

Agreement between the Government of Australia and the Government of Bermuda on the exchange of information with respect to taxes

Introduction

- 6.1 The Agreement¹ provides for the full exchange of information on criminal and civil tax matters between Australia and Bermuda. The Agreement will help Australia to protect its revenue base by allowing access to necessary offshore information and improving the integrity of the tax system by discouraging tax evasion.²
- 6.2 The Agreement includes an additional article that prevents Australia or Bermuda from imposing prejudicial or restrictive measures based on harmful tax practices on residents or nationals of either Party while the Agreement is in force. This reflects the understanding among participating partners that committed jurisdictions that enter into Tax Information Exchange Agreements (TIEAs) will not be considered tax havens by OECD³ member countries.⁴

1 *The Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the exchange of information with respect to taxes.*

2 NIA, para. 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

3 Organisation for Economic Co-operation and Development

4 NIA, para. 12.

- 6.3 Bermuda's⁵ economy is heavily dependent on tourism and international business including insurance, investment holding, pension fund, unit trust and mutual funds, and shipping. A combination of a low tax structure, a stable political and legal system, well developed infrastructure, a highly skilled workforce, high education standards, and a good climate, positions Bermuda as a significant financial hub.⁶
- 6.4 The majority of economic activity occurring between Australia and Bermuda is in the insurance and reinsurance industries and currency trading activities, including foreign exchange hedging and forward contract purchases.⁷

Background

The OECD's Global Forum on Taxation and TIEA model

- 6.5 The OECD's Global Forum on Taxation (the Forum) as part of its work on harmful tax competition has identified the lack of effective exchange of information as a key contributing factor to the existence of harmful tax practices.⁸
- 6.6 The Forum advocates a process for establishing a global level playing field that undertakes a high standard of transparency in the equitable information exchange on tax matters between member and non-member countries.⁹ Internationally, 33 low-tax jurisdictions have made a commitment to the elimination of harmful tax practices.¹⁰
- 6.7 In 2002, the OECD released a model TIEA to facilitate negotiations between member countries and committed jurisdictions. This Agreement with some modification adopts the text of the OECD TIEA.¹¹

5 Bermuda though largely self-governing is an overseas territory of the United Kingdom. NIA, para. 4.

6 NIA, paras 4 and 5.

7 NIA, para. 5.

8 NIA, para. 8; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 22.

9 OECD Global Forum on Taxation in Berlin, 3-4 June 2004, Outcome/Conclusion of Meeting, viewed 13 March 2006, <www.oecd.org>.

10 NIA, para. 11.

11 NIA, para. 12.

Investment between Australia and Bermuda

- 6.8 In 2004, Bermuda invested \$A2.2 billion into Australia, making it the fourth leading investor that year, behind the United States of America, the Netherlands and Canada. Bermuda was ranked in Australia's list of top five countries with which to enter into a TIEA.¹²
- 6.9 It is estimated that \$A5 billion is annually moved out of Australia to tax havens globally. The Australian Taxation Office (ATO), the Australian Crime Commission, and the Australian Federal Police have commenced a major investigation of the use of offshore tax havens for alleged money laundering and tax evasion. TIEAs will aid investigators to collect evidence and determine the extent and nature of tax evaded.¹³
- 6.10 The ATO informed the Committee that Bermuda has already introduced legislation into its Parliament to give effect to the Agreement.¹⁴
- 6.11 The ATO also relayed the motivations behind entering into the Agreement with Bermuda:

The outcome we are seeking is a reduction in international tax avoidance and evasion and that is one of the reasons why we have a multi-pronged approach to this area. Certainly one of the outcomes we are seeking is enhancing the community's confidence in the way the ATO is dealing with this area ... An important part of this work is working with other agencies. Our approach is co-ordinated in the Taxation Office by a tax haven task force that was set up a number of years ago. Our strategy has been to increase our active compliance focus on promoters and their offshore facilitation and distribution networks that we might find in Australia. Sometimes we might find an offshore service provider operation maybe through someone in Australia. We would focus on them as well as the participants in the tax haven based arrangements.¹⁵

12 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

13 NIA, para. 14.

14 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 23-24.

15 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 26.

Australia's TIEA network

- 6.12 Australia is currently negotiating TIEAS with: Antigua and Barbuda, Jersey, Guernsey, the Isle of Man, the British Virgin Islands, the Cayman Islands, Anguilla, the Netherlands Antilles and Granada. Preliminary discussions are also underway with Vanuatu.¹⁶
- 6.13 The Treasury informed the Committee of the benefits of creating a network of TIEAs:

The emergence of a network of TIEAs between the OECD countries and offshore financial centres assists international efforts for countries to work together to integrate economic and financial architecture, to support and benefit from global growth and development. This focus is consistent with the principal objectives underpinning Australia's engagement in international development bodies and its more direct aid programs. These factors are key elements to the development of sustainable economies and international efforts to introduce systems that support financial stability. Furthermore, enhanced transparency and effective information exchange necessarily support existing international efforts to counter scope for money laundering and other criminal activity through the Financial Action Task Force and related initiatives.¹⁷

Overview

- 6.14 The Agreement is the first of its kind for Australia and the third such agreement to be signed in the world.¹⁸ The Agreement paves the way for entering into similar agreements with other jurisdictions that have committed to work with OECD member countries under the auspices of the Global Forum on Taxation. Developing a network of TIEAs will enhance transparency and information exchange to the benefit of Australia and other committed jurisdictions.¹⁹

16 Mr Graham Whyte, *Transcript of Evidence*, 27 February 2006, p. 27.

17 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 23.

