INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1984

Date Introduced: 13 September 1984
House: House of Representatives
Presented by: Hon. J.S. Dawkins, M.P., Minister for Finance

Short Digest of Bill

Purpose

To amend the Income Tax (International Agreements) Act 1953 in order to clarify Australia's right to tax distributions by Australian business trusts to beneficiaries resident in countries with which Australia has concluded double taxation agreements; to provide legislative authority for a comprehensive taxation agreement between Australia and Malta, and for a protocol amending the existing taxation agreement between Australia and Belgium; and to provide for minor technical amendments.

Background

Australia has concluded treaties with a number of countries to avoid international double taxation and to prevent fiscal evasion. Two chief methods of relieving double taxation are adopted in tax treaties. Firstly, taxing rights over certain classes of income are reserved entirely to the country of residence of the person deriving the income. Secondly, all other income may be taxed (in some cases, only to a limited extent) by the country of origin of that income. If the country of residence of the recipient also taxes that income, it is required to grant a credit against its tax for the tax levied by the country of origin.

With some variation from treaty to treaty, the following are a few examples of the classes of income which are taxable only by the country of residence:

(1) Industrial or commercial profits, if the recipient has no permanent establishment in the country of origin of those profits.

(2) Air transport profits.

(3) International shipping profits.
(4) Remuneration for personal (including professional) services, if the visit to the other country does not exceed 183 days in any tax year and the remuneration is not paid by a resident of or permanent establishment in the country visited.

Other classes of income may be taxed by the country of origin although there are general limits on the tax that may be charged. These limits are 15 per cent for dividends and 10 per cent for interest and royalties (except for the agreement with Korea, where the source country's tax upon interest and royalties is limited to 15 per cent).

In a press release, dated 19 August 1984, the Treasurer announced the Government's intention to clarify Australia's right to tax business income derived in Australia by a trust and distributed to a resident of an agreement partner country. The Government was made aware of the argument that Australia, in fact, could not tax such distributions because the trust did not represent a permanent establishment of the beneficiary in Australia. The Taxation Commissioner, however, rejected this argument. Consequently, the Government decided to introduce this Bill in order to make clear that such distributions will be subject to tax in Australia.

Main Provisions

This Bill will come into operation on the date of Royal Assent (clause 2).

By clause 3, business income derived in Australia by a trust (not a corporate unit trust) and distributed to a resident of an agreement partner country will be subject to tax in Australia in accordance with the business profits article of each of Australia's agreements. Australia can only tax business profits derived by a resident of an agreement partner country if the profit is attributable to a permanent establishment. By paragraph (c) of the new sub-section 11, the beneficiary will be deemed to carry on in Australia, through a permanent establishment in Australia, business by the trustee. The beneficiary's share of trust income from the trustee's operations in Australia will be attributed to the Australian permanent establishment of the overseas beneficiary.

The new provisions will apply to any distributions of trust income to which a beneficiary became entitled after 19 August 1984 (sub-clause 3(2)).

Clause 4 will provide legislative authority in Australia to the protocol signed in Canberra on 20 March...
1984 which will amend the existing comprehensive agreement with Belgium to incorporate three developments which have occurred since the agreement was signed in 1977. The protocol will provide for the enactment of Australian legislation for a branch profits tax, revised transfer pricing provisions applicable to Australian enterprises, and a revised definition of "royalty" to include both credited and paid amounts, and amounts paid or credited by a person in return for a forebearance to grant to third persons rights to use property covered by the royalty definition.

Clause 5 provides legislative authority in Australia to the comprehensive taxation agreement with Malta which was signed on 9 May 1984. The agreement is similar to other comprehensive taxation agreements to which Australia is a party. To reflect the Maltese system of taxing company profits and dividend distributions, the Maltese tax and dividends is normally not to exceed the company tax chargeable on the profits from which the dividends are paid.

Clause 8 will add the protocol with Belgium and the agreement with Malta as Schedules 13A and 24, respectively, to the Income Tax (International Agreements) Act 1953.

For further information, if required, contact:

Economics and Commerce Group

LEGISLATIVE RESEARCH SERVICE

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