Income Tax (International Agreements) Amendment Bill (No. 2) 1989

Date Introduced: 2 November 1989
House: House of Representatives
Portfolio: Treasury

Digest of Bill

Purpose
To give legislative backing to agreements for the prevention of double taxation and tax avoidance with Thailand and Papua New Guinea, and to amend the agreements with France and Singapore.

Background
Australia has agreements with a number of countries, including France, West Germany, New Zealand, the United States and the United Kingdom. Recently, such an agreement was signed with China. The agreements all have a common aim, the prevention of double taxation and avoidance, and this is reflected in the content of the agreements which are substantially similar. The agreements work by giving the country of residence the exclusive right to tax certain categories of income and allowing the remaining income to be taxed by the country where it was sourced. If the income is then taxed by the country of residence, it is to allow a credit for tax paid in the country of origin. Examples of categories reserved for tax by the country of residence include:

* Industrial or commercial profits where the taxpayer has no permanent establishment in the country where the profits are earned;

* Most pensions and purchased annuities;

* Civil servants renumeration; and

* Air transport profits.

A recent feature of many agreements is the inclusion of provisions to protect schemes designed to encourage investment in certain countries. These countries offer tax concessions or tax free treatment of profits where the body establishes a permanent operation in the country. As a result, where the body returns profits to Australia, the full profit will be included in taxable income and no credit, or a reduced credit, will be available for the tax paid in the country of source. This largely cancels out the benefit available and reduces any incentive offered by the concessional tax treatment. To remove this effect,
certain agreements contain a provision that the country of residence is to deem that the tax has actually been paid at the normal rate.

The treatment of foreign sourced income in Australia is further complicated by the foreign tax credit rules. In announcing proposed changes to these rules, future amendments to the agreements were foreshadowed.

Main Provisions
Clauses 5, 6 and 7 will give the Protocols with France and Singapore, which amend existing agreements, and the agreements with Papua New Guinea and Thailand force in Australian law. The text of the Protocols and agreements is contained in the Schedules to the Bill and a brief description of each follows.

Singapore
The changes to this agreement, entered into in 1969, will bring the tax treatment of dividends received by Australians into line with the foreign tax credits law. As well, the definition of permanent establishment will be expanded to reflect current agreements. The right to tax shipping profits will be clarified to give the country of residence the exclusive right to tax such profits. A provision designed to help give effect to concessional tax treatment in Singapore will also be included.

France
The main amendments will update and clarify this agreement. The main change will provide that if Australia negotiates a lesser rate of tax on dividends with another member of the OECD, negotiations are to be held to provide the same treatment in respect of France.

Papua New Guinea and Thailand
The agreements with these two countries reflect the current tax agreements entered into with other countries. For example, income from land will be taxable in the country where the land is situated, and business profits may only be taxed in the source country if the entity has a permanent establishment in the country. Dividends, interest and royalties may be taxed by either country but there are limits on the tax charged by the source country, while pensions will generally only be taxable in the country of residence. The measures to avoid double taxation will be based on each country allowing a credit for tax paid in the other country. The provision designed to assist schemes designed to attract investment to these countries will be included in both agreements. Anti-avoidance measures will be concentrated on the exchange of information between tax officials in Australia and the country concerned. However, no country will be obliged to provide information that could not be obtained under the laws of the country to which the information is to be supplied or to disclose information that would be contrary to public policy.

An agreement may be terminated, five years after it commences to operate, by giving one year’s notice.
For further information, if required, contact the Economics and Commerce Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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