18 The United States of America and the Netherlands have also signed a TIEA. Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 22-23.

19 NIA, paras 7 & 8.

- 6.15 This and subsequent TIEAs make it harder to tax evade using tax havens. This in turn helps protect Australia's revenue base, improve the transparency and integrity of the tax system, and promote legitimate economic exchange between jurisdictions.²⁰
- 6.16 At the recent Global Forum held in Melbourne in 2005, the Chair of the OECD's Committee on Fiscal Affairs welcomed the signature of this Agreement as a landmark model. This echoes the view of the international community that this Agreement is a positive move towards good international governance.²¹
- 6.17 Safeguards have been built into the OECD TIEA model to protect the legitimate interests of taxpayers. The Treasury informed the Committee:

Australia and Bermuda cannot engage in 'fishing expeditions' or request information that is unlikely to be relevant to the tax affairs of a specific taxpayer. The agreement specifies the type of information Australia needs to provide when seeking information from Bermuda, to demonstrate the relevance of the information to the request. The same proviso applies to Bermuda while seeking information from Australia ... A request for information can be declined if the information will disclose a trade or business secret or if the information is protected by attorney-client privilege ... or contrary to public policy...The information can be disclosed to third parties or third countries only if the jurisdiction supplying the information gives consent in writing.²²

Consultation

- 6.18 Consultation was undertaken with Government agencies. The ATO was consulted in the development of the Agreement and also negotiated the Agreement. State and Territory Governments were consulted through the Commonwealth-State/Territory Standing Committee on Treaties.²³

20 NIA, para 6; Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, pp. 22 & 24.

21 NIA, paras 9 & 10.

22 Mr Michael Rawstron, *Transcript of Evidence*, 27 February 2006, p. 24.

23 NIA, Consultation Annex.

Legislation

- 6.19 The *International Tax Agreements Act 1953* (Cth) will be amended to give effect to Australia's obligations under the Agreement.²⁴

Costs

- 6.20 Administration costs are likely to arise from Australia's information requests and will be absorbed into the ATO's existing exchange of information program.²⁵ Additional resources may also be required to deal with the expected complexities of obtaining information from Bermuda.²⁶
- 6.21 Under the Memorandum of Understanding between the ATO and the Bermuda Ministry of Finance, certain costs may be payable by the ATO to Bermuda's revenue authorities. These include reasonable costs for:
- engaging experts, interpreters or translators
 - litigation in relation to a specific request for information
 - obtaining depositions or testimony.²⁷
- 6.22 Compliance costs for Australian taxpayers are estimated to be minimal as it is unlikely that Australia will receive many requests for information from Bermuda.²⁸
- 6.23 Overall, it is estimated that the TIEA program will generate an additional full time equivalent requirement of one employee.²⁹

Entry into force and withdrawal

- 6.24 The Agreement will enter into force on the date of the last notification in writing by both Australia and Bermuda once all domestic procedures have been completed.³⁰

24 NIA, para. 25.

25 NIA, para. 29.

26 NIA, para. 26.

27 NIA, para. 27.

28 NIA, para. 28.

29 NIA, para. 29.

- 6.25 The Agreement will take effect from 1 January 2006 with respect to matters regarding serious tax evasion and from 1 January 2008 for all other tax matters covered by the Agreement. The OECD proposes that it may take countries up to three years to implement TIEAs. Australia's implementation of this Agreement is in line with the OECD's proposed timeframe.³¹
- 6.26 The Agreement applies only to those external territories listed in Article 4(1)(b) of the Agreement.³²
- 6.27 The Agreement may be terminated by written notice and would take effect in both jurisdictions on the first day of the month following the expiration of six months after the date the other Party receives the notice.³³

Conclusion and recommendation

- 6.28 The Committee supports Australia's compliance with the OECD's policy on tax information sharing to eliminate tax evasion and welcomes Australia's adoption of the OECD's model TIEA.
- 6.29 The Committee acknowledges that the Agreement is an international landmark model and a positive move towards international good governance.

Recommendation 4

The Committee supports the Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the exchange of information with respect to taxes (Washington, 10 November 2005) and recommends that binding treaty action be taken.

30 NIA, para. 1.

31 NIA, para. 2.

32 NIA, para. 3.

33 NIA, paras 32-33.

Dr Andrew Southcott MP

Committee Chair