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 signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984, done at Paris on 24 June 2009

[2009] ATNIF 17

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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 signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984, done at Paris on 24 June 2009, [2009] ATNIF 17

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force 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* (the Second Protocol). The Second Protocol will enter into force, pursuant to Article II, upon an exchange of notes confirming that each Party has completed the necessary domestic requirements to bring it into force.
2. The Second Protocol will then have effect:
 - from the date of entry into force with respect to criminal tax matters, without regard to the taxable period to which the matter relates; and
 - from 1 January 2010 with respect to other tax matters relating to taxable periods beginning on or after 1 January 2010.
3. The Second Protocol 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* signed at Canberra on 13 October 1977 [1979] ATS 21, as amended by the *Protocol signed at Canberra on 20 March 1984*, [1986] ATS 25 (the existing Agreement).

Overview and national interest summary

4. The Second Protocol will update the legal basis for the exchange of tax information between Australia and Belgium by replacing the EOI provisions (Article 26) in the existing Agreement. This will align the EOI provisions in the existing Agreement with the internationally agreed standard on tax information exchange developed by the Organisation for Economic Cooperation and Development (OECD).
5. The new EOI provisions enhance the ability of the tax authorities of Australia and Belgium to exchange tax information and to exchange that information on a wider range of taxes. In particular, the new provisions provide that neither tax administration 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. It also expands the taxes in respect of which information may be

exchanged to all federal taxes, rather than just taxes covered under the existing Agreement. At the same time, the enhanced EOI provisions maintain important safeguards to protect the legitimate interests of taxpayers.

6. Australia enjoys a positive and constructive relationship with Belgium, with a growing bilateral commercial relationship. The Second Protocol will help protect Australia's revenue base by expanding the scope of taxpayer information available to the Australian Taxation Office (ATO). This is expected to improve the integrity of the tax system by increasing taxpayer compliance and tax revenue.

Reasons for Australia to take the proposed treaty action

7. The enhanced EOI provisions in the Second Protocol will be an important tool in Australia's efforts to combat offshore tax evasion. The enhanced EOI provisions will make it harder for taxpayers to evade Australian tax and will discourage taxpayers from participating in abusive tax arrangements by increasing the probability of detection. The provisions will improve the ability of the ATO to exchange tax information 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.

Accordingly it will enhance Australia's ability to administer and enforce its domestic tax laws.

8. The Second Protocol aligns the EOI provisions with the internationally agreed standard on tax information exchange, which was developed by the OECD. This standard was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the United Nations Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting. Belgium's commitment to implement full EOI on tax matters is a positive step in its relationship with Australia. It is in Australia's interest to utilise EOI treaty provisions that meet the internationally agreed standard to combat tax avoidance and evasion, and to continue the Government's support of global action on improving information exchange and transparency.

Obligations

9. Article I(1) of the Second Protocol creates reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the provisions of the Agreement or to the administration and enforcement of domestic law concerning all federal taxes of the Parties.

10. Article I(2) obliges the Parties to treat information received through exchange as secret in the same manner as information obtained under their domestic laws. This is an essential feature which ensures that adequate protection is provided to information exchanged between the two countries. The respect for confidentiality of information is necessary to protect the legitimate interests of taxpayers.

11. Either Party may decline to supply information in certain circumstances. For example, Article I(3) provides that a request may be denied where the provision of information would disclose a trade or business secret or disclosure of the information would be contrary to public policy (for example, if it would breach human rights obligations). These circumstances, which act as a safeguard to protect taxpayer's rights, accord with the OECD Model Tax Convention on Income and on Capital.

12. These obligations are generally equivalent to Australia's current obligations under Article 26 of the Agreement. However, Article I expands on the requirements of the existing Article 26 by specifically providing that neither Party may decline to provide requested information solely on the grounds that the information is not required for its domestic law purposes or because the information is held by a bank or financial institution.

13. Article I also expands on the existing Article 26 by providing that, notwithstanding the secrecy obligations in Article I(2), 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.

Implementation

14. 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.

15. The legislative framework required for Australia to fulfil its obligations under the enhanced EOI provisions in the Second Protocol is contained in section 23 of the *International Tax Agreements Act 1953*.

16. The implementation of the Protocol will not affect the existing roles of the Commonwealth or the States and Territories in tax matters.

Costs

17. Treasury has estimated the revenue impact of the updated EOI Article in the Second Protocol as unquantifiable. However, since the Second Protocol seeks to expand the scope of taxpayer information available to the ATO, the proposal is expected to increase taxpayer compliance and therefore tax revenue.

18. The section of the ATO dealing with international issues already has an Exchange of Information Unit which handles EOI requests with Australia's tax treaty partners, including Belgium. It is envisaged that there will only be minimal increases in administrative costs to the ATO as a result of the enhanced information exchange between Australia and Belgium flowing from the Second Protocol.

19. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers from the Second Protocol.

Regulation Impact Statement

20. The Office of Best Practice Regulation in the Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

21. The Second Protocol does not provide for the negotiation of future legally binding instruments. Neither the Second Protocol nor the existing Agreement contains formal amendment procedures. Any future amendments to the existing Agreement would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

22. Article III of the Second Protocol provides that the Protocol shall form an integral part of the existing Agreement and that it shall remain in force as long as the existing Agreement remains in force and shall apply as long as the existing Agreement itself is applicable. The existing Agreement may be terminated by either Party by written notice (Article 29).

Contact details

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ATTACHMENT ON CONSULTATION

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23. The Second Protocol addresses only administrative matters, namely facilitating the full exchange of information between tax authorities. Accordingly, the public was not consulted.

24. The ATO was consulted about the Second Protocol and will administer the Exchange of Information provisions. Given that the Second Protocol upgrades those provisions to align with the OECD standard on tax information exchange and with Australia's recent bilateral tax treaty practice, the ATO were supportive of the proposed action to update the existing Australia-Belgium Agreement.

25. The Second Protocol was proposed by Belgium soon after Belgium removed its reservation to Article 26 (*Exchange of Information*) of the OECD Model Tax Convention in March 2009. As the proposed treaty text was able to be agreed quickly, the proposed treaty action has not appeared on the schedules of treaties to State and Territory representatives, which is updated six-monthly.

26. In addition to the Assistant Treasurer, the Minister for Foreign Affairs and the Minister for Trade approved the treaty action.