

International Tax Agreements Amendment Act (No. 1) 2006

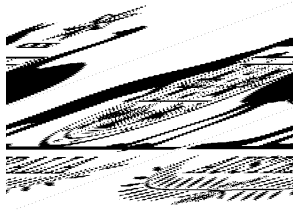
No. 100, 2006

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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International Tax Agreements Amendment Act (No. 1) 2006

No. 100, 2006

An Act to amend the law relating to taxation, and for related purposes

[Assented to 14 September 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Tax Agreements
Amendment Act (No. 1) 2006*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Mutual assistance in collection of tax debts

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

foreign revenue claim has the meaning given by section 263-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

2 Subsection 8AAB(5) (after table item 17J)

Insert:

17K 263-30 in *Taxation Administration Act 1953*
Schedule 1

3 Section 8AAZA (definition of *credit*)

Repeal the definition, substitute:

credit includes:

- (a) an amount that the Commissioner must pay to a taxpayer under a taxation law (other than the *Product Grants and Benefits Administration Act 2000*), whether or not described as a credit; and
- (b) an amount received by the Commissioner in respect of a taxpayer as a result of the Commissioner having made a claim that is similar in nature to a foreign revenue claim (as defined in section 263-10 in Schedule 1).

4 Subsection 250-10(2) in Schedule 1 (after table item 135)

Insert:

137 amount to be recovered 263-30 in *Taxation Administration Act 1953*
from a debtor under a Schedule 1
registered foreign
revenue claim

5 At the end of section 255-40 in Schedule 1

Add:

- (3) For the purposes of giving effect to a provision of an international agreement of a kind referred to in Subdivision 263-A (about foreign revenue claims), if a document needs to be served on a person and the Commissioner, after making reasonable inquiries, is satisfied that:
- (a) the person is absent from Australia and does not have an agent in Australia on whom the document can be served; and
 - (b) the person has an address in a foreign country, a constituent part of a foreign country or a foreign territory;
- the Commissioner may serve the document on the person at the address mentioned in paragraph (b).

6 Paragraph 255-45(1)(a) in Schedule 1

After “subsection (2)”, insert “or (3)”.

7 At the end of section 255-45 in Schedule 1

Add:

- (3) A certificate may state:
- (a) that a *foreign revenue claim for an amount specified in the certificate has been made by the competent authority under the relevant international agreement; or
 - (b) that the relevant requirements of the relevant international agreement have been complied with in relation to the foreign revenue claim; or
 - (c) that the claim was registered under Division 263 on the date specified in the certificate; or
 - (d) that, as at the date of the certificate, the Commissioner has or has not received advice from the competent authority under the relevant international agreement about the reduction or discharge of an amount to be recovered under the claim; or
 - (e) that the particulars of any reduction or discharge of an amount to be recovered under the claim are as specified in the certificate.

8 After Division 260 in Schedule 1

Insert:

Division 263—Mutual assistance in collection of foreign tax debts

Table of Subdivisions

263-A Foreign revenue claims

Subdivision 263-A—Foreign revenue claims

Guide to Subdivision 263-A

263-5 What this Subdivision is about

This Subdivision can be activated if there is in force an agreement between Australia and a foreign country or territory that contains an article relating to assistance in collection of foreign tax debts.

The Commissioner can collect from an entity an amount in respect of a tax debt that the person owes to such a country or territory or take action to conserve assets of the entity.

The Commissioner is required to remit amounts collected to the foreign country or territory concerned.

Table of sections

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Operative provisions

263-10 Meaning of foreign revenue claim

A *foreign revenue claim* is a claim made to the Commissioner:

- (a) in accordance with an agreement (the *international agreement*) between Australia and:
 - (i) a foreign country or a constituent part of a foreign country; or
 - (ii) an overseas territory;(the *overseas entity*); and
- (b) for one or both of these purposes:
 - (i) the recovery by the Commissioner of an amount from an entity (the *debtor*) in respect of taxes imposed otherwise than by an *Australian law (including any associated amounts);
 - (ii) the conserving of assets for the purposes of a recovery of that kind.

263-15 Requirements for foreign revenue claims

A *foreign revenue claim must:

- (a) be made by or on behalf of an entity that is, under the relevant international agreement, the competent authority; and
- (b) be consistent with the provisions of that agreement; and
- (c) be made in the *approved form; and
- (d) specify the amount owed by the debtor in Australian currency (calculated as at the day the claim is made); and
- (e) be accompanied by a declaration by the competent authority stating that the claim fulfils the requirements of that agreement.

