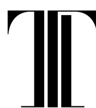

THE TAX INSTITUTE

29 October 2021

Ronita Ram
Director | Tax Treaties Branch
Corporate and International Tax Division | Revenue Group
Treasury
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By email: RGCITDTaxTreatiesBranch@treasury.gov.au

Dear Ms Ram

Expanding Australia's Tax Treaty Program

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the consultation on Expanding Australia's Tax Treaty Network which opened on 16 September 2021 (**Consultation**) in light of the announcement by the Treasurer, the Hon Josh Frydenberg, on 15 September 2021.[1]

In the development of this submission, we have consulted with our National Large Business and International (**LB&I**) Technical Committee to prepare a considered response which represents the views of the broader membership of The Tax Institute.

We appreciate your time in meeting with our LB&I Committee earlier this month and trust that our comments will assist Treasury in the proposed negotiations and in contemplation of Australia's tax treaty network more broadly.

Tax treaties play an important role in facilitating trade and commerce, and ensuring entities in party jurisdictions are, among other things, not subject to double taxation. From a tax law and policy perspective, The Tax Institute is of the view that the treaties that are currently being negotiated should strive to promote investment and reduce potential distortions or barriers for individuals and businesses in Australia and our treaty counterparties. To the extent there are integrity concerns, they should be appropriately balanced with the potential economic benefits.

An example of an area which requires a considered and modernised approach is the exemption from interest withholding tax for financial institutions. The way in which the exemption currently works is inflexible and effectively discourages Australian businesses from borrowing from certain foreign entities, such as bond funds. Being heavily reliant on foreign capital, it is important that Australia encourages foreign investment from numerous sources, especially financing hubs like Luxembourg.

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1 https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/expanding-australias-tax-treaty-network-cover-80-cent.

Tax treaties should also seek to reduce compliance costs and excessive tax burdens from foreign tax regimes, encouraging Australian businesses to expand and invest overseas. For example, India's capital gains tax (**CGT**) regime is both complex and burdensome. Given India has historically provided concessions from their CGT regime to several jurisdictions, similar concessions for Australian businesses would encourage growth in a key economic market and there are opportunities for Australia to achieve this through negotiations with India.

There are also a range of other considerations that need to be examined during the negotiation of the announced (and yet to be announced) treaties, and Australia's existing treaty network generally. These include ensuring a targeted approach is taken so that our tax treaties are compatible with existing and upcoming OECD conventions, and working with other jurisdictions to better manage the treaty implications caused by significant global events like the COVID-19 pandemic. These steps will ensure that the Australia's tax treaties can achieve their policy objectives as simply and fairly as possible.

Our detailed response is contained in **Appendix A**.

We would be pleased to continue to work with Treasury throughout the negotiation of the proposed treaties to ensure key outcomes are achieved.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix C** for more about The Tax Institute.

If you would like to discuss any of the above, please contact Tax Counsel, Julie Abdalla, on 02 8223 0058.

Yours faithfully,

Peter Godber

President

APPENDIX A

We have set out below detailed comments and observations in respect of certain aspects of the proposed tax treaty negotiations, and Australia's tax treaty network more broadly. We have limited our comments to matters concerning tax law and policy and in particular, those which were discussed with you and which we consider are matters of priority. Any references to or comments on the laws or regimes of jurisdictions other than Australia are based on our understanding of how the relevant law or regime applies.

Background

Tax treaties are an expression of goodwill between Contracting States. They serve a number of purposes including the prevention of double taxation (and double non-taxation), the prevention of evasion and avoidance (including avoidance through base erosion and profit shifting), and the prevention of certain types of discrimination against foreign nationals. Tax treaties provide mechanisms for administrative cooperation through information sharing, allowances for cross-border tax collection, and processes for settling disputes. They encourage and facilitate foreign trade and investment generally by offering lower source country tax to foreigners, as well as credit and exemption mechanisms for offshore investments.

Tax Treaties are fundamental to enabling Australian taxpayers to participate effectively in the global economy and allowing non-resident taxpayers to engage in the domestic Australian economy. The Tax Institute is of the view that it is therefore important that Australia's tax treaty network is periodically reviewed and updated to reflect contemporary global settings.

Key drivers for the negotiation of Australia's tax treaties include trade and investment levels, similarity between the tax systems including approaches to integrity matters and exchange of information (**EOI**), as well as broader foreign policy considerations. We consider that it would be helpful for Treasury to provide greater clarity on the emphasis placed on these factors and others. This will assist us and other stakeholders to understand the Government's priorities and the factors that are influential in its negotiations of new (and revised) treaties.

The Treasurer announced that Australia will enter into 10 new and updated tax treaties by 2023. We understand that in light of the Treasurer's announcement, negotiations with India, Luxembourg and Iceland are commencing in the current year as part of the first phase of this program. Negotiations with Greece, Portugal and Slovenia are expected to occur in 2022 as part of the second phase.

The remaining four treaties have not yet been announced. The Tax Institute wishes to take this opportunity to recommend some potential treaty partners for these purposes.

Hong Kong

In addition to its role as a major financial services hub, Hong Kong is a country with which Australia has growing trade.[2] Accordingly, The Tax Institute considers that further thought should be given to negotiating a treaty with Hong Kong. A treaty with Hong Kong would likely enhance Australia's already significant inbound and outbound trade and investment with Hong Kong. Further, Hong Kong plays an important role in investment both into and out of other Asian countries.

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2 Hong Kong is Australia's 15th largest trading partner.

We note that many of Hong Kong's tax treaties are with countries with which Australia also has tax treaties. Examples include the United Kingdom, New Zealand, Japan, Indonesia, Malaysia, and France. For Australia to maintain a level playing field with its other treaty partners, both in terms of accessing the significant amounts of capital in Hong Kong and engaging with Hong Kong's funds management industry, there is a strong argument for Australia to also negotiate a tax treaty with Hong Kong.

However, we note that the potential economic benefits should be weighed against broader concerns that have been raised in commentary concerning treaties with Hong Kong and whether such a treaty will overall be beneficial for the Australian financial sector. As part of this consideration, it should be noted that Hong Kong has proposed amendments to its domestic tax legislation in response to being placed on the European Union's Grey List of Non-Cooperative Tax Jurisdictions. While Hong Kong proposes to continue adopting a territorial source principle of taxation, the proposed legislative amendments will target corporations with no substantial economic activity in Hong Kong that make use of passive income to evade tax across borders. If enacted, these changes could lessen some of the underlying integrity concerns.

We consider that targeted engagement with the relevant stakeholders specifically on this matter will help to highlight any costs or factors that should be assessed. We also acknowledge that potential concerns between China and Australia will likely be a major factor for consideration by Treasury and the Government.

Other potential treaty partners

The Netherlands is one of the most significant gateways for indirect investment into Europe and there are a number of ways in which the existing treaty could be updated. The existing tax treaty with Italy is outdated and requires modernisation.

It is also important for Australia to foster relations with emerging markets. Brazil, Mongolia, and Peru are potentially viable options in this regard. We would be pleased to discuss these options further with Treasury should they be considered for the remaining treaties to be negotiated by 2023.

Taxation of individuals in announced treaty negotiations

Australia's positions on the taxation of individuals in respect of personal service income (Articles 15 to 20) is consistent with the positions adopted in the 2017 OECD Model (except in the case of fringe benefits given that Australia is one of only three nations which tax the employer). The Tax Institute recommends that in the treaty negotiations with Luxembourg, Iceland, Greece, Portugal, and Slovenia, the Government should continue to adopt these positions, particularly in respect of Article 18 in relation to pensions. We note that Australia's approach has changed in respect of government sourced pensions in the recently concluded tax treaties with Chile, Germany, India, Israel, Switzerland, and Turkey.

In The Tax Institute's view this approach should be adopted in respect of the new and updated treaties. We consider that it is crucial that Treasury ensure that a fringe benefits article is inserted to prevent double taxation and the imposition of additional costs on Australian business in terms of staff posted offshore.

Financial institution exemption from interest withholding tax

The Tax Institute is of the view that the exemption from interest withholding tax for financial institutions contained in many of our tax treaties has become dated and overly narrow over time. Article 11 of many of Australia's tax treaties contains an exemption from interest withholding tax "where the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer".[3] For this purpose, the term financial institution is defined as:

> *a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or taking deposits at interest and by using those funds in carrying on a business of providing finance.*[4]

In other words, the exemption is limited to *debt-funded* entities that *carry on a business* of providing finance. In practice, for entities that are not banks or similar enterprises which fall squarely within this definition, it requires them to be debt funded and to be in the business of money lending. The restriction to debt-funding means that certain large institutional investors such as bond funds do not benefit from the exemption, and the restriction to "carrying on a business" could potentially exclude passive-style investment vehicles.

The requirement to be debt funded removes the ability for other financial instruments and vehicles, for example, bond funds (which are equity funded) to access the treaty exemption for financial institutions. We further note that investors in equity-funded bond funds are typically unable to recover any Australian withholding tax as a foreign tax credit. This is often because the fund is treated as a corporate vehicle in the investor's home jurisdiction and no credit is provided for taxes incurred by the vehicle. In other cases, the investor may be an exempt pension fund with no corporate income tax liability.

The Tax Institute is of the view that this definition is not reflective of modern practices and hinders the flow of funds into Australia. The inbound flow of funds is of specific concern as Australia is heavily reliant on foreign capital. Today, there is a large amount of capital invested globally in entities other than traditional financial institutions, (which may not have been as prevalent one to two decades ago). The narrow scope of this definition prevents Australian businesses from accessing a significant pool of foreign capital.

The Tax Institute considers that this requirement should be removed to account for modern practices in all new treaties and existing treaty re-negotiations going forward. This is particularly relevant to the proposed Luxembourg treaty. Doing so could significantly boost the amount of capital that could flow into Australia.

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[3] For examples, see *Convention Between Australia And Japan For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income,* Australia-Japan, signed 31 January 2008, [2008] ATS 21 (Entry into force 3 December 2008), Art 11(3)(b); *Convention between the Government of Australia 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 on Capital Gains,* Australia-United Kingdom, signed 21 August 2003, [2003] ATS 22 (Entry into force 17 December 2003), Art 11(3)(b); *Convention between Australia and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income*, Australia-Switzerland , (30 July 2013) [2014] ATS 33 (Entry into force 14 October 2014), Art 11(3)(b).

[4] Ibid.

The requirement for a financial institution to be in the business of money lending can also disincentivise foreign investment into Australia. This requirement excludes equity funded vehicles which may include sovereign wealth funds and private equity structures, many of which have an investment mandate to invest in debt instruments around the world. These entities operate in essentially the same markets as banks and traditional financial institutions but do not meet the conditions for the exemption due to the requirement to raise debt finance.

It also can exclude other entities such as securitisation vehicles which in certain cases simply collect interest and can be seen as passive investments (rather than active businesses). Further, the lack of certainty around the actions, or series of actions, required for an entity to be in the business of money lending, along with the heavily fact-dependent nature of the test makes it difficult to comply with and apply consistently across cases. We note that the public guidance from the ATO on this issue is limited and suggested uncertainty about whether a passive style debt vehicle would satisfy the requirement of carrying on a business of providing finance.[5] The Tax Institute considers that the focus on debt investment is appropriate though we are of the view that the condition requiring capital to be raised in the debt markets is unduly limiting.

Importantly, our understanding is that the lack of availability of the exemption does not of itself raise revenue. Rather, it curtails activity and deters transactions from taking place, thereby preventing a revenue liability arising as the investment does not occur. This is because in commercial dealings, the cost of interest withholding tax is usually ultimately borne by the borrower (in this case an Australian borrower).[6] Depending on the nature and scale of a transaction, this cost can be prohibitively expensive for Australian borrowers to borrow from entities which do not fall within the scope of the definition.

We recommend that future treaties should incorporate a broader definition which encompasses any entity that substantially derives its income from activities that include providing debt finance. This is especially important for the proposed treaty with Luxembourg and other future treaties, though we recommend this provision is also revisited in Australia's existing treaties.

Modernising the definition of financial institution would more readily allow for the flow of funds into Australia, particularly when negotiating tax treaties with major financial and investment hubs such as Luxembourg.

Further, we understand that the financial institutions exemption is broadly intended to mirror the public offer exemption from withholding tax contained in section 128F of the *Income Tax Assessment Act 1936* (**ITAA 1936**). We understand from our members that the interest withholding tax exemption contained in section 128F is frequently relied on in the market but that it is not always appropriate in the commercial circumstances, for example, in private transactions which may be of a significantly large scale but do not meet the public offer requirements.

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[5] For example, see ATO Interpretative Decision *ATO ID 2006/217: Income Tax: Securitisation Vehicle: financial institution - treatment of interest income and expenses* which raises ATO concerns over whether a securitisation vehicle can carry on a financial institution business.

[6] This generally involves the borrower having to pay a tax gross-up or indemnity in respect of withholding tax in the borrower jurisdiction.

Given the intention of broad consistency with the domestic policy, the removal of the requirement for debt funding will enable this (as the exemption in section 128F of the ITAA 1936 can also apply to bond funds) without raising new integrity concerns. Finally, we note that The Tax Institute is also of the view that anything less than a full exemption from interest withholding tax for financial institutions is ineffective and that this is not something that should be pursued in future treaty negotiations. We recommend that this is revisited in existing treaties when the treaty program permits.[7]

Australia-India tax treaty

Australia's existing tax treaty with India was signed in 1991, almost 30 years ago. Since then, Australia's bilateral economic relationship with India has developed rapidly. The Tax Institute is of the view that it is important that the Australia-India tax treaty is renegotiated in a way which levels the playing field for Australian investors, and support Australia's aspirations to achieve broader-based economic growth.

We understand that in negotiations with India, Article 12 (Royalties) will be in play in light of the Satyam Computer Systems (Tech Mahindra Limited) litigation. The Tax Institute considers that this presents an ideal opportunity for Australia to explore other circumstances where Australian businesses find challenges with other aspects of the Australia-India tax treaty. This may allow Australia to negotiate for other changes in the treaty such as in relation to CGT concessions (considered below).

Indian capital gains tax exemption, dividend withholding tax and interest withholding tax

India's CGT regime is complicated and results in different rates of tax applying depending on a range of factors. Broadly, these include the duration the asset is held for, the type of asset, and the tax residency of the holder of the asset. There are also further calculations, such as indexation, and charges, such as the Securities Transaction Tax, or Health and Education Surcharge, that may apply depending on the same factors.

This complexity significantly increases compliance and administration costs for Australian businesses and investors, thereby disincentivising capital investment into India.

To counteract this disincentive, India has historically offered exemptions or reductions in CGT to some jurisdictions through its tax treaties. These include:

- full exemptions from CGT in India for resident of the other Contracting State if holding requirements are met;[8]
- allowing the right to tax the capital gain from the disposal of some or all types of assets to be taxed in the residence of the seller;[9] and

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[7] *Convention Between The Republic Of India And The State Of Israel For The Avoidance Of Double Taxation And For The Prevention Of Fiscal Evasion With Respect To Taxes On Income And On Capital*, India-Israel, Dated 26 June 1996 (Entry into force 15 May 1996), Art 11(2)(a); *Protocol Between The Republic of India And the Republic of Chile For Elimination Of Double Taxation*, India-Chile, signed 11 March 2020 (Entry into force unknown), Art 11(2)(a).

[8] For example, see *Convention Between The Republic Of India And The Kingdom Of Netherlands For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And On Capital*, India-Netherlands, Dated 25 June 2019 (Entry into force 1 April 2020), Art 13(5).

[9] *Agreement For Avoidable Of Double Taxation And Prevention Of Fiscal Evasion With Mauritius,* India-Mauritius, Dated 10 August 2016 (Entry into force 1 July 1983), Art 13(4).

- reduced rates of CGT for residents of the Contracting State.[10]

For Australian share and non-share (for example, bonds, debt securities) investment into India, such investment is currently subject to CGT in India on disposal. Under the existing Australia-India tax treaty, there is no protection from the Indian CGT on any gains derived by an Australian investor looking to dispose of a non-controlling interest (that is, a portfolio investment) in share investment. The treaty also does not offer protection for any gains derived by an Australian investor from a non-share investment.

The absence of any concession under the Australia-India DTA is inconsistent with tax treaties that India has executed with other jurisdictions. Certain of India's other tax treaties concede taxing rights on non-resident capital gains from shareholdings of less than 10% in non "land-rich" Indian companies. Such treaties also concede taxing rights on non-resident capital gains from non-share investments. Examples include the tax treaties signed between India and:

- France;
- the Netherlands;
- Belgium; and
- Spain.

We have included at **Appendix B** a summary of India's tax treaties with other jurisdictions which include a CGT exemption.

With respect to dividends, India can impose tax at a rate of up to 15% under the existing Australia-India tax treaty. This rate is higher than many tax treaties India has entered into with other jurisdictions. Most of those tax treaties incorporate a negotiated rate of between five and 10%. Similarly for interest, the rate under the existing Australia-India DTA is 15% while many other jurisdictions negotiated a rate at 10%.

The Tax Institute considers that negotiating similar concessions for Australian resident entities will remove blockers and incentivise investment into India. This will be important given India's rising economic strength on the global stage.

We recommend that the Australian Government take this opportunity to negotiate an update of the Capital Gains Tax Article (Article 13) of the Australia-India tax treaty in order to align with the corresponding Article in other Indian tax treaties, to level the playing field for Australian investors. Similarly, there is also opportunity for the Dividends and Interest Articles (Articles 10 and 11, respectively) to be updated to align with the lower rates in other Indian tax treaties.

This will provide relief for Australian residents from capital gains on Indian portfolio investments as well as non-share investments and a more "equitable" return on these investments. This consistency will ensure Australian residents trading in Indian securities will be afforded the same concessions as some of their foreign counterparts and is a key element for Australian investors to take advantage of the increased openness of Indian capital markets.

[10] Ibid, Art 13(3B).

Clear integrity provisions and policy

It is important to ensure that integrity provisions achieve the correct balance between addressing integrity concerns for both Contracting States and ensuring that the relevant treaty removes the barriers and costs of business between the two States. It is also important to ensure integrity concerns are adequately addressed in specific tax treaties with countries that can or have historically been perceived to be low tax jurisdictions or 'tax havens,' such as Luxembourg. Addressing matters such as EOI and the mutual enforcement of tax debt will be particularly relevant in this regard. Doing so will help to instil public confidence in the proper management of tax risks. We note that Australia has 45 treaties with EOI countries, 36 Tax Information Exchange Agreements, and as of 30 November 2020, 109 jurisdictions had signed the OECD's Multilateral Competent Authority Agreement. In our view, it is clear that the scope of the EOI rules have been greatly expanded and should provide assurance when entering into negotiations with jurisdictions like Luxembourg, among others.

Comments on Australia's tax treaty network generally

Managing future pandemics and other global crises

The COVID-19 pandemic has been an unprecedented event which has significantly impacted and continues to affect countless people globally from a tax, health, economic and social perspective. Australia has the potential to lead global discussions to ensure that our tax treaties are better placed to flexibly manage potential future disruptions of a similar magnitude. Examples include:

- the residency or permanent establishment statuses of individuals and businesses is impacted by travel restriction and border closures;
- the impact of mandatory quarantine periods on residency tests in Contracting States; and
- ensuring fair outcomes in respect of the determination of residency and source of income for cross-border workers who relocate away from their home state in exceptional circumstances (such as a pandemic or similar event).

We note that on 21 January 2021, the OECD released updated guidance on the impact of COVID-19 on tax treaties.[11] The guidance was intended to only cover periods of time when public health measures were in effect, and only intended to avoid double taxation. It contains a range of responses from governments, including Australia, on these issues.

Noting that changes on this scale may take a significant amount of time and require involvement from the OECD and other countries, The Tax Institute considers that one option could be for the ATO to be given discretionary powers under domestic law, potentially only for the duration of significant events such as the COVID-19 pandemic, to manage unfair outcomes and inequitable treatment more fairly during these situations.

[11] OECD Policy response, *Updated guidance on tax treaties and the impact of the COVID-19 pandemic*, 21 January 2021.

Withholding tax on portfolio holdings and direct investments

We understand that flows and volumes of investment (both direct and portfolio) other trade statistics and the factors noted above such as similarity of tax systems and broader foreign policy are considered during treaty negotiations. These factors may help to inform decisions but are not necessarily determinative.

We note that, there are certain countries into which investments are likely to be portfolio, whereas others are more often direct. Given the increasing amount of portfolio investments into and out of Australia, we consider it is important for this to be taken into account in the context of Australia's tax treaty negotiations and also as a matter of domestic tax policy.

Simplifying the tax treatment of Collective Investment Vehicles

The tax treatment of CIVs is a difficult area for taxpayers to navigate as each jurisdiction and treaty take a nuanced approach. This often creates significant complexity when domestic rules around the tax treatment of CIVs interact with provisions in tax treaties. This complexity significantly increases costs for businesses while disincentivising investment flows. Further, the requirement for CIVs to be 'widely held' can limit the options for Australian businesses when seeking foreign capital. For example, a private equity fund which pools funds from a small number of large investors, including sovereign wealth funds and pensions funds, could potentially fail a widely held test if it is cast narrowly.

If the Australian Government seeks to encourage investment and trade flows with our treaty partners, facilitative definitions should be adopted. This is subject to striking a balance with appropriate integrity provisions. For example, the Managed Investment Trust and Investment Manager Regimes contain concessional tracing and counting mechanisms that ensure the types of funds described above are appropriately recognised as widely held investment vehicles.[12] Such concessional treatment is supplemented by integrity provisions which safeguard against misuse. Similar mechanisms could be adopted in this context to provide the necessary certainty.

Implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

The *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (**MLI**) was developed as part of the OECD/G20 Base Erosion and Profit Shifting (**BEPS**) project.

Australia signed the MLI on 7 June 2017 and ratified it on 26 September 2018 by depositing its Instrument of Ratification, Acceptance or Approval with the OECD. The MLI entered into force in Australia on 1 January 2019.

For a bilateral tax treaty to be modified by the MLI, both Contracting States need to have signed and ratified the MLI and identified the relevant treaty as a Covered Tax Agreement.[13] The extent to which a tax treaty will be modified by the MLI depends broadly on the overlap between the elections made by the Contracting States.

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[12] *Income Tax Assessment Act 1997* ss 275-20 – 275-25 and 842-230 – 842-240.

[13] As defined in Article 2(1)(a) of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.

Australia elected for all but two of its tax treaties to be Covered Tax Agreements and several have been modified by the MLI. Certain of Australia's tax treaties have not been modified because the other Contracting State has not elected for the treaty to be a Covered Tax Agreement or the positions taken by Australia and the treaty counterparty do not align.

The Australia-Germany treaty is not a Covered Tax Agreement because the BEPS principles and relevant MLI provisions were negotiated into the revised treaty bilaterally. The agreement with Taipei was not nominated as a Covered Tax Agreement due to it not having full treaty status.

The MLI provisions have been built into the OECD Model Tax Convention and we understand that the positions taken by Australia, particularly in relation to the MLI minimum standards, will be pursued in future treaty negotiations including the six treaties currently anticipated. The Tax Institute is of the view that it is important that the MLI principles adopted by Australia are incorporated into future treaties, particularly if they may not be treated as Covered Tax Agreements by both Contracting States. The implementation of the minimum standards, among other provisions, will help to ensure consistency across Australia's treaty network. This should support greater integrity and reduce complexity overall.

As outlined above, The Tax Institute is of the view that it is important to re-evaluate our existing tax treaty network and invest in the maintenance of existing treaties. We acknowledge that the MLI is an efficient way to update Australia's tax treaties compared to entering into bilateral negotiations. However, where the MLI has not modified a tax treaty which is a Covered Tax Agreement from Australia's perspective, we consider that further engagement with existing treaty partners is required to ensure compliance with the BEPS project and MLI principles can be achieved as consistently as possible across our treaty network.

Timing with Organisation for Economic Cooperation and Development's Pillar 1 and Pillar 2 implementation plan

We understand that instruments for Pillar 1 and Pillar 2 are still under development and may not be incorporated into the treaties proposed to be negotiated in the coming years.

The Tax Institute considers that it is important to ensure that there is scope to incorporate changes arising under Pillar 1 and Pillar 2 into the newly negotiated treaties as well as existing treaties. This may require targeted consultation to address potential adverse outcomes, complexities or inconsistencies between the Organisation for Economic Cooperation and Development's (**OECD**) implementation plan and the tax treaties being negotiated. We would be pleased to assist Treasury in this regard once the Pillar 1 and Pillar 2 instruments have progressed.

APPENDIX B

Appendix 1 – Summary of Indian tax treaties with CGT exemption

Country	CGT exemption applies to	Limitation of Benefits	MLI
Belgium	Non-land-rich shares: portfolio investors < 10% stake Non-share investments (e.g., debt securities, derivatives)	N/A	Yes
Netherlands	Non-land-rich shares: portfolio investors < 10% stake; or corporate reorganisation/merger etc Non-share investments (e.g., debt securities, derivatives)	N/A	Yes
Korea	Non-land-rich shares: portfolio investors < 5% stake Non-share investments (e.g., debt securities, derivatives)	Benefit not available if the main purpose or one of the main purposes is paid to is to take advantage of the tax treaty articles	Yes
France	Non-land-rich shares: portfolio investors < 10% stake Non-share investments (e.g., debt securities, derivatives)	N/A	Yes
Spain	Non-land-rich shares: portfolio investors < 10% stake Non-share investments (e.g., debt securities, derivatives)	Benefit not available if the main purpose or one of the main purposes of the transaction undertaken was to obtain benefits	Yes
Sweden	All non-land-rich shares Non-share investments (e.g., debt securities, derivatives)	If the gain is subject to tax in Sweden, then taxing right goes to India	Yes

Mauritius	Shares: investments made up to 31 Mar 2017 and sold at any time Non-share investments (e.g., debt securities, derivatives)	For shares only: 1. Motive test - benefits will not be available, if the affairs of a company are arranged with the primary purposes of avoiding taxes; and 2. Expenditure test – at least Mauritian 1.5mn/INR 2.7mn operating expenses during 12 months in the immediately preceding period from the date the capital gain arises	Yes
Singapore	Shares: investments made up to 31 Mar 2017 and sold at any time Non-share investments (e.g., debt securities, derivatives)	For shares only: 1. Motive test - benefits will not be available, if the affairs of a company are arranged with the primary purposes of avoiding taxes and 2. Expenditure test – at least SGD 200,000/INR 5mn operating expenses during each block of 12 months in the immediately preceding period of 24months from the date the capital gain arises	Yes
Cyprus	Non-share investments (e.g., debt securities, derivatives)	N/A	Yes

APPENDIX C

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.