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Mr Martin Jacobs
Manager
Tax Treaties Unit
International Tax and Treaties Division
The Treasury
Langton Crescent
PARKES ACT 2600

RE: AUSTRALIA'S TAX TREATY NEGOTIATION POLICY

Dear Mr Jacobs

ANZ is pleased to provide the following information for the Assistant Treasurer's consideration concerning Australia's future tax treaty negotiation program and policy.

ANZ operates in 31 countries worldwide, employing more than 30,000 people, with the majority of our operations in Australia and New Zealand. ANZ is the fifth largest Australian company, by market capitalisation, listed on the Australian Stock Exchange and is the largest bank and company in New Zealand. In 2007 we established a new Asia Pacific division to reflect the growing importance of the region to ANZ.

Australia's tax treaties provide real benefits to the conduct of our business including encouraging investment in foreign entities, growing our retail presence and facilitating trade for our business customers. Australia, in turn, benefits from the tax paid by ANZ and our customers that is derived from these activities.

The countries with which it may be desirable to negotiate or update a tax treaty

ANZ has a strong history of investing in the Asia Pacific region and the continued expansion in this area is a key plank in its ambition to become a "super regional bank" over the next five-plus years.



In light of these plans we see merit in including the Asia Pacific countries, particularly Indonesia, China, India, PNG and Taiwan, as part of the renegotiation process.

In particular, ANZ would like to see a reduction of source country dividend withholding tax with respect to our growing investments in the Asia Pacific region.

In relation to Taiwan, there are currently uncertainties as to whether interest received by the Central Bank of Taiwan from Australian investments would be free from interest withholding tax. ANZ is of the view it would be beneficial to clarify this position by renegotiating the existing tax treaty with Taiwan to make it clear that interest being derived by a bank performing central banking functions in the other country is exempt from withholding tax (refer to discussion below in relation to the current tax treaty policy).

Given ANZ's strong Asian growth strategy, ANZ would also be supportive of any plans to commence treaty negotiations with any countries in the region with which Australia currently does not have a tax treaty particularly Cambodia and Laos. The negotiations should be consistent with the approach adopted in recent negotiations outlined below.

The appropriateness of Australia's tax treaty policy and drafting approaches as reflected in recent treaties

ANZ generally supports Australia's recent tax treaty policy and drafting approach. Our key areas of interest in Australia's negotiation and/or renegotiation of tax treaties are the Dividend Article, Interest Article, and Alienation of Property (capital gains) Article.

ANZ supports the position adopted in the Australian Bankers' Association ("ABA") submission. The key points are:

(i) Dividend article

ANZ supports the approach adopted in Australia's recent treaty negotiation in relation to the dividend article. Broadly the trend has been for a 5% non-resident withholding tax ("NRWT") where the ownership interest is greater than or equal to 10%. When an investor holds at least 80% of the voting power in the company paying the dividend, and satisfies certain criteria, a zero rate applies. A general rate of 15% applies to all other dividends.



(ii) Interest article

ANZ also supports the approach being adopted in Australia's recent treaty negotiation in relation to the interest article. The trend has been to provide an exemption for interest derived by a "financial institution" which is unrelated. ANZ submits that the optimal position from a global capital market perspective is that no NRWT be charged on interest paid to Australian financial institutions (related or unrelated).

If an unrestricted exemption from withholding tax is not acceptable through the treaty negotiation process, ANZ would support an exemption from NRWT for interest derived by an unrelated financial institution.

Exemption for government and central banks

ANZ also supports the elimination of withholding tax on interest being derived by the Government, or a body exercising governmental functions, or a bank performing central banking functions in the other country.

Safeguards: back to back loans

ANZ is of the view that the drafting of the safeguards in respect of back to back loans could be improved by limiting the denial of the exemption to situations where there is a purpose of avoiding withholding tax. As explained in the ABA submission the current wording in the UK and US treaties potentially apply to normal business situations where the clear purpose is not to avoid tax.

(iii) Alienation of property article

ANZ also supports the approach being adopted in Australia's recent treaty negotiation in relation to the alienation of property article. Limiting the source country taxing rights to assets which have a physical connection with the relevant country is consistent with ANZ's Asian Pacific growth strategy.

Arbitration Procedure

ANZ would also support the inclusion of a binding arbitration procedure in any renegotiated treaties to potentially resolve tax disputes across two jurisdictions.

Australia's tax treaty with New Zealand

ANZ supports the ABA submission in relation to the renegotiation of the tax treaty with New Zealand. The key points raised in the submission are summarised below.



Interest withholding tax

ANZ supports a reduction in the interest withholding tax rate to 0% on interest paid to Australian and New Zealand resident financial institutions (related or unrelated). This would provide greater flexibility for Australia and New Zealand businesses to access funds from wider trans-Tasman sources.

Dividend withholding tax

ANZ would support the reduction in the dividend withholding tax rate to 0% on all dividend flows from both countries irrespective of the share ownership interest. However, if this were not possible, we would support Australia's current negotiating approach adopted in Australia's recent treaty negotiation in relation to the dividend article.

Mutual recognition of dividend imputation credits

ANZ also supports the ABA submission in relation to the need for mutual recognition of dividend imputation credits. While progress has been made by the Australian and New Zealand Governments in addressing the "triangular tax", this issue remains unresolved and has impeded capital and investment flows between the two countries.

Non-discrimination - skilled employees

ANZ believes it is important for the Australian and New Zealand Governments to continue to develop tax policies that facilitate the movement of talented and skilled foreign individuals to work in each country. Appropriate tax exemptions and concessions for foreign sourced income of temporary resident individuals and returning expatriates need to continue to be developed to enable Australian and New Zealand companies to access skilled labour in other countries.

ANZ would welcome an opportunity to discuss the key outcomes that could be sought in negotiating/renegotiating tax treaties