263-20 Foreign Revenue Claims Register

- (1) The Commissioner must keep a register called the Foreign Revenue Claims Register (the *Register*).
- (2) The regulations may make provision in relation to the form in which the Register may be kept.
- (3) The register is not a legislative instrument.

263-25 Registering claims

If the Commissioner is satisfied that a *foreign revenue claim has been made in accordance with section 263-15, the Commissioner must register the claim by entering particulars of it in the Register within 90 days after receiving the claim.

263-30 When amount is due and payable

- (1) When particulars of a *foreign revenue claim are entered in the Register, the amount owed by the debtor becomes a pecuniary liability to the Commonwealth by the debtor.

Note 1: The amount to be recovered from the debtor will be a primary tax debt for the purposes of Part IIB and the Commissioner may allocate the debt to a running balance account under that Part.

Note 2: For provisions about collection and recovery of the debt, see Part 4-15.

- (2) That amount becomes due and payable 30 days after notice of the particulars of the *foreign revenue claim is given to the debtor or on a later day specified in the notice.
- (3) If that amount remains unpaid after it is due and payable, the debtor is liable to pay *general interest charge on the unpaid amount for each day in the period that:
 - (a) started at the beginning of the day by which the amount was due to be paid; and
 - (b) finishes at the end of the last day at the end of which either of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

263-35 Amending the Register

- (1) The Commissioner may, with the agreement of the relevant competent authority, amend the Register to correct an error.
- (2) The Commissioner may, with the agreement of the relevant competent authority:
 - (a) remove from the Register the particulars of a *foreign revenue claim; or

- (b) reduce an amount to be recovered from a debtor under the claim.
- (3) A debtor may, after receiving a copy of the particulars of a *foreign revenue claim entered in the Register, apply to the Commissioner in the *approved form to have those particulars removed from the Register.
- (4) The Commissioner may, after considering the application, remove those particulars from the Register.
- (5) If the Commissioner removes particulars of a *foreign revenue claim relating to the recovery of an amount from the Register under paragraph (2)(a) or subsection (4), the debtor is taken never to have been liable to pay an amount (including any *general interest charge) as a result of the foreign revenue claim.
- (6) If the Commissioner reduces the amount to be recovered from a debtor under a *foreign revenue claim under paragraph (2)(b), the amount of the reduction is taken never to have been payable by the debtor.

263-40 Payment to competent authority

- (1) The Commissioner must, if the Commissioner recovers all or part of an amount to be recovered from a debtor under a registered *foreign revenue claim, pay that amount to the competent authority concerned or to another entity on behalf of that competent authority.
- (2) The Commissioner may also pay to the competent authority all or part of an amount that the Commissioner has received and that is attributable to *general interest charge in relation to the claim.

Taxation (Interest on Overpayments and Early Payments) Act 1983

9 Subsection 3(1) (after paragraph (c) of the definition of *decision to which this Act applies*)

Insert:

(caa) a decision under Subdivision 263-A (about foreign revenue claims) in Schedule 1 to the *Taxation Administration Act 1953*; or

10 Section 3C (after table item 90 of the definition of *relevant tax*)

Insert:

- 92 An amount payable to the Commissioner under Subdivision 263-A (about foreign revenue claims) in Schedule 1 to the *Taxation Administration Act 1953*

11 Application

The amendments made by this Schedule apply to claims for assistance in collection of foreign tax debts made after the day on which this Act receives the Royal Assent.

Schedule 2—Exchange of information

International Tax Agreements Act 1953

1 After section 22

Insert:

23 Gathering and exchanging information

- (1) The Commissioner or an officer authorised by the Commissioner may use the information gathering provisions for the purpose of gathering information to be exchanged in accordance with the Commissioner's obligations under an international agreement.
- (2) Making a record of, and exchanging, information in accordance with the Commissioner's obligations under an international agreement is not a breach of a provision of a taxation law that prohibits the Commissioner or an officer from making a record of, or disclosing, information.

Example: An example of such a provision is section 3C of the *Taxation Administration Act 1953*.

