



**International treaty examination  
of the Second Protocol  
amending the convention  
between the Government of  
New Zealand and the  
Government of Belgium for the  
Avoidance of Double Taxation  
and the Prevention of Fiscal  
Evasion with respect to Taxes on  
Income and the Protocol, signed  
at Brussels on 15 September  
1981**

Report of the Finance and Expenditure  
Committee

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# International treaty examination of the Second Protocol amending the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol, signed at Brussels on 15 September 1981

## **Recommendation**

The Finance and Expenditure Committee recommends that the House take note of its report.

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The Finance and Expenditure Committee has conducted an international treaty examination of the Second Protocol amending the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol, signed at Brussels on 15 September 1981 and has no matters to bring to the attention of the House.

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

## **Appendix A**

### **Committee procedure**

The committee met on 5 and 19 May 2010 to consider the agreement.

### **Committee members**

Craig Foss (Chairperson)

Amy Adams

David Bennett

John Boscawen

Brendon Burns

Hon David Cunliffe

Aaron Gilmore

Raymond Huo

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

## Appendix B

### **Second Protocol amending the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Protocol, signed at Brussels on 15 September 1981**

#### **National Interest Analysis**

##### **Proposed Binding Treaty Action**

1 On 7 December 2009, New Zealand signed the Second Protocol amending the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and the Protocol, signed at Brussels on 15 September 1981 (“the Second Protocol”). Subsequent to signature and satisfactory completion of the Parliamentary treaty examination process, it is proposed that the Second Protocol be incorporated into domestic legislation through an Order in Council, and brought into force, in accordance with Article XIII, through an exchange of diplomatic notes, confirming completion of all necessary domestic procedures for entry into force. The Second Protocol will enter into force on the fifteenth day after the date of the latter note.

##### **Reasons for New Zealand to become a Party to the Treaty**

2 New Zealand currently has 35 double tax agreements (“DTAs”) in force. DTAs are primarily aimed at reducing tax impediments to cross-border trade and investment, but also help tax administrations detect and prevent tax evasion and tax avoidance.

3 The Second Protocol amends the *Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (“the Belgian DTA”) that entered into force in 1983. The Belgian DTA already stands amended by the *Protocol to the Convention between the Government of New Zealand and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (“the First Protocol”), which came into force at the same time as the DTA itself.

4 The First Protocol included an undertaking by New Zealand to enter into further negotiations with Belgium with a view to incorporating a non-discrimination article if New Zealand ever agreed to an article of this type in any other DTA.

5 Shortly after the Belgian DTA and First Protocol were signed, New Zealand agreed to include a non-discrimination article in a DTA with the United States. This triggered the negotiation clause in the Belgian DTA.

6 In addition to the inclusion of a non-discrimination article, the Second Protocol makes several other amendments to the Belgian DTA that were proposed by the two sides during the course of the negotiations.

### **Advantages and Disadvantages to New Zealand of the Treaty Entering into Force**

7 The advantages to New Zealand are:

- The Belgian DTA, already in force, is designed to foster improved cross-border trade and investment and to assist tax administrations in the detection and prevention of tax evasion and tax avoidance. The Second Protocol generally enhances the ability of the Belgian DTA to achieve those objectives.
- The Second Protocol fulfils an obligation under the Belgian DTA for New Zealand to enter into negotiations with Belgium with a view to including a non-discrimination article in the DTA if we ever agreed to an article of that type in another DTA. This obligation was triggered in 1983 when New Zealand agreed to include a non-discrimination article in our DTA with the United States.

8 No disadvantages to New Zealand from the entering into force of the Second Protocol have been identified.

9 It is in New Zealand's interest to enter into the Second Protocol with Belgium.

### **Obligations**

10 The Second Protocol does not impose requirements on taxpayers. DTAs only impose obligations on the respective governments. The Second Protocol imposes the following obligations on the New Zealand Government:

- Not to impose the following discriminatory income tax laws:
- Laws that discriminate against Belgian nationals as opposed to New Zealand nationals in the same circumstances. However, laws that differentiate between residents and non-residents are expressly permitted.
- Laws that treat a permanent establishment of a Belgian enterprise less favourably than a permanent establishment of an enterprise from any third State.
- Laws that treat a Belgian ship or aircraft operator less favourably than a New Zealand ship or aircraft operator carrying on the same activities. However, measures reasonably designed to prevent or defeat the avoidance or evasion of taxes are expressly permitted.
- Laws that discriminate against a New Zealand enterprise owned or controlled by Belgian residents as opposed to a New Zealand enterprise owned or controlled by residents of any third State. Belgian ownership or control of New Zealand enterprises cannot therefore result in more restrictive taxation rules. (Article IX of the Second Protocol refers.)

- To provide corresponding adjustments in relation to transfer pricing adjustments made by Belgium. (Transfer pricing rules enable a tax administration to adjust the value of a cross-border transaction between associated enterprises where the value has been artificially set too high or low so as to manipulate the amount of tax applying in each country. Provided that the adjustment has been correctly made, the associated enterprises article will now require an increase in taxable income in one country to be matched by a corresponding decrease in taxable income in the other country.) (Article IV of the Second Protocol refers.)
- Not to impose non resident withholding tax on interest paid to the Belgian Government, central bank, or an export guarantee organisation approved by Belgium. (Article VI of the Second Protocol refers.)
- To disregard any domestic time limits when giving effect to mutually agreed solutions. (Article X of the Second Protocol refers.)
- To enter into further negotiations with Belgium if ever both Governments agree that double taxation of fringe benefits is occurring. (Article XI of the Second Protocol refers.)

11 All of the above obligations are reciprocal on both governments.

### **Economic, Social, Cultural and Environmental Effects**

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

### **Costs**

13 No costs are anticipated.

### **Future Protocols**

14 No future protocols are anticipated. As noted, however, the Second Protocol does create a contingent obligation for the two sides to enter into negotiations to resolve the problem of double taxation of fringe benefits (should the two sides ever agree that such double taxation is occurring). This may require the conclusion of an additional amendment to the Belgian DTA.

15 New Zealand would consider proposed amendments on a case by case basis and any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

### **Implementation**

16 Subject to the successful completion of the Parliamentary treaty examination process, the Second Protocol will be implemented domestically by means of an overriding Regulation.

17 Section BH 1(3) of the Income Tax Act 2007 authorises the making of an Order in Council to give the provisions of a DTA overriding effect in relation to the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993. This override is necessary to give effect to the terms of the DTA.

### **Consultation**

18 The Ministry of Foreign Affairs and Trade and the Treasury have been consulted and concur with the terms of the Second Protocol. No private sector consultation has been entered into.

### **Withdrawal or Denunciation**

19 Article XIV of the Second Protocol provides that it shall remain in force as long as the Belgian DTA and the First Protocol are applicable.

20 Either party may terminate the Belgian DTA by giving notice of termination, through diplomatic channels, on or before 30 June in any calendar year, in accordance with Article 29.

### **Adequacy statement**

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