

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**International Tax Agreements
Amendment Bill (No. 1) 2006**

No. , 2006

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

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

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

1
2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Mutual assistance in collection**
3 **of tax debts**
4

5 ***Income Tax Assessment Act 1997***

6 **1 Subsection 995-1(1)**

7 Insert:

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

10 ***Taxation Administration Act 1953***

11 **2 Subsection 8AAB(5) (after table item 17J)**

12 Insert:

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

13 **3 Section 8AAZA (definition of *credit*)**

14 Repeal the definition, substitute:

15 *credit* includes:

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

24 **4 Subsection 250-10(2) in Schedule 1 (after table item 135)**

25 Insert:

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

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

2 Add:

3 (3) For the purposes of giving effect to a provision of an international
4 agreement of a kind referred to in Subdivision 263-A (about
5 foreign revenue claims), if a document needs to be served on a
6 person and the Commissioner, after making reasonable inquiries, is
7 satisfied that:

8 (a) the person is absent from Australia and does not have an
9 agent in Australia on whom the document can be served; and

10 (b) the person has an address in a foreign country, a constituent
11 part of a foreign country or a foreign territory;

12 the Commissioner may serve the document on the person at the
13 address mentioned in paragraph (b).

14 **6 Paragraph 255-45(1)(a) in Schedule 1**

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

16 **7 At the end of section 255-45 in Schedule 1**

17 Add:

18 (3) A certificate may state:

19 (a) that a *foreign revenue claim for an amount specified in the
20 certificate has been made by the competent authority under
21 the relevant international agreement; or

22 (b) that the relevant requirements of the relevant international
23 agreement have been complied with in relation to the foreign
24 revenue claim; or

25 (c) that the claim was registered under Division 263 on the date
26 specified in the certificate; or

27 (d) that, as at the date of the certificate, the Commissioner has or
28 has not received advice from the competent authority under
29 the relevant international agreement about the reduction or
30 discharge of an amount to be recovered under the claim; or

31 (e) that the particulars of any reduction or discharge of an
32 amount to be recovered under the claim are as specified in
33 the certificate.

34 **8 After Division 260 in Schedule 1**

35 Insert:

1 **Division 263—Mutual assistance in collection of foreign tax**
2 **debts**

3 **Table of Subdivisions**

4 263-A Foreign revenue claims

5 **Subdivision 263-A—Foreign revenue claims**

6 **Guide to Subdivision 263-A**

7 **263-5 What this Subdivision is about**

8 This Subdivision can be activated if there is in force an agreement
9 between Australia and a foreign country or territory that contains
10 an article relating to assistance in collection of foreign tax debts.
11
12 The Commissioner can collect from an entity an amount in respect
13 of a tax debt that the person owes to such a country or territory or
14 take action to conserve assets of the entity.
15
16 The Commissioner is required to remit amounts collected to the
17 foreign country or territory concerned.

16 **Table of sections**

17 **Operative provisions**

18 263-10 Meaning of *foreign revenue claim*
19 263-15 Requirements for foreign revenue claims
20 263-20 Foreign Revenue Claims Register
21 263-25 Registering claims
22 263-30 When amount is due and payable
23 263-35 Amending the Register
24 263-40 Payment to competent authority

25 **Operative provisions**

26 **263-10 Meaning of foreign revenue claim**

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

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

14 **263-15 Requirements for foreign revenue claims**

- 15 A *foreign revenue claim must:
16 (a) be made by or on behalf of an entity that is, under the
17 relevant international agreement, the competent authority;
18 and
19 (b) be consistent with the provisions of that agreement; and
20 (c) be made in the *approved form; and
21 (d) specify the amount owed by the debtor in Australian
22 currency (calculated as at the day the claim is made); and
23 (e) be accompanied by a declaration by the competent authority
24 stating that the claim fulfils the requirements of that
25 agreement.

26 **263-20 Foreign Revenue Claims Register**

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

1 **263-25 Registering claims**

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

6 **263-30 When amount is due and payable**

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

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

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

15 (2) That amount becomes due and payable 30 days after notice of the
16 particulars of the *foreign revenue claim is given to the debtor or
17 on a later day specified in the notice.

18 (3) If that amount remains unpaid after it is due and payable, the
19 debtor is liable to pay *general interest charge on the unpaid
20 amount for each day in the period that:

21 (a) started at the beginning of the day by which the amount was
22 due to be paid; and

23 (b) finishes at the end of the last day at the end of which either of
24 the following remains unpaid:

25 (i) the amount;

26 (ii) general interest charge on any of the amount.

27 **263-35 Amending the Register**

28 (1) The Commissioner may, with the agreement of the relevant
29 competent authority, amend the Register to correct an error.

30 (2) The Commissioner may, with the agreement of the relevant
31 competent authority:

32 (a) remove from the Register the particulars of a *foreign
33 revenue claim; or

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

18 **263-40 Payment to competent authority**

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

27 ***Taxation (Interest on Overpayments and Early Payments) Act***
28 ***1983***

29 **9 Subsection 3(1) (after paragraph (c) of the definition of**
30 ***decision to which this Act applies*)**

31 Insert:

1 (caa) a decision under Subdivision 263-A (about foreign revenue
2 claims) in Schedule 1 to the *Taxation Administration Act*
3 *1953*; or

4 **10 Section 3C (after table item 90 of the definition of *relevant***
5 ***tax*)**

6 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

7 **11 Application**

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

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Schedule 2—Exchange of information

4

International Tax Agreements Act 1953

5

1 After section 22

6 Insert:

7

23 Gathering and exchanging information

8 (1) The Commissioner or an officer authorised by the Commissioner
9 may use the information gathering provisions for the purpose of
10 gathering information to be exchanged in accordance with the
11 Commissioner's obligations under an international agreement.

12 (2) Making a record of, and exchanging, information in accordance
13 with the Commissioner's obligations under an international
14 agreement is not a breach of a provision of a taxation law that
15 prohibits the Commissioner or an officer from making a record of,
16 or disclosing, information.

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

19 (3) Subsections (1) and (2) have effect whether or not the information
20 relates to Australian tax.

21 (4) In this section:

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

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

30 ***international agreement*** means:

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

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

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

6 ***Taxation Administration Act 1953***

7 **2 At the end of subsection 3C(2)**

8 Add:

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

13 **3 Paragraphs 3C(2A)(b) and (c)**

14 Repeal the paragraphs, substitute:

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

16 **4 Paragraph 355-5(4)(a) in Schedule 1**

17 Repeal the paragraph, substitute:

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

20 **5 Subsection 355-5(4) in Schedule 1 (note)**

21 Omit "Note", substitute "Note 1".

22 **6 At the end of subsection 355-5(4) in Schedule 1**

23 Add:

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

28 **7 Application**

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

1
2
3 **Schedule 3—The New Zealand protocol**

4 ***International Tax Agreements Act 1953***

5 **1 Subsection 3(1) (at the end of the definition of *the New***
6 ***Zealand agreement*)**

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

8 **2 Subsection 3(1)**

9 Insert:

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

15 **3 After section 6B**

16 Insert:

17 **6C New Zealand protocol**

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

21 **4 After Schedule 4**

22 Insert:

1 **Schedule 4A—The New Zealand protocol**

2 Note: See section 6C
3
4
5

6
7 **PROTOCOL**

8 **AMENDING THE AGREEMENT BETWEEN**

9 **THE GOVERNMENT OF AUSTRALIA**

10 **AND**

11 **THE GOVERNMENT OF NEW ZEALAND**

12 **FOR THE AVOIDANCE OF DOUBLE TAXATION**

13 **AND**

14 **THE PREVENTION OF FISCAL EVASION WITH RESPECT TO**
15 **TAXES ON INCOME**

16 Melbourne, 15 November 2005

1
2 **PROTOCOL AMENDING THE AGREEMENT BETWEEN THE**
3 **GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF**
4 **NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION**
5 **AND THE PREVENTION OF FISCAL EVASION WITH RESPECT**
6 **TO TAXES ON INCOME.**

7
8 The Government of Australia and the Government of New Zealand,

9
10
11 Desiring to amend the Agreement between the Government of New
12 Zealand and the Government of Australia for the avoidance of double
13 taxation and the prevention of fiscal evasion with respect to taxes on
14 income signed at Melbourne on the 27th day of January 1995 (in this
15 Protocol referred to as “the Agreement”),

16
17
18 Have agreed as follows:

19 **ARTICLE 1**

20 Article 2 of the Agreement is amended by inserting:

21 “3. Notwithstanding paragraphs 1 and 2, the taxes to which Articles 26 and
22 27 shall apply are:

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

28 **ARTICLE 2**

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

30 *“Article 26*

1

EXCHANGE OF INFORMATION

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

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

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

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

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

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

6 **ARTICLE 3**

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

9 **ARTICLE 4**

10 The Agreement is amended by inserting:

11 *“Article 27*

12 **ASSISTANCE IN COLLECTION OF TAXES**

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

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

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

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

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

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

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

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

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

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

- 1 a) to carry out administrative measures at variance with the law
2 and administrative practice of that or of the other Contracting
3 State;
- 4 b) to carry out measures which would be contrary to public policy
5 (ordre public);
- 6 c) to provide assistance if the other Contracting State has not
7 pursued all reasonable measures of collection or conservancy,
8 as the case may be, available under its law or administrative
9 practice;
- 10 d) to provide assistance in those cases where the administrative
11 burden for that State is clearly disproportionate to the benefit to
12 be derived by the other Contracting State;
- 13 e) to provide assistance if that State considers that the taxes with
14 respect to which assistance is requested are imposed contrary to
15 generally accepted taxation principles.”
16

17 **ARTICLE 5**

18 With reference to Articles 10, 11 and 12, if in any future Agreement with any
19 other State, New Zealand should limit its taxation at source of dividends,
20 interest or royalties to a rate lower than the one provided for in any of those
21 Articles, the Government of New Zealand shall without undue delay inform the
22 Government of Australia and shall enter into negotiations with the Government
23 of Australia with a view to providing the same treatment.
24

25 **ARTICLE 6**

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

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

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

6
7 In WITNESS WHEREOF the undersigned, being duly authorised thereto by
8 their respective Governments, have signed this Protocol.

9
10 DONE at Melbourne in duplicate this fifteenth day of November two thousand
11 and five in the English language.

12
13 FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT
OF
NEW ZEALAND:

Peter Costello

Kate Lackey

14 [Signatures omitted]
15