



International treaty examination of the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains

Report of the Finance and Expenditure
Committee

The Finance and Expenditure Committee has conducted an international treaty examination of the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains and has no matters to bring to the attention of the House.

The national interest analysis for the Protocol is appended to this report.

Charles Chauvel MP
Chairperson

Appendix A

National interest analysis—Amendment to the Protocol between the Government of the United Kingdom of Great Britain and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains

Executive summary

1 The purpose of the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains (“the Protocol”) is to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains (“the UK DTA”). The UK DTA addresses the double taxation of income flows between the United Kingdom and New Zealand. It enables the tax administrations of the two countries to assist each other in the detection and prevention of tax avoidance and evasion.

2 The Protocol amends the UK DTA in relation to this second purpose. It updates the Exchange of Information Article of the UK DTA to follow the new OECD standard on exchange of information, and to encompass taxes other than income tax. It also inserts an Article on Assistance in the Collection of Taxes into the UK DTA that will enable the two tax administrations to request assistance from each other in the recovery of tax debt.

Date and nature of proposed binding treaty action

3 The Convention between the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (“the UK DTA”) was signed at London on 4 August 1983 and entered into force on 16 March 1984.

4 The Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains (“the Protocol”) amends the UK DTA.

5 The Protocol was signed in London on 7 November 2007. Subject to satisfactory completion of the Parliamentary treaty examination process, and incorporation of the Protocol into domestic legislation through an Order in Council, it is also proposed that the Protocol be brought into force, in accordance with Article III, through an exchange of notes through diplomatic channels confirming completion of all necessary domestic procedures for entry into force. The Protocol would enter into force on the date of the later note.

Reasons for New Zealand becoming party to the treaty

6 The need for the amendments to the UK DTA, contained in the Protocol, arose because of the introduction of the new OECD standard on exchange of information.

7 The text of the Protocol was finalised by officials on 8 June 2007 and signed in London on 7 November 2007.

8 The Protocol enhances the provisions of the UK DTA that enable the tax administrations of the two countries to assist each other in the detection and prevention of tax avoidance and evasion. It replaces the Article on Exchange of Information of the UK DTA with a new Article that more closely follows the new OECD standard on exchange of information and that will also apply to taxes other than income tax (Article I of the Protocol; Article 25 of the UK DTA). It also introduces a new Article 25A on Assistance in the Collection of Taxes into the UK DTA that will enable the two tax administrations to request assistance from each other in the recovery of tax debt (Article II of the Protocol; Article 25A of the UK DTA). These changes can be expected to benefit New Zealand through a reduction in tax avoidance and evasion and an improvement in revenue collection (particularly given the large numbers of New Zealanders who live in the United Kingdom).

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

9 The amendments contained in the Protocol are expected to reduce tax avoidance and evasion and improve revenue collection in light of the large numbers of New Zealanders present in the United Kingdom.

10 The requirement for New Zealand to provide the United Kingdom with information on a wider range of tax matters under the exchange of information provision is a potential disadvantage. However, the ability to request information is reciprocal, and New Zealand's experience with exchange of information in relation to its DTAs generally is predominantly positive. The benefit gained from being able to request information from the other country more than offsets the administrative burden of having to provide information pursuant to its requests.

11 The Assistance in the Collection of Taxes Article is, likewise, reciprocal in nature. It will require New Zealand to collect unpaid tax on behalf of the United Kingdom, but will enable New Zealand to recover unpaid tax from absconding taxpayers who now live in the United Kingdom. The ability of New Zealand to collect otherwise uncollectible unpaid tax is expected to outweigh the administrative costs.

12 Amendments to a DTA are made by way of a protocol. The Protocol will help to achieve government objectives in relation to DTAs by improving the prevention of fiscal evasion and facilitating the exchange of information between New Zealand and the United Kingdom and assisting in the recovery of unpaid taxes.

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

13 The Protocol will impose obligations on New Zealand to provide information to the United Kingdom (Article I refers) and to assist the United Kingdom in the collection of revenue claims (Article II refers) in response to any valid request made under the Exchange of Information or Assistance in the Collection of Taxes Article. Both of these obligations are reciprocal.

14 Reservations are not provided for under the Protocol or the UK DTA. The Protocol itself does not contain any dispute settlement mechanism, but the UK DTA provides that any difficulties or doubts arising as to interpretation or application are to be resolved by mutual agreement between the Competent Authorities (Article 24 of the UK DTA refers).

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

15 The Protocol will need to be implemented domestically by Order in Council in accordance with section BH 1(3) of the Income Tax Act 2004.

16 The Protocol will be implemented by way of an overriding treaty regulation. Section BH 1 of the Income Tax Act 2004 provides that DTAs will have overriding effect in relation to the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993 in relation to income tax, unpaid tax and the exchange of information relating to a tax. The override of the Revenue Acts is necessary to give effect to the terms of a DTA, for example because DTAs prevent New Zealand from applying its domestic law taxing rights in some circumstances. The Official Information Act is overridden to ensure that communications with other states during DTA negotiations are not disclosed. The Privacy Act is overridden to ensure that information can be exchanged regarding natural persons under the Exchange of Information Article.

17 Subject to satisfactory completion of Parliamentary treaty examination, the Order in Council would be promulgated and would come into effect twenty-eight days after being published in the Gazette.

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

18 No social, cultural or environmental effects are anticipated.

Costs to New Zealand of compliance with the treaty

19 There may be administrative costs arising from New Zealand’s obligations to exchange information and assist in the collection of taxes. However, the ability to obtain information and request assistance from the United Kingdom tax authorities and thus reduce tax avoidance and evasion and increase revenue collection is expected to provide compensating economic benefits to New Zealand.

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

20 The Treasury and the Ministry of Foreign Affairs and Trade have been consulted on and agree with the proposed treaty action. Consultation was undertaken by providing drafts of the NIA and the accompanying Cabinet Paper for comment.

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

21 No future amendments to the UK DTA are anticipated and the Protocol makes no provision for amendments. However, if the need to amend the UK DTA arises again, this could be achieved by means of another protocol.

Withdrawal or denunciation provision in the treaty

22 Article IV of the Protocol provides that it shall remain in force as long as the UK DTA remains in force. Article 28 of the UK DTA provides that the DTA can be terminated by either party through the diplomatic channel by giving notice of termination at least six months before the end of any calendar year after the expiration of five years from the date of its entry into force.

Adequacy statement

23 The Inland Revenue Department has prepared this extended NIA and has assessed it as adequate in accordance with the Code of Good Regulatory Practice.

Prepared by: Inland Revenue Department

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