



International treaty examination of the Third Protocol to the Convention between the Government Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Report of the Finance and Expenditure
Committee

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Recommendation

The Finance and Expenditure Committee has examined the Third Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and recommends that the House take note of its report.

New Zealand signed a double tax agreement (DTA) with India in 1986. This protocol to the DTA brings the mechanism for the exchange of information up to date to meet the current standard set by the OECD. It also introduces into the DTA with India an article that will enable the tax authorities of New Zealand and India to assist each other in the recovery of unpaid taxes.

We support the agreement and have no matters to bring to the attention of the House. The national interest analysis for the agreement is appended to this report.

Appendix A

Committee procedure

The international treaty examination of the Third Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income was referred to us by the Foreign Affairs, Defence and Trade Committee on 5 December 2016. We met on 14 December 2016, and 8 and 15 February 2017 to consider the agreement.

Committee members

Chris Bishop (Chairperson)
Andrew Bayly
Hon Clayton Cosgrove
Hon Craig Foss
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Alastair Scott
David Seymour
James Shaw

Appendix B

National Interest Analysis

NATIONAL INTEREST ANALYSIS:
**Third Protocol to the Convention between the Government of New Zealand and the
Government of the Republic of India for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with respect to Taxes on Income**

Executive summary

1. The *Third Protocol to the Convention between the Government of New Zealand and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (“the Third Protocol to the India DTA”) was signed on 26 October 2016.

2. The Third Protocol to the India DTA brings the exchange of information mechanism in New Zealand’s DTA with India, signed in 1986, up to date to meet the current standard set by the Organisation for Economic Co-operation and Development (“the OECD”) in the OECD Model Tax Convention on Income and on Capital, which forms the basis of New Zealand’s negotiating model. It also introduces into the India DTA an article on assistance in the collection of taxes, which enables the tax authorities of each country to assist each other in the recovery of unpaid taxes.

3. Owing to historic international and legal principles that otherwise impose barriers to countries assisting each other in enforcing their tax laws, forms of administrative co-operation are typically established through tax treaties, more specifically, traditionally through DTAs. However, DTAs are not the only legal instrument available to enable and encourage administrative co-operation in tax matters. The joint OECD/Council of Europe *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (“the Multilateral Convention”) has been in existence since 1988 but opened for signature to all countries in 2010. The Multilateral Convention is the most comprehensive multilateral instrument available which provides for all forms of tax co-operation to tackle tax evasion and avoidance. The Multilateral Convention provides for a wide range of administrative co-operation in tax matters, including exchange of information and assistance in collection. It has now been signed by more than 100 jurisdictions.

4. Once the Third Protocol to the India DTA enters into force, New Zealand and India (“the Contracting States”) will have up-to-date exchange of information and assistance in collection mechanisms available to them under both the Multilateral Convention and the DTA. The tax authorities of the two Contracting States will have flexibility to choose the legal instrument that is most appropriate for the circumstances of any particular case. Both instruments allow for the Contracting States to request information from each other (such as business books and accounts, bank information, and information on the ownership of legal entities) for the purpose of detecting and preventing tax avoidance and evasion, as well as assistance in the collection of taxes to enable tax authorities to assist each other in recovering unpaid taxes from absconding taxpayers.

5. It is in the national interest to bring into force the Third Protocol to the India DTA as it will strengthen New Zealand’s exchange of information and assistance in collection network, as well as New Zealand’s diplomatic ties with India, particularly as India is an important trade and investment partner for New Zealand.

Nature and timing of the proposed treaty action

6. The *Third Protocol to the Convention between the Government of New Zealand and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (“the Third Protocol to the India DTA”) was signed on 26 October 2016.

7. Before the Third Protocol to the India DTA may be brought into force it must be incorporated into domestic legislation by Order in Council pursuant to section BH 1 of the Income Tax Act 2007. Section BH 1 provides that such Orders in Council may specify that the provisions of a DTA will have effect notwithstanding any provision of the Inland Revenue Acts, the Official Information Act 1982 or the Privacy Act 1993 – although only in relation to tax matters. Section BH 1 expressly applies only to “double tax agreements”. However that term also covers amending protocols, including the Third Protocol to the India DTA.

8. Once the Order in Council is passed it is proposed that the New Zealand and India exchange diplomatic notes confirming completion of each jurisdiction’s domestic procedures required before entry into force. The Third Protocol to the India DTA will enter into force on the date of the last notification (Article 3). However, requests may be made for information or assistance in the collection of taxes relating to periods prior to the entry into force of the Third Protocol.

