Short Digest of Bill

**Purpose**

To provide legislative authority in Australia for new comprehensive taxation agreements with the Philippines and Switzerland and for a protocol to amend the double taxation agreement between Australia and the United Kingdom.

**Background**

Australia has concluded treaties with a number of countries to avoid international double taxation and to prevent fiscal evasion. Tax treaties covering all usual areas of possible double taxation now in force are those with the United Kingdom, United States, Canada, New Zealand, Singapore, Japan, Germany, the Netherlands, France and Belgium. In the case of France, air transport profits are separately covered in a limited treaty. Australia also has limited treaties with Italy and Greece relating only to air transport profits.

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, class of income may be reserved to 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, some examples of those classes of income which are taxable only by the country of residence are:

(i) the profits of an enterprise carried on in one State unless those profits are derived in part from a business in the other State, which is conducted through a permanent establishment. A permanent establishment is defined in each agreement but a branch agent (excluding a commission agent or
broker), management or fixed place of business normally constitutes a permanent establishment, and

(ii) remuneration derived by an employee or professional person who is present in the other State for a period not exceeding in the aggregate 183 days in a year of income. The country of origin of the income is generally however not precluded from taxing the remuneration of visiting entertainers and athletes.

(iii) International shipping and air transport profile.

Other classes of income are generally taxed by the country of origin although their taxing powers are limited. For example the withholding tax applicable to dividends received directly or indirectly from a resident company by a non-resident who does not carry on a business at or through a permanent establishment is limited to 15% of the gross dividend. The withholding tax on interest and royalties similarly received is limited to 10% of the gross amount of the royalty or interest.

Main Provisions

Detailed discussion of the clauses of the Bill and terms of the two new agreements and the amendment to the agreement with the United Kingdom is contained in the Explanatory Memorandum.

Clause 4 provides for the insertion in the Principal Act, the Income Tax (International Agreements) Act 1953 of a new section, section 5A, which will give the force of law in Australia to the protocol with the United Kingdom. The protocol, in accordance with Article III, will enter into force when all steps have been taken to give it the force of law in Australia and the U.K. The Treasurer is required to publish the date of entry into force in the Gazette (proposed S.5A(2)).

Proposed section 5A(3) will require that where an Australian resident individual receives a dividend from a United Kingdom resident company he is to be entitled to a tax credit in the U.K. on the same basis as a United Kingdom resident individual. In addition any such tax credit is to be treated as assessable income in Australia.

Clause 5 provides for the insertion in the Principal Act, of two new sections - sections 11D and 11E which respectively will give the force of law in Australia to the agreements with the Philippines and Switzerland. By proposed sub-section 11D(1) the Philippine agreement
will, when the agreement enters into force, have effect, for Australian tax-

(a) in relation to dividends and interest subject to withholding tax that are derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force;

(b) in relation to other income, for any year of income beginning on or after 1 July in the calendar year immediately following that in which the agreement enters into force.

By proposed sub-section 11E(1), the Swiss agreement will, when the agreement enters into force, have effect for Australian tax—

(a) in relation to dividends or interest subject to withholding tax that are derived on or after 1 January 1979;

(b) in relation to other income, for any year of income beginning on or after 1 July 1979.

Sub-section (2) of each of new sections 11D and 11E provides for notification in the Gazette of the dates of entry into force of the agreements.

Clause 6 amends section 12 to specify that interest and royalties derived from the Philippines and Switzerland by residents of Australia and in respect of which, under the agreements, tax has been limited, will not by reason of the payment of that limited tax be exempt from Australian tax. Australia is required to credit against its tax, the limited tax of the other country. The Philippines will limit its tax in the case of interest to 15% or 10% as applicable in the case of royalties. Switzerland will limit its tax to 10 per cent of the gross amount of royalty and interest income received.

Clause 8 provides for the insertion of new Schedules 1A, 14 and 15 which contain the amended agreement with the United Kingdom and the two new agreements with the Philippines and Switzerland.

These Schedules are attached to the Bill and explained in detail in the Explanatory Memorandum.

Clause 9 includes some transitional provisions with respect to the protocol with the Government of the United Kingdom. Sub-clause 9(4) allows the Commissioner of Taxation to amend assessments that have already been issued.
This is to avoid any retrospective increase in Australian tax liability that might result from the application of the provisions of new article 8 of the agreement to dividends derived by Australian residents from United Kingdom companies.

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Finance, Industries, Trade & Development Group
LEGISLATIVE RESEARCH SERVICE