





# **International Tax Agreements Amendment Act (No. 1) 2009**

**No. 105, 2009**

**An Act to amend the *International Tax Agreements Act 1953*, 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) 2009**

**No. 105, 2009**

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## **An Act to amend the *International Tax Agreements Act 1953*, and for related purposes**

[Assented to 8 October 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *International Tax Agreements Amendment Act (No. 1) 2009*.

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## **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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—International Tax Agreements Act 1953**

### **1 Subsection 3(1)**

Insert:

*the British Virgin Islands agreement* means the Agreement between the Government of Australia and the Government of the British Virgin Islands for the allocation of taxing rights with respect to certain income of individuals, being the agreement a copy of which is set out in Schedule 48.

### **2 Subsection 3(1)**

Insert:

*the Isle of Man agreement* means the Agreement between the Government of Australia and the Government of the Isle of Man for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, being the agreement a copy of which is set out in Schedule 49.

### **3 After section 11ZL**

Insert:

#### **11ZM Agreement with the British Virgin Islands**

Subject to this Act, on and after the date of entry into force of a provision of the British Virgin Islands agreement, the provision has the force of law according to its tenor.

#### **11ZN Agreement with the Isle of Man**

Subject to this Act, on and after the date of entry into force of a provision of the Isle of Man agreement, the provision has the force of law according to its tenor.

### **4 At the end of the Act**

Add:

## **Schedule 48—The British Virgin Islands agreement**

Note: See section 3.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS FOR THE  
ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN  
INCOME OF INDIVIDUALS

The Government of Australia and the Government of the British Virgin  
Islands (“the Contracting Parties”):

Recognising that the two Governments have concluded an Agreement for the  
Exchange of Information Relating to Taxes; and

Desiring to conclude an Agreement for the allocation of taxing rights with  
respect to certain income of individuals;

Have agreed as follows:

### ARTICLE 1

#### PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both  
of the Contracting Parties.

ARTICLE 2

TAXES COVERED

1 The existing taxes to which this Agreement shall apply are:

(a) in Australia, the income tax imposed under the federal law of Australia

(hereinafter referred to as “Australian tax”).

(b) in the British Virgin Islands, such taxes on income or profits as imposed by law (hereinafter referred to as “British Virgin Islands tax”).

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting Party.

ARTICLE 3

DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:
  - (i) the Territory of Norfolk Island;
  - (ii) the Territory of Christmas Island;
  - (iii) the Territory of Cocos (Keeling) Islands;
  - (iv) the Territory of Ashmore and Cartier Islands;
  - (v) the Territory of Heard Island and McDonald Islands; and
  - (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including only the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone and the seabed and subsoil of the continental shelf;

- (b) the term “British Virgin Islands ” means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (c) the term “competent authority” means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing;
- (d) the term “Contracting Party” means Australia or the British Virgin Islands, as the context requires;
- (e) the term “national” means
  - (i) in relation to Australia , any person who is an Australian citizen;
  - (ii) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands or is a permanent resident of the British Virgin Islands;
- (f) the term “person”, wherever used, refers to an individual;
- (g) the term “tax” means Australian tax or British Virgin Islands tax as the context requires.

2 As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting

Party prevailing over a meaning given to the term under other laws of that Contracting Party.

#### ARTICLE 4

#### RESIDENT

1 For the purposes of this Agreement, the term “resident of a Contracting Party” means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of the British Virgin Islands, a person who is liable to pay tax under British Virgin Islands law.

2 A person is not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting Parties, then the person’s status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Contracting Party in which a permanent home is available to that individual; if a permanent home is available in both Contracting Parties, or in neither of them, that individual shall be deemed to be a resident only of the Contracting Party with which the individual’s

personal and economic relations are closer (centre of vital interests);

- (b) if the Contracting Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Contracting Party of which the individual is a national;
- (c) if the individual is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

## ARTICLE 5

### GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Contracting Party and the individual is a resident of that Contracting Party who:
  - (i) is a national of that Contracting Party; or

- (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Contracting Party.