9. Like the India DTA itself, the Third Protocol will not apply to the Cook Islands, Niue or Tokelau.

Reasons for New Zealand becoming party to the treaty

10. The aim of the Third Protocol to the India DTA is to update the article relating to the exchange of information to reflect the international standard set in the OECD Model Tax Convention and to introduce an article relating to assistance in the collection of taxes.

11. Double tax agreements (“DTAs”) are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. DTAs encourage growth in economic ties by reducing tax impediments to cross-border trade and investment. More specifically they provide greater certainty of tax treatment, eliminate double taxation, reduce withholding taxes on cross-border investment returns, and exempt certain short-term activities in the host state from income tax. The intention of a DTA is to do this without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

12. DTAs also enable the tax authorities of treaty countries to assist each other in the detection and prevention of tax avoidance and evasion.

13. They do this primarily by establishing a mechanism for exchanging information between the tax authorities of the treaty countries. In addition, they also establish a mechanism for providing and requesting assistance in the collection of taxes. Exchange of information is critical to effective tax administration, as it enables a tax authority to obtain information on the offshore activities and income of tax residents, so as to ensure that worldwide income is being reported correctly for tax purposes. Assistance in the collection of taxes helps to ensure that the correct amount can actually be collected when the taxpayer or their assets are in a different jurisdiction.

14. New Zealand has an existing DTA in force with India, which was signed in 1986, and has two amending Protocols (the first was signed in 1996 and the second in 1999).

15. While the existing DTA contains an article relating to the exchange of information, the provisions of this article are limited and no longer meet the standard for exchange of information set by the OECD in its Model Tax Convention, on which New Zealand's DTAs are generally based.

16. In addition, the existing DTA does not contain an article relating to assistance in collection as this was only introduced into the OECD Model Tax Convention in 2003, which was after the India DTA was last updated.

17. Administrative co-operation in tax matters is important and New Zealand's network is under constant development, with a view to establishing arrangements relating to exchange of information and assistance in collection with a wide range of partners. It is also vital that existing treaties be kept up to date. Experience to date from administering such provisions is that the benefits arising from the enhanced ability to reduce tax avoidance and evasion outweigh any of the costs that arise.

18. India and New Zealand are signatories to the Multilateral Convention, which 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. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. However, this is also the case with a number of our other bilateral treaty partners, as more than 100 jurisdictions participate in the Multilateral Convention.

19. While there is some overlap between the Third Protocol to the India DTA and the scope of the Multilateral Convention, it provides flexibility to the tax authorities of the Contracting States as to which legal instrument is most appropriate for the circumstances of any particular case.

20. In addition, bringing into force the Third Protocol to the India DTA will strengthen diplomatic ties with India.

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

Advantages

21. The Third Protocol to the India DTA will enable tax officials to request tax records, business books and accounts, bank information, and ownership information from India. In addition, it will also enable tax officials to request assistance from India in collecting unpaid taxes from taxpayers who do not reside in New Zealand. These provisions will enhance Inland Revenue's ability to detect and prevent tax evasion and avoidance, and ensure that the correct amount of tax can actually be collected.

22. Any reduction in tax avoidance or tax evasion will be beneficial to New Zealand in financial, fiscal and economic terms.

23. As the provisions contained in the Third Protocol to the India reflect the current OECD standard on exchange of information and assistance in the collection of taxes, there is also the benefit of being able to utilise the comprehensive commentary produced by the OECD to support consistent interpretation and application of the provisions.

24. As noted in paragraphs 18 and 19, both India and New Zealand are signatories to the Multilateral Convention which provides for all possible forms of administrative co-operation in tax matters, including exchange of information and assistance in the collection of taxes. The overlap between the Multilateral Convention and the Third Protocol to the India DTA means that there will be flexibility available to the tax authorities of the Contracting States to choose the legal instrument that is most appropriate to the circumstances of a particular case.

25. Bringing into force the Third Protocol to the India DTA will strengthen diplomatic ties.

Disadvantages

26. To the extent that requests for information or assistance in the collection of taxes are received from India, New Zealand will incur administrative costs in obtaining and providing the information, or costs in providing the requested assistance. However, such costs are already being borne by New Zealand when requests for information are received under the existing India DTA or when requests for information or assistance in collection are received under the Multilateral Convention. As streamlined and effective mechanisms for dealing with such requests have already been established in relation to New Zealand's existing bilateral treaty network as well as the Multilateral Convention, any administrative costs of responding to requests from India under the Third Protocol to the India DTA are therefore expected to be marginal.

27. Experience gained from administering the exchange of information arrangements already in place under New Zealand's existing tax treaties indicates that the benefits arising from the enhanced ability to reduce tax avoidance and evasion outweigh any of the costs that arise.

28. On balance, it is in New Zealand's interests to bring into force the Third Protocol to the India DTA. The Third Protocol to the India DTA will extend and strengthen New Zealand's treaty network and will enhance Inland Revenue's ability to detect and prevent tax evasion and avoidance.

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

29. The Third Protocol to the India DTA places a reciprocal obligation on each Contracting State to provide, upon request, administrative assistance by way of information that is relevant or to the administration and enforcement of taxes (Article 1), or assistance in the collection of taxes (Article 2). The provisions relating to the exchange of information cover taxes of every kind and description and the provisions relating to assistance in the collection of taxes cover all revenue claims, not merely income tax.

30. 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 India 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 India.

31. However, the obligations that arise under the Third Protocol to the India DTA already exist under the India DTA, in relation to the exchange of information, and under the Multilateral Convention, in relation to both exchange of information and assistance in the collection of taxes.

32. 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 the Third Protocol to the India DTA are expected to be minimal.

33. The Third Protocol to the India DTA does not contain a dispute-resolution provision, but instead the dispute-settlement mechanisms that are currently in place for the India DTA will also apply to the Third Protocol.

34. Reservations are not provided for under the Third Protocol to the India DTA.

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

35. In order to implement the obligations in the Third Protocol to the India DTA an Order in Council must be passed in accordance with section BH 1 of the Income Tax Act 2007.

36. Section BH 1 of the Income Tax Act 2007 enables DTAs (and amending protocols) to be given effect by Order in Council. Section BH 1 provides that the provisions of DTAs will then override the Inland Revenue Acts, the Official Information Act 1982, and the Privacy Act 1993. The override of the Acts is necessary to give effect to the terms of a DTA, given that the DTA requires New Zealand to provide information it holds to foreign jurisdictions which is otherwise forbidden under those Acts. The Official Information Act is overridden to ensure that communications with other jurisdictions are not required to be disclosed. The Privacy Act is overridden to ensure that information can be exchanged regarding natural persons under the exchange of information provisions of the Third Protocol to the India DTA.

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

37. No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

The costs to New Zealand of compliance with the treaty

38. Ordinary costs of responding to a request for information or assistance in collection will be borne by the jurisdiction actioning the request. To the extent that requests for information or assistance in collection are received from India, New Zealand will incur administrative costs in complying with those requests. However, such costs are already being borne by New Zealand when requests for information are received under the existing India DTA or when requests for information or assistance in collection are received under the Multilateral Convention. As streamlined and effective mechanisms for dealing with such requests have already been established in relation to New Zealand's existing bilateral treaty network as well as the Multilateral Convention, any administrative costs of responding to requests from India under the Third Protocol to the India DTA are therefore expected to be marginal.

39. Any costs arising to Inland Revenue as a result of the operation of the Third Protocol to the India DTA will be met within existing baselines.

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

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

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

41. No future protocols are anticipated. New Zealand would consider proposed amendments on a case-by-case basis and any decision to accept an amendment would be subject to the usual domestic approvals and procedures.

Withdrawal or denunciation provision in the treaty

42. Article 4 of the Third Protocol to the India DTA provides that it shall remain in force as long as the India DTA remains in force and shall apply as long as the India DTA itself is applicable.

43. Either Contracting State may terminate the India DTA by giving notice of termination, through diplomatic channels, at least six months before the end of any calendar year, in accordance with Article 29 of the India DTA. Any decision by New Zealand to terminate the India DTA and its protocols would be subject to the usual Government approvals and procedures.

Agency Disclosure Statement

44. Inland Revenue has prepared this extended national interest analysis. Inland Revenue has undertaken an analysis of the issue of implementing the Third Protocol to the India DTA, and the legislative and regulatory proposals arising from that implementation. Inland Revenue has considered all other possible options in that process, and is of the view that there are no significant constraints, caveats and uncertainties concerning the regulatory analysis.

45. An Order in Council is required to implement the Third Protocol to the India DTA into New Zealand domestic law.

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

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