Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol

Report of the Foreign Affairs, Defence and Trade Committee

Contents

Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol, and recommends that the House take note of its report.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters authorises the tax authorities of the signatory countries to assist each other regarding the exchange of information, unpaid tax recovery, and service of documents. It provides a means of significantly increasing New Zealand's ability to detect and prevent tax avoidance and evasion without the cost and resources that would be required for a bilateral agreement. New Zealand is one of 54 countries that have signed the convention. New Zealand has existing tax treaties with 27 of the signatory countries.

We note that as a signatory, New Zealand has some mechanisms available to avoid working with particular countries should it wish. It can oppose other countries' entrance into the convention, and it can also refuse information requests, for example on human rights grounds. There are also safeguards in the convention: a country does not have to comply with a request if it is at a variance with that country's law, for example, or if the request will lead to discrimination.

We have no other matters to bring to the attention to the House. The national interest analysis for the convention is appended to this report.

Appendix A

Committee procedure

The international treaty examination of the Multilateral Convention on Mutual Administrative Tax Matters, Amended by the 2010 Protocol, was referred to the committee on 14 June 2013. We met on 1 August and 8 August 2013 to consider the agreement, and we heard evidence from the Inland Revenue Department.

Committee members

John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su'a William Sio
Lindsay Tisch

Appendix B

National Interest Analysis

Executive summary

1. New Zealand signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol (the Convention) on 26 October 2012. Once the Convention enters into force for New Zealand, it will enable Inland Revenue to engage in the following forms of cooperation on tax matters with the tax authorities of other signatory countries:

- exchange of information;
- assistance in recovery of tax; and
- service of documents

2. *Exchange of information* treaty arrangements enable tax authorities to assist each other in the detection and prevention of tax evasion and tax avoidance. In the absence of exchange of information arrangements, tax authorities is more limited in verifying whether activities and income conducted or derived offshore have been correctly reported for tax purposes. New Zealand has been entering into exchange of information arrangements bilaterally in double tax agreements (DTAs) since 1947 and in tax information exchange agreements (TIEAs) since 2008. Fifty-five DTAs and TIEAs have been signed to date. New Zealand therefore has considerable experience in administering exchange of information treaty provisions.

3. Similarly, *assistance in recovery* treaty arrangements enable tax authorities to assist each other in recovering unpaid taxes from absconding taxpayers. In the absence of exchange of information arrangements, tax authorities generally cannot recover unpaid taxes from a person who resides offshore. New Zealand has been entering into assistance in recovery arrangements bilaterally in DTAs since 2004 and currently has five such arrangements in force.

4. Assistance in the *service of documents* is essentially intended to support assistance in recovery, by ensuring that documents such as notices of assessment or reminders actually reach the taxpayer concerned. New Zealand has no experience in this form of assistance. However, international experience indicates that, in practice, service of documents is of itself successful in resulting in payment of unpaid tax.

5. In 1988, the Convention opened for signature by member countries of the Organisation for Economic Co-operation and Development (OECD) and of the Council of Europe. In 2010, the Convention was amended to enable any country (not just OECD or Council of Europe member countries) to sign. This development means that there are clear advantages to OECD member countries signing the Convention – in particular, networks of assistance arrangements can be extended without the time-consuming and expensive process of negotiating and bringing into force bilateral DTAs and TIEAs. Signing the Convention will also demonstrate New Zealand's commitment to tax cooperation.

6. Signing the convention will require New Zealand to contribute to the OECD's annual costs of maintaining a coordinating body to oversee the Convention. The OECD advises that the annual contribution is approximately 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines.

7. The text of the Convention is attached as Annex A. A schedule of the countries that have signed the Convention to date is attached as Annex B.

Nature and timing of the proposed treaty action

8. The Convention was signed by New Zealand on 26 October 2012. After completing all domestic procedures for the ratification, New Zealand will deposit with the Secretary-General of the OECD[1] an instrument of ratification expressing its intention to be bound by the provisions of the Convention. The Convention will enter into force for New Zealand three months after the deposit of the instrument of ratification. The procedures relating to signature, ratification and entry into force are set out at Article 28 of the Convention.