## ARTICLE 6

### STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Contracting Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Contracting Party, provided such payments arise from sources outside that Contracting Party.

## ARTICLE 7

### EXCHANGE OF INFORMATION

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the

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purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information Relating to Taxes concluded by the Contracting Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

## ARTICLE 8

### ENTRY INTO FORCE

The Contracting Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information Relating to Taxes is in force between the Contracting Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 9

TERMINATION

1 This Agreement shall continue in force indefinitely, but either of the Contracting Parties may, give to the other Contracting Party through the appropriate channel written notice of termination

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the Agreement for the Exchange of Information Relating to Taxes between the Contracting Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

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

DONE at London, this 27<sup>th</sup> day of October, 2008 in the English language.

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF  
BRITISH VIRGIN ISLANDS:

## **Schedule 49—The Isle of Man agreement**

Note: See section 3.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF THE ISLE OF MAN FOR THE ALLOCATION OF  
TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF  
INDIVIDUALS AND TO ESTABLISH A MUTUAL AGREEMENT  
PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

The Government of Australia and the Government of the Isle of Man  
("the Parties"),

Recognising that the Parties have concluded an Agreement on the Exchange of  
Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with  
respect to certain income of individuals and to establish a mutual agreement  
procedure in respect of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Parties.

ARTICLE 2

TAXES COVERED

1 The existing taxes to which this Agreement shall apply are:

(a) in Australia, the income tax imposed under the federal law of Australia;

(hereinafter referred to as “Australian tax”).

(b) in the Isle of Man, taxes on income or profits;

(hereinafter referred to as “Manx tax”).

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

### ARTICLE 3

#### DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:
  - (i) the Territory of Norfolk Island;
  - (ii) the Territory of Christmas Island;
  - (iii) the Territory of Cocos (Keeling) Islands;
  - (iv) the Territory of Ashmore and Cartier Islands;
  - (v) the Territory of Heard Island and McDonald Islands; and
  - (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration

for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- (b) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Isle of Man, the Assessor of Income Tax or an authorised delegate;
- (c) the term “Isle of Man” means the island of the Isle of Man;
- (d) the term “ Party” means Australia or Isle of Man, as the context requires;
- (e) the term “national”, in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
- (f) the term “person” includes an individual, a company and any other body of persons;
- (g) the term “tax” means Australian tax or Manx tax, as the context requires; and
- (h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

2 As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the

applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### ARTICLE 4

#### RESIDENT

1 For the purposes of this Agreement, the term “resident of a Party” means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of the Isle of Man, a person who is a resident for the purposes of Manx tax.

2 A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person’s status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or

in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;
- (c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

4 Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

## ARTICLE 5

### PENSIONS AND RETIREMENT ANNUITIES

1 Pensions (including government pensions) and retirement annuities paid to an individual who is a resident of a Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Party may be taxed in that Party where such income is not subject to tax in the other Party.

2 The term "retirement annuity" means:

- (a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;

- (b) in the case of the Isle of Man, an annuity payment within the meaning of the taxation laws of the Isle of Man; and
- (c) any other similar periodic payment agreed upon by the competent authorities.

## ARTICLE 6

### GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
  - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who:
    - (i) is a national of that Party; or
    - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
- 2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party.

ARTICLE 7

STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Party, provided such payments arise from sources outside that Party.

ARTICLE 8

MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER  
PRICING ADJUSTMENTS

1 Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within three years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9

EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 10

ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which this Agreement enters into force; and

- (b) in respect of the Isle of Man, for any year of income beginning on or after 5 April in the calendar year next following that in which this Agreement enters into force.

## ARTICLE 11

### TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party through the appropriate channel written notice of termination.

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (b) in respect of Manx tax, for any year of income beginning on or after 5 April in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

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

DONE at LONDON, UNITED KINGDOM, this 29<sup>th</sup> day of JANUARY, 2009, in duplicate in the English language.

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF  
THE ISLE OF MAN:

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*[Minister's second reading speech made in—  
House of Representatives on 19 March 2009  
Senate on 17 September 2009]*

(38/09)

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