- (3) Subsections (1) and (2) have effect whether or not the information relates to Australian tax.
- (4) In this section:

information gathering provision means a provision of a taxation law that allows the Commissioner:

- (a) to access land, premises, documents, information, goods or other property; or
- (b) to require or direct a person to provide information; or
- (c) to require or direct a person to appear before the Commissioner or an officer and give evidence or produce documents.

international agreement means:

- (a) an agreement given the force of law under this Act; or
- (b) some other agreement that allows for the exchange of information on tax matters between Australia and:

- (i) a foreign country or a constituent part of a foreign country; or
- (ii) an overseas territory.

taxation law has the same meaning as in the *Income Tax Assessment Act 1997*.

Taxation Administration Act 1953

2 At the end of subsection 3C(2)

Add:

Note: It is not a breach of subsection (2) to record or disclose information in accordance with an obligation Australia has under an agreement with another country. See section 23 of the *International Tax Agreements Act 1953*.

3 Paragraphs 3C(2A)(b) and (c)

Repeal the paragraphs, substitute:

- (b) in the performance of the person's duties as an officer.

4 Paragraph 355-5(4)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) the making of the record or the disclosure is for the purposes of an *indirect tax law; or

5 Subsection 355-5(4) in Schedule 1 (note)

Omit "Note", substitute "Note 1".

6 At the end of subsection 355-5(4) in Schedule 1

Add:

Note 2: It is not a breach of subsection (2) to record or disclose information in accordance with an obligation Australia has under an agreement with another country. See section 23 of the *International Tax Agreements Act 1953*.

7 Application

The amendments made by this Schedule apply to requests for the exchange of information made after the day on which this Act receives the Royal Assent.

Schedule 3—The New Zealand protocol

International Tax Agreements Act 1953

1 Subsection 3(1) (at the end of the definition of *the New Zealand agreement*)

Add “, as amended by the New Zealand protocol”.

2 Subsection 3(1)

Insert:

the New Zealand protocol means the Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. A copy of the protocol is set out in Schedule 4A.

3 After section 6B

Insert:

6C New Zealand protocol

Subject to this Act, on and after the date of entry into force of a provision of the New Zealand protocol, the provision has the force of law according to its tenor.

4 After Schedule 4

Insert:

Schedule 4A—The New Zealand protocol

Note: See section 6C

PROTOCOL

AMENDING THE AGREEMENT BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF NEW ZEALAND

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION WITH RESPECT TO

TAXES ON INCOME

Melbourne, 15 November 2005

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of Australia and the Government of New Zealand,

Desiring to amend the Agreement between the Government of New Zealand and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Melbourne on the 27th day of January 1995 (in this Protocol referred to as “the Agreement”),

Have agreed as follows:

ARTICLE 1

Article 2 of the Agreement is amended by inserting:

“3. Notwithstanding paragraphs 1 and 2, the taxes to which Articles 26 and 27 shall apply are:

- a) in the case of New Zealand, taxes of every kind and description imposed under its tax laws; and
- b) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation.”

ARTICLE 2

Article 26 of the Agreement is omitted and the following Article is substituted:

“Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic law concerning taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable by the competent authority under the law or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE 3

Article 27, Article 28 and Article 29 of the Agreement are renumbered as Article 28, Article 29 and Article 30 respectively.

ARTICLE 4

The Agreement is amended by inserting:

“Article 27

ASSISTANCE IN COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the law of that State and is owed by a person who, at that time, cannot, under the law of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its law applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its law as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the law of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the law of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the law of that State and is owed by a person who, at that time, cannot, under the law of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its law or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.”

ARTICLE 5

With reference to Articles 10, 11 and 12, if in any future Agreement with any other State, New Zealand should limit its taxation at source of dividends, interest or royalties to a rate lower than the one provided for in any of those Articles, the Government of New Zealand shall without undue delay inform the Government of Australia and shall enter into negotiations with the Government of Australia with a view to providing the same treatment.

ARTICLE 6

1. The Government of New Zealand and the Government of Australia shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol.

2. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the last notification, and thereupon the Protocol shall have effect.

3. Notwithstanding paragraph 2, Article 4 shall have effect from the date agreed in a subsequent exchange of notes through the diplomatic channel.

In WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Melbourne in duplicate this fifteenth day of November two thousand and five in the English language.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF
NEW ZEALAND:

Peter Costello
[Signatures omitted]

Kate Lackey

*[Minister's second reading speech made in—
House of Representatives on 22 June 2006
Senate on 17 August 2006]*

(90/06)