9. Before ratification, the Convention must go through the Parliamentary treaty examination process and must be incorporated into New Zealand domestic law (by means of an Order in Council made pursuant to section BH 1 of the Income Tax Act 2007).

10. Given that the Inland Revenue Acts[2] are currently drafted in contemplation of bilateral tax treaties, some minor legislative amendments may need to be made to provisions of those Acts to ensure that they will operate correctly in the context of a multilateral treaty.

11. It is expected that these steps will be completed, and that the Convention will enter into force for New Zealand, by mid-2013.

Reasons for New Zealand becoming party to the treaty

International developments

12. The OECD website describes the Convention as follows: *"The Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion."* Three forms of cooperation in tax matters can be established under the Convention:

- exchange of information;
- assistance in recovery of tax; and
- service of documents.

13. In the absence of a treaty for cooperation in tax matters, tax authorities are generally constrained by the international principle that countries do not assist each other in the enforcement of tax laws. The New Zealand courts have confirmed that this principle

[1] Pursuant to Article 2(3) of the Convention, the Secretary-General of the OECD is one of two official depositaries. The other is the Secretary-General of the Council of Europe.

[2] The Inland Revenue Acts are the Acts administered by Inland Revenue. They are listed in a schedule to the Tax Administration Act 1994.

applies in New Zealand.[3] The secrecy provisions of the Tax Administration Act 1994 also effectively limit cooperation on tax matters with other jurisdictions unless authorised by a treaty[4].

14. However, New Zealand, like most countries, taxes its residents on their worldwide income (that is, on all income, whether derived from New Zealand or elsewhere). Globalisation has increasingly removed many of the obstacles to cross-border exchanges of goods and services and to the movement of persons, technology and capital. Residents therefore have considerable scope for conducting business and other income-earning activities in other jurisdictions. The particular benefit of a treaty for cooperation in tax matters is that it empowers tax authorities to ensure that their residents are correctly reporting all worldwide income and activities, and to facilitate improved collection of unpaid tax from absconding taxpayers.

15. Most developed countries, and many developing countries, have therefore for many years been building networks of treaty arrangements that provide for cooperation between tax authorities. The OECD has taken a lead role internationally in promoting such cooperation, and in developing treaty mechanisms and guidelines to ensure that the cooperation is effective. The traditional instrument promoted by the OECD for this purpose is the (bilateral) double tax agreement (DTA).[5] However, DTAs are complex technical agreements that deal with a wide range of tax issues other than cooperation, and they are time-consuming, resource-intensive and expensive to negotiate, bring into force and maintain.

16. In 1988, the OECD and Council of Europe jointly developed the Convention as a multilateral alternative for OECD and Council of Europe member countries. However, it was largely ignored at the time, for a number of reasons, including the fact that OECD and European countries already had substantive networks of bilateral DTAs in place between them, and bilateral DTAs tended to be preferred because they provided a range of benefits in addition to tax cooperation. In addition, assistance in recovery provisions generally only started featuring in DTAs from 2003, and so in 1988 they were relatively novel (particularly for non-European Union countries). Many countries (including New Zealand) preferred to see how well the multilateral approach to tax cooperation worked for other countries before committing themselves to it.

17. International concerns over lack of exchange of information have been building for some time. Because DTAs are generally only appropriate for major trading and investment partners, and the Convention was only open to signature by OECD and Council of Europe member countries, the OECD in 2001 developed the tax information exchange agreement (TIEA). It was intended that this instrument, which, unlike a DTA, deals only with exchange of information, could be used to establish bilateral cooperation arrangements with jurisdictions such as tax havens. However, a number of jurisdictions, including tax havens, were generally reluctant to enter into such agreements.

---

[3] Connor v Connor [1974] 1 NZLR 632.

[4] Section 81 of the Tax Administration Act 1994 imposes the requirement to maintain secrecy. Section 86 of the Act contains the exception for treaty authorisation.

[5] The OECD's "Model Tax Convention on Income and on Capital" forms of the basis of most DTAs entered into worldwide, and the OECD has also produced a comprehensive commentary with a view to ensuring uniform interpretation and application of DTA provisions. The UN has also produced a model tax convention. However, apart from a few departures that give a more favourable allocation of taxing rights to developing countries in some key areas, the UN model largely adopts the OECD model tax convention.

18. The international concerns over lack of exchange of information were brought to a head by the recent global financial crisis. At the same time as governments faced declining tax revenue, many found themselves bailing out financial institutions that had been using schemes involving unregulated offshore finance centres to deprive those very governments of tax revenue. In addition, a number of scandals broke in the media that revealed significant levels of tax evasion by (often high-profile) individuals using international finance centres. A key contributing factor in these problems was lack of exchange of information in tax matters by the jurisdictions in which those international finance centres were located.

19. This resulted in an intense international focus on requiring a change of stance from international finance centres, tax havens and other jurisdictions that had previously refused to cooperate on exchange of information. The G20 led this action. G20 leaders made clear statements that they will deploy sanctions against non-complying jurisdictions. In addition, the G20 established an international organisation, the Global Forum on Transparency and Exchange of information for Tax Purposes (the Global Forum), to conduct peer reviews of countries to ensure compliance. In response, virtually all international finance centres, tax havens and other "secrecy" jurisdictions have now committed to what is known as the "international standard for transparency and exchange of information in tax matters".

20. Building appropriate treaty networks is a key aspect of implementing the international standard. However, building treaty networks on a bilateral basis can be a time-consuming, resource-intensive, expensive and (particularly for smaller jurisdictions) onerous process. This has renewed interest in the Convention as a means for countries to quickly establish and/or expand their treaty networks. In 2010, the Convention was updated to ensure that it reflects the latest developments to the international standard, and it was also opened to signature by all countries (not just OECD and Council of Europe member countries). The OECD has requested all of its member countries to sign the Convention as quickly as possible. This would send an appropriate signal about the commitment of all OECD member countries to the international standard. It would also ensure that non-OECD jurisdictions that sign the Convention can be assured of establishing a wide network of assistance arrangements with developed countries at a single stroke. A total of 38 countries (including 24 OECD member countries) have signed the Convention to date, with many more expected to sign. Australia signed the Convention in November 2011.

New Zealand's position

21. Inland Revenue has long experience in administering bilateral treaties for cooperation in tax matters, but has no previous experience in entering into multilateral tax conventions as these are unusual internationally. The Legal Division of the Ministry of Foreign Affairs and Trade, which advises on and oversees all New Zealand treaty actions, has therefore been closely consulted in respect of, and agrees with, the proposal for New Zealand to sign the Convention.

22. Reflecting New Zealand's experience in administering treaty arrangements for cooperation in tax matters, Inland Revenue has a very active exchange of information work programme. We have been entering into exchange of information arrangements since 1947 (and have signed 37 DTAs and 18 TIEAs) and into assistance in recovery arrangements since 2004 (with five arrangements currently in force – four in DTAs and another in a stand-alone bilateral tax recovery convention). These treaty provisions are all administered by Inland Revenue.

23. Reflecting the general international experience, Inland Revenue has found exchange of information provisions to be critical to its efforts to detect and prevent tax evasion and tax avoidance. A number of court decisions have examined and upheld key aspects of New Zealand's exchange of information policy and practice. Both internationally and in New Zealand, assistance in recovery provisions have proven to be very effective in ensuring that absconding taxpayers pay unpaid taxes.

24. However, cooperation treaties can be concluded only with jurisdictions that are willing to engage in such cooperation. Inland Revenue therefore strongly supports the international initiatives to ensure other countries' full compliance with the international standard. In general, signing the Convention is one way in which New Zealand can demonstrate its commitment and support to those international efforts.

25. Conversely, failure to sign the Convention may send a signal that New Zealand does not support the current international initiatives to promote exchange of information and other forms of cooperation. Only ten OECD countries (including New Zealand) are yet to sign the Convention. If it does not sign the Convention, New Zealand risks being seen as unsupportive of the international approach to countering tax evasion and tax avoidance.

26. A key practical benefit for New Zealand of ratifying the Convention is a reduction in the future resource and administrative costs of having to negotiate new bilateral treaties or update existing ones. More specifically:

- **Where New Zealand has no existing DTA or TIEA**
  Of the 38 countries that have signed the Convention to date, 14 are countries with which we do not currently have a DTA or TIEA. Becoming party to the Convention will therefore significantly expand New Zealand's network of assistance arrangements. As other countries sign the Convention, our network will continue to expand accordingly.
- **Where New Zealand has an existing DTA**
  In respect of those countries that have signed the Convention, and with which New Zealand already has a DTA in place, in 18 cases New Zealand can ensure that its existing exchange of information arrangements in those DTAs are upgraded to the latest international standard (given that the Convention represents the most up-to-date and prescriptive wording).
- **Where New Zealand has no existing assistance in recovery arrangements**
  Given that only a limited number of New Zealand's DTAs, and none of its TIEAs, provide for cooperation in tax matters other than in the form of exchange of information, New Zealand can effectively update those existing treaty agreements to include assistance in recovery and service of documents without any need to negotiate amendments.

27. Note that where New Zealand already has exchange of information and/or assistance in recovery under an existing bilateral treaty, the OECD multilateral treaty will in some cases result in a second exchange of information and/or assistance in recovery mechanism. However, this duplication of mechanisms in place would not create problems. In practice, information could be exchanged under either treaty instrument.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Exchange of information

28. In the absence of exchange of information, Inland Revenue is more limited in investigating commercial and financial transactions conducted in other jurisdictions and to verify whether taxpayers are correctly reporting income-earning activities conducted in those jurisdictions. Exchange of information arrangements in a treaty enable Inland Revenue, when auditing or investigating the tax affairs of a particular taxpayer, to request information from the tax authority of the treaty-partner jurisdiction. The requested tax authority is then obliged under the treaty to use its information-gathering powers to obtain the requested information and to provide it to Inland Revenue.

29. Any information that is foreseeably relevant to the tax enquiry can form the subject of the request, but in practice the three most common forms of requested information are:

- accounting information (such as books of account, contracts and invoices);
- financial information (such as bank account transactions); and
- ownership information (that is, information on the legal and beneficial ownership of commercial and legal entities).

30. Given the personal and commercial nature of much of the information held by tax authorities, strict secrecy rules typically apply to ensure that such information is not divulged to the wider community.[6] Exchange of information arrangements override such secrecy rules but contain within themselves a number of safeguards to ensure that exchanged information is only disclosed to authorise persons, and is only used for authorised purposes.

31. As noted above, Inland Revenue has a long history (over 60 years) of applying exchange of information treaty arrangements in practice. It currently has signed 55 treaty arrangements for exchange of information, and a number of court decisions have confirmed key aspects of Inland Revenue's exchange of information policy and practice. Inland Revenue has a very active exchange of information programme, and it therefore now has considerable experience to draw upon in evaluating the benefits of exchange of information. That experience clearly shows that exchange of information is an effective tool in the detection and prevention of tax evasion and tax avoidance. It also shows that the benefits of being able to obtain information from other countries far outweigh the costs of complying with the reciprocal treaty obligation to obtain and provide information to other countries.

32. Given the growing importance of exchange of information internationally, treaty arrangements between developed countries have developed to encompass forms of exchange of information other than on request. Such other forms of information exchange include:

- automatic exchanges (in which tax authorities agree to provide certain generic types of information such as non-resident withholding tax deducted from interest payments):

[6] Inland Revenue, as noted above, is subject to comprehensive secrecy rules pursuant to section 81 of the Tax Administration Act 1994.

- spontaneous exchanges (in which a tax authority will pass on information uncovered during an investigation that it considers of interest to the other tax authority):
- the conduct of simultaneous tax examinations (in which, for example, two tax authorities will investigate the affairs of a multi-national company at the same time, and share the information discovered):
- and industry-wide exchanges.

33. Taxpayers who are intent on undertaking tax evasion or tax avoidance can generally be expected to attempt to exploit gaps in the network. Therefore, it is clear that the wider the network of exchange of information arrangements that a country has in place, the more effective it will be in defeating tax evasion and tax avoidance. As noted above, of the 38 countries that have signed the Convention to date, 14 are countries with which New Zealand does not have existing exchange of information arrangements. Signing the Convention will therefore enable New Zealand to widen its network by a factor of around 25 percent, without having to undertake separate negotiations with individual countries. As additional countries sign the Convention, the New Zealand network will continue to expand.

34. The international focus on exchange of information during the last decade resulted in the OECD updating its standard wording for treaty provisions, to ensure that they are sufficiently prescriptive so as to operate effectively. The new standard OECD wording was then adopted by the United Nations (UN). When the Convention was amended in 2010, to open it up for signature by all countries, the wording of the exchange of information provisions was also upgraded to the latest OECD and UN wording. A particular advantage for New Zealand in signing the Convention is that, even where bilateral exchange of information arrangements are already in place under a DTA, in 18 of those cases the arrangements will be updated to the international standard without any need to negotiate amendments to DTAs.

35. The only identifiable disadvantages of signing the Convention are that New Zealand will be required to respond to requests for assistance from other countries and will be required to contribute annually toward the OECD's cost of maintaining a co-ordinating body to oversee the Convention. The OECD advises that this cost is around 5,000 euros per annum.

36. In respect of the first of these items, Inland Revenue already has 55 exchange of information treaty arrangements, has considerable experience in processing requests made under those arrangements, and has efficient systems in place. The administrative costs of processing additional requests under the Convention are therefore expected to be minimal.

37. In respect of the annual contribution, the cost will be met by Inland Revenue from within existing baselines. For New Zealand, the on-going annual cost is expected to be offset by on-going benefits in terms of reduced tax evasion and tax avoidance and improved collection of unpaid taxes. In addition, signing the Convention will provide an upfront benefit to New Zealand from the reduced need to negotiate and give effect to DTA amendments and TIEAs in respect of mutual assistance.

Other forms of assistance

38. Assistance in recovery provisions enable a tax authority to ask the tax authority in a treaty-partner country to use its debt-collection powers to collect unpaid tax from an

absconding taxpayer. For example, New Zealand already has assistance in recovery provisions in place in its DTA with Australia. If a New Zealand taxpayer moves to Australia and leaves behind an unpaid tax debt, Inland Revenue can ask the Australian Taxation Office to use its debt-recovery powers to collect the debt on our behalf and to remit the payment back to New Zealand.

39. Assistance in recovery provisions have some history within the European Union, but for most countries only began being commonly adopted within the last ten years (usually in DTAs). New Zealand entered into its first assistance in recovery arrangement in 2004 and now has five such arrangements in place. Because this form of assistance is relatively novel, it has taken some time to build up experience of this arrangement working in practice. The experience gleaned to date, both from the operation of New Zealand's assistance in recovery provisions and as generally advised by other countries, is that it works very well in practice. In many cases, writing to an absconding taxpayer to advise that assistance in recovery provisions will be invoked has proven to be sufficient by itself to elicit immediate payment. When the provisions are actually invoked, the process of collecting the unpaid tax has worked extremely well.

40. Assistance in the service of documents is essentially intended to support assistance in recovery. It can be used to ensure that documents such as notices of assessment or reminders actually reach the taxpayer concerned. This ensures that enforcement steps are not taken against a taxpayer who is genuinely ignorant of the tax claim. New Zealand has no experience in this form of assistance. However, international experience indicates that, in practice, service of documents is of itself successful in resulting in payment of unpaid tax.

41. A key advantage of signing the Convention is that New Zealand, which currently has only a modest network of assistance in recovery arrangements, and no service of documents arrangements, can significantly widen its network without any need to renegotiate amendments to existing DTAs.

42. The only identifiable disadvantage of signing the Convention is that New Zealand will be required to respond to requests for assistance from other countries. Again, Inland Revenue has experience in processing such requests and has efficient systems in place. In addition, as noted above, international and New Zealand experience to date is that large numbers of requests do not need to be made. The administrative costs of processing additional requests under the Convention are expected to be marginal and will be met by Inland Revenue within existing baselines.

Wider (international) considerations

43. New Zealand is an OECD member country. Although there is no legal obligation on New Zealand to support OECD initiatives, in this case New Zealand does strongly support the initiative to promote cooperation between tax authorities. (It is in New Zealand's overall interests that other jurisdictions, which have traditionally opposed effective exchange of information, will enter into exchange of information arrangements with us.) The act of signing the Convention will provide a positive signal of that support to the international community.

44. The advantages outlined above for the treaty entering into force outweigh the identified disadvantages. Accordingly, it is in New Zealand's overall interests to enter into the treaty.

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

45. The obligations that will arise under the Convention will fall on Inland Revenue. The Convention will not give rise to obligations for taxpayers or for other Government agencies.

46. The key obligation that will be imposed on Inland Revenue under the Convention will be to respond to requests for assistance from other signatory countries as they arise. In the case of a request for information, if Inland Revenue does not already hold the information, it will be obliged to use its information-gathering powers to obtain and forward that information to the treaty-partner country in a timely manner. Similarly, for assistance in recovery requests, Inland Revenue will be obliged to use its debt-recovery powers to collect unpaid tax debt and to forward the payments to the treaty-partner country. Service of documents likewise involves an obligation on Inland Revenue to use its powers to ensure that tax notices and legal documents are served on relevant taxpayers.

47. As noted, Inland Revenue already has considerable experience in all forms of exchange of information and has in recent years been building experience in assistance in recovery. As a result, efficient systems for responding to incoming requests for assistance have been developed. Therefore, although entering into treaty arrangements for cooperation in tax matters gives rise to obligations on New Zealand to respond to incoming requests, the administrative costs imposed on Inland Revenue when responding to those requests have not been onerous. The additional obligations that would arise from signing the Convention are expected to be minimal.

48. A subsidiary obligation that will arise under the Convention is for Inland Revenue to maintain strict confidentiality in respect of the information that it may obtain under the exchange of information provisions of the treaty. Such information may only be disclosed to authorised persons, and only for authorised purposes. This obligation already applies to Inland Revenue under domestic law (section 81 of the Tax Administration Act 1994).

49. The exchange of information is the core form of assistance established under the Convention and cannot be reserved against. The other forms of assistance – assistance in recovery and service of documents, set out in Article 30(1) – can be reserved against, but I understand that in practice very few countries are entering such reservations. New Zealand does not intend to make any significant reservations at the time of ratification.

50. The Convention does not contain a dispute-resolution provision.

51. Signature of the Convention by New Zealand will not give rise to obligations to or in respect of the Cook Islands, Niue or Tokelau.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

52. As is currently the case for DTAs and TIEAs, the provisions of the Convention will need to be given the force of law in New Zealand.

53. Section BH 1 of the Income Tax Act 2007 authorises the making of an Order in Council that ensures that assistance arrangements in a DTA will have effect despite anything in the Inland Revenue Acts or in certain other prescribed Acts. (Such an override is necessary, for example, to ensure that Inland Revenue's strict secrecy provisions do not become an obstacle to the exchange of information.) The reference to "double tax

agreement" in section BH 1 expressly extends to other bilateral treaties, such as TIEAs (by virtue of its definition). However, section BH 1 does not contemplate (and therefore may not authorise) entering into arrangements for assistance in tax matters in a multilateral context.

54. A review is currently being undertaken to determine whether section BH 1 needs to be amended to enable it to apply to the Convention. Options being considered are (i) whether to extend the section BH 1 Order-in-Council-making power to ensure that it applies to the Convention, or (ii) to expressly refer to the Convention in section BH 1 without any need for a subsequent Order in Council. Other consequential amendments to other aspects of the Inland Revenue Acts may be needed to ensure that the Convention's provisions will continue to work correctly.

Economic, social, cultural and environmental costs and effects of the treaty action

55. No social, cultural or environmental effects are anticipated.

56. The overall economic effects are expected to be favourable. The Convention will enhance Inland Revenue's ability to detect and prevent tax evasion and tax avoidance and to collect unpaid tax from absconding taxpayers.

The costs to New Zealand of compliance with the treaty

57. The Convention will not impose any fiscal costs on New Zealand or compliance costs on taxpayers, other than an annual contribution to the OECD's cost of maintaining a coordinating body to oversee the Convention. The OECD advises that the annual contribution is approximately 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines.

58. The Convention will also give rise to administrative costs for Inland Revenue, in complying with requests for assistance by other countries. However, as noted, New Zealand has experience in dealing with such requests and has efficient systems in place. The additional administrative costs from requests that will arise under the Convention are expected to be marginal and will be met by Inland Revenue from within existing baselines.

Subsequent protocols and/or amendments to the treaty and their likely effects

59. As noted above, the Convention was amended by the OECD in 2010 (to open it to signature by all countries, and to upgrade the wording of the exchange of information provisions to the latest international standard). No further protocols are envisaged.

Completed or proposed consultation with the community and parties interested in the treaty action

60. The Treasury and the Ministry of Foreign Affairs and Trade have been consulted and agree with the proposed treaty action.

Withdrawal or denunciation provision in the treaty

61. Article 31 of the Convention provides that any party may, at any time, denounce the Convention by means of a notification addressed to one of the depositaries. (The official depositaries are the Secretaries-General, respectively, of the OECD and of the Council of Europe.) Denunciation becomes effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the depositary.

62. Any party that denounces the Convention remains bound by the obligation to maintain confidentiality in respect of all information that it has received from treaty-partner countries.

Agency disclosure statement

63. Inland Revenue has prepared this extended national interest analysis. It has undertaken an analysis of the issue of implementing the Convention, and the legislative and regulatory proposals arising from that implementation. It has considered all other relevant options in that process, including the option of not signing the Convention. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis.

64. New Zealand has long experience in administering bilateral treaty arrangements for cooperation in tax matters, but has no previous experience in entering into multilateral tax conventions as these are unusual internationally. The Legal Division of the Ministry of Foreign Affairs and Trade, that has expertise in respect of multilateral treaties and which advises on and oversees all New Zealand treaty actions, has therefore been closely consulted in respect of, and agrees with, the proposal for New Zealand to sign the Convention.

65. Signing the Convention will result in a requirement for New Zealand to contribute annually toward the OECD's cost of maintaining a co-ordinating body to oversee the Convention. The OECD advises that this cost is around 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines. For New Zealand, the on-going annual cost is expected to be offset by on-going benefits in terms of reduced tax evasion and tax avoidance and improved collection of unpaid taxes. In addition, signing the Convention will provide an upfront benefit to New Zealand from the reduced need to negotiate and give effect to DTA amendments and TIEAs in respect of mutual assistance.

66. There is a question whether and specific legislative amendment in respect of the implementation of a multilateral treaty is needed. DTAs and TIEAs are implemented into New Zealand domestic law by Order in Council; this is authorised by section BH 1 of the Income Tax Act 2007. The Order in Council provides that the DTA and TIEA provisions will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is necessary to give effect to the terms of the DTA or Protocol. The provisions of the Convention will similarly need to be implemented into New Zealand domestic law. A review is currently being conducted to determine whether section BH 1 will also enable an Order in Council to be made in respect of the Convention. If not, a legislative amendment will first need to be made to section BH 1.

67. Inland Revenue is of the view that the policy options considered will not impose additional costs on businesses; impair private property rights or market competition; adversely impact the incentives on businesses to innovate and invest; or override fundamental common principles.

Dr Craig Latham
Group Manager
Policy Advice Division
Inland Revenue
3 August 2012