

**Documents tabled on 13 June 2007:**

**National Interest Analysis [2007] ATNIA 17**

**with attachment on consultation**

**Agreement between the Government of Australia and the Government of  
Antigua and Barbuda on the Exchange of Information with Respect to Taxes  
(Saint John's, Antigua, 30 January 2007)  
[2007] ATNIF 2**

**Background information:**

**Country political brief**

**List of other treaties with Antigua and Barbuda**

**List of treaties of the same type with other countries**

## **NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY**

### **SUMMARY PAGE**

#### **Agreement between the Government of Australia and the Government of Antigua and Barbuda on the Exchange of Information with Respect to Taxes (Saint John's, Antigua, 30 January 2007) [2007] ATNIF 2**

##### **Nature and timing of proposed treaty action**

1. The Agreement will enter into force on the date of the last notification in writing through diplomatic channels by both Australia and Antigua and Barbuda that the constitutional and legal procedures for the entry into force of this Agreement have been completed, pursuant to Article 13.
2. The Agreement will then have effect from the date of the last notification with respect to criminal tax matters and from 1 January 2007 with respect to all other tax matters covered by the Agreement. The start date of 1 January 2007 for civil matters will allow the Commissioner of Taxation to request information back to this date once the Agreement is in force.
3. Pursuant to Article 4(1)(b), the Agreement does not apply to any external territories except to the extent they are specifically listed in the Agreement.

##### **Overview and national interest summary**

4. Antigua and Barbuda is a Commonwealth country comprising two of the six Leeward Islands in the Caribbean Sea. The economy of Antigua and Barbuda is heavily dependent on tourism but also has small construction and light manufacturing industries and a growing offshore financial sector. Antigua and Barbuda has a low tax structure and a stable political and legal system based on the British model.
5. There is limited economic activity between Australia and Antigua and Barbuda, with the balance of trade generally in Australia's favour. The major Australian exports to Antigua and Barbuda are meat, measuring and controlling instruments, soap and cleansing preparations and footwear. The major Australian imports from Antigua and Barbuda include textile manufactures, power generating machinery, musical instruments and heating and cooling equipment.
6. The Agreement will help Australia protect its revenue base by allowing access to necessary offshore information and improving the integrity of the tax system by discouraging tax evasion by certain individuals and businesses. The Agreement provides for full exchange of information on criminal and civil tax matters between Australia and Antigua and Barbuda. It also incorporates a number of important safeguards to protect the legitimate interests of taxpayers.
7. This Agreement is the second of its kind signed for Australia; the first was signed with Bermuda on 10 November 2005. It is an important step towards entering into Tax Information Exchange Agreements (TIEAs) with other jurisdictions that have committed to work with OECD member countries under the auspices of the Global Forum on Taxation (Global Forum) to improve transparency and establish effective exchange of information for tax purposes.

## **Reasons for Australia to take the proposed treaty action**

8. The Agreement seeks to implement the OECD's work on harmful tax practices, which has identified the lack of effective exchange of information between countries as a key contributing factor to international tax evasion and avoidance.

9. Australia has taken a leadership role in this work and hosted the Global Forum in Melbourne in 2005, which was attended by 55 OECD member countries and non-OECD jurisdictions.

10. Internationally, 33 low tax jurisdictions have publicly committed to the elimination of harmful tax practices. These jurisdictions (collectively referred to as participating partners), have worked together under the auspices of the OECD's Global Forum to develop international standards regarding transparency and effective exchange of information. The participating partners seek to ensure the information needed by tax authorities to determine a taxpayer's correct tax liability is available. TIEAs are the key bilateral means by which exchange of information can be facilitated.

11. On 18 April 2002, the OECD released a model TIEA to facilitate negotiations between OECD member countries and participating partners. The Treasurer approved a standard TIEA which, with minor variations, is closely aligned to the OECD model TIEA. This Agreement is consistent with the Australian standard TIEA with only minor variations.

12. Data held by the Australian Transaction Reports and Analysis Centre and the Australian Bureau of Statistics indicates a relatively small flow of funds between Australia and Antigua and Barbuda and little or no investment between the two countries.

13. It is estimated that \$5 billion is moved out of Australia each year to tax havens around the world. While most financial flows are legitimate, a tax haven's legal frameworks and communication systems can also be used in arrangements designed to avoid paying tax elsewhere. The Australian Taxation Office (ATO) commenced Operation Wickenby in 2004, which is a major investigation of the use of offshore tax havens for alleged money laundering and tax evasion in conjunction with the Australian Crime Commission and the Australian Federal Police. Entering into TIEAs with participating partners is useful in such instances as TIEAs create mechanisms through which information can be sought to establish the extent and nature of the tax evaded, supporting the objectives of Operation Wickenby.

14. This is the second TIEA Australia has signed with a participating partner and will help progress Australia's broader TIEA negotiation programme. It is in Australia's interest to develop a network of agreements with other participating partners to enhance transparency and information exchange to the benefit of Australia and participating partners.

15. This Agreement, along with future TIEAs, will make it harder for taxpayers to evade Australian tax. This will help Australia protect its revenue base and improve the integrity of the tax system while enhancing these jurisdictions as options for legitimate business activity.

16. This Agreement will also discourage those taxpayers who participate in abusive tax arrangements by increasing the chance that such arrangements will be discovered.

17. Antigua and Barbuda's tangible commitment to counter harmful tax practices is a positive step in its relationship with Australia. It will also be seen by the international community as a positive step towards good governance. A press release issued by the OECD notes the Agreement

marks ‘another step forward in international efforts to implement the principles of transparency and exchange of information for tax purposes on a global basis’.

## **Obligations**

18. Article 1 of the Agreement requires the relevant authority in each State to exchange information with the other, upon request, where the information is relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims or the investigation or prosecution of tax matters. Each State must do so irrespective of whether the conduct being investigated is a crime under its domestic law (Article 5(2)). A request for information under the Agreement can only be made after all reasonable efforts to obtain the information by other means have been tried and proved unsuccessful (Article 5(1)). The States are not obliged to provide information which relates to a period more than six years prior to the tax period being investigated (Article 5(8)). There is no provision in the Agreement for the routine or voluntary exchange of information between the two States.

19. If Antigua and Barbuda requests information, Australia is obliged to supply information on any federal taxes administered by the Commissioner of Taxation. Australia must also make reasonable endeavours to provide information in the form of depositions of witnesses and authenticated copies of original records, to the extent allowable under domestic law, if requested to do so (Article 5(4)). To enable this obligation to be fulfilled, Australia must ensure the Commissioner of Taxation has the necessary authority to obtain and provide information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity, as well as information regarding the legal and beneficial ownership of companies, partnerships and other persons (Article 5(5)). All obligations apply similarly to Antigua and Barbuda in situations where Australia makes a request for information.

20. Australia must, pursuant to Article 5(6), provide certain details to Antigua and Barbuda when making a request for information to demonstrate the relevance of the information sought.

21. Where the information in the possession of the Commissioner of Taxation is insufficient to enable compliance with the request, Australia must, pursuant to Article 5(3), use all relevant information gathering methods to furnish the required detail to Antigua and Barbuda, even where it is not needed for domestic tax purposes. This is consistent with Article 26 of the *OECD Model Convention on Income and on Capital*, which was updated in 2005.

22. The information must be forwarded as soon as possible. Article 5(7) provides that when Australia receives a request for information, it must confirm receipt in writing and notify Antigua and Barbuda within 30 days if there is a deficiency in the request. If Australia is unable to provide the information within 60 days of the receipt of the request, it must inform Antigua and Barbuda of the difficulties involved or the reasons for refusing to provide the information. A request may be refused if it is not made in conformity with the Agreement (Article 7).

23. Article 8 imposes an obligation on Australia and Antigua and Barbuda to treat information it receives confidentially. Such information may be revealed only to specified persons or authorities concerned with the taxation matters covered by the Agreement. These persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or judicial decisions. Generally, however, the express written consent of the State that provided the information is required for any disclosure not covered by this Article. Both States will remain bound by the confidentiality provisions of the Agreement even after the

termination of the Agreement pursuant to Article 14(3). This is an essential feature which ensures adequate protection is provided to information exchanged between the two States.

## **Implementation**

24. The obligations under the Agreement are met by existing legislation. The legislative framework to give effect to Australia's obligation to provide information under the Agreement was achieved by appropriate amendments to the *International Tax Agreements Act 1953* in the *International Tax Agreement Amendment Act (No. 1) 2006*, which commenced on 14 September 2006.

## **Costs**

25. The Agreement will have a financial impact on the ATO. It is likely most requests for information will originate from Australia. Hence, costs are likely to be associated with the administration of those requests and the analysis of information by the ATO. Additional resources may be required to deal with the expected complexities of obtaining information from Antigua and Barbuda. Actual impacts are difficult to estimate and will depend on the development of effective administrative arrangements between the ATO and the relevant revenue authorities in Antigua and Barbuda.

26. The ATO and the Antiguan and Barbudan Ministry of Finance have entered into a Memorandum of Understanding under which certain costs may be payable by the ATO to Antiguan and Barbudan revenue authorities. Such costs are classified as extraordinary costs. Some examples are:

- reasonable costs of engaging experts, interpreters or translators;
- reasonable litigation costs in relation to a specific request for information; and
- reasonable costs for obtaining depositions or testimony.

27. The compliance costs to taxpayers in Australia are likely to be minimal. It is unlikely Australia will receive many requests from Antigua and Barbuda, therefore, it is unlikely the ATO would be required to collect information from Australian taxpayers.

28. Overall, it is estimated the whole of the TIEA programme will generate an additional full time equivalent requirement of one employee. The impact of the Agreement will be negligible and its administration will be absorbed into the ATO's existing exchange of information programme.

## **Regulation Impact Statement**

29. The Office of Best Practice Regulation within the Productivity Commission was consulted and confirmed a Regulation Impact Statement is not required.

## **Future treaty action**

30. The Agreement does not provide for the negotiation of future legally binding instruments, amendments or appendices to the existing Agreement. However, this does not preclude the two States from agreeing in the future to amend the existing Agreement. The Agreement does not have an amendment clause, but Article 39 of the *Vienna Convention on the Law of Treaties 1969* provides that a treaty may be amended by agreement between the States. Any such agreement would be subject to the normal treaty process, including tabling and consideration by the Joint

Standing Committee on Treaties (JSCOT). Any amendments to the Agreement may be considered in the future in line with Australian policy for TIEA negotiations current at that time.

### **Withdrawal or denunciation**

31. Article 14(1) provides that the Agreement will continue in effect indefinitely unless either State gives written notice of termination to the other State through the diplomatic channel.

32. Article 14(2) provides that in the event of termination, the Agreement will cease to have effect in both States on the first day of the month following the expiration of three months after the date the other State received the notice terminating the Agreement. However, both States remain bound by the obligations of confidentiality contained in Article 8 with respect to any information obtained under the Agreement (Article 14(3)).

33. Withdrawal by Australia would be subject to the normal treaty process, including tabling and consideration by JSCOT.

### **Contact details**

International Tax and Treaties Division  
Department of the Treasury.

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**CONSULTATION**

1. The Taxation Information Exchange Agreement negotiations with Antigua and Barbuda were not in the public domain, consequently, the public was not consulted.
2. However, the Australian Taxation Office (ATO) was consulted in the development of the Australian Model Agreement, as the responsibility for administration of the Agreement rests with the ATO, and it conducted negotiations with Antigua and Barbuda on the development of this Agreement.
3. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties. Information on the negotiation of this treaty has been included in the six-monthly schedules of treaties to State and Territory representatives since February 2005.
4. In addition to the Minister for Revenue and Assistant Treasurer, the Minister for Foreign Affairs and the Minister for Trade agreed to this treaty, and the Prime Minister was informed.

## **Political Brief on Antigua and Barbuda**

### ***Political Overview***

1. Antigua and Barbuda gained full independence from the United Kingdom in 1981. It has a stable constitutional parliamentary democracy, based on the British model, with a Westminster-style parliament. The Head of State is Her Majesty Queen Elizabeth II, represented in Antigua and Barbuda by HE the Governor General, Sir James Carlisle. Barbuda has its own nine member Council headed by its Chairman, Mr Randolph Beazer. The Council has responsibility for electricity, water and education.

2. For much of the twentieth century, domestic politics were dominated by the Bird family. The late Sir Vere Bird was an active figure in the West Indies independence movement and formed the Antigua Labour Party (ALP) in 1931. The ALP won the country's first election, held in 1951, and maintained a parliamentary majority until 2004, with the exception of the five years from 1971-1976. Sir Vere Bird served as Prime Minister of Antigua and Barbuda from the time of independence in 1981 until 1994, when he was succeeded by his son, Lester Bird.

3. During the late 1990s, the ALP Government was weakened by internal turmoil, including allegations of mismanagement, bribery and misconduct, and suffered major losses in the March 2004 election. The United Progressive Party (UPP) subsequently won the election and their candidate, Baldwin Spencer, became Prime Minister and Minister for Foreign Affairs. The next elections are due to be held in 2009.

4. The UPP Government inherited serious structural problems, including an unwieldy public sector, high fiscal deficits and a large public debt. Since assuming power, the UPP has embarked on a programme of good governance, passing the Freedom of Information Act, Prevention of Corruption Act and Integrity in Public Life Act.

5. Antigua and Barbuda is a member of numerous international organisations. These include: the Caribbean Community (CARICOM), United Nations (UN), World Trade Organisation (WTO), Commonwealth of Nations, Organisation of American States (OAS), Organisation of Eastern Caribbean States (OECS), International Criminal Court and the Group of 77 (of which Antigua will assume Chairmanship in 2008).

### ***Economic Overview***

6. Tourism is the mainstay of the economy and accounts for over half of the country's GDP (of around USD\$750 million). Historically, US visitors have made up around one-third of all tourist visitors to Antigua, but a new US passports law, which came into force on 8 January 2007, may harm the tourism driven economy as tourists will now require a passport to re-enter the US from the Caribbean, not just photo identification.

7. Services contribute over 80 per cent of Antigua's GDP. Antigua also has a small manufacturing sector, producing mainly beverages and construction material, contributing around 11 per cent of GDP, and an agricultural sector contributing 7 per cent. The Government has encouraged the development of an offshore financial sector, which has needed reform after reports of criminal links to money laundering.



8. In 2005, the WTO appellate body rejected a US appeal against an earlier WTO disputes panel finding that the US was in breach of its obligations under GATS in denying Antigua internet-based gambling service providers access to the US market.

***Bilateral Relationship***

9. Australia enjoys friendly relations with Antigua and Barbuda through our Commonwealth ties and our shared love of cricket. Antigua and Barbuda hosted six Super Eight matches in the 2007 Cricket World Cup. Australia assisted Antigua and Barbuda to host the event through the provision of radio equipment to establish a communications network for security and emergency purposes.

10. Two-way merchandise trade totalled AUD\$808 million in 2006, with AUD\$686 million in exports (mainly meat, specialised machinery and telecommunications equipment) and AUD\$122 million in imports (mainly preserved fruits, vegetables and metal containers). An Australian company is currently in negotiations with the Antigua Government on a project to build housing estates in the country.

## **List of other treaties with Antigua and Barbuda**

There are no other bilateral treaties between Australia and Antigua and Barbuda.

June 2007.

## **List of treaties on Tax Information Exchange with other countries**

There are two similar treaties between Australia and a bilateral treaty partner; neither treaty is yet in force.

- Agreement between the Government of Australia and the Government of Bermuda [as authorised by] the Government of the United Kingdom of Great Britain and Northern Ireland on the Exchange of Information with Respect to Taxes  
(Washington, 10 November 2005)  
**[2005] ANTIF 27**
- Agreement between the Government of Australia and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with Respect to Taxes  
(Canberra, 1 March 2007)  
**[2007] ATNIF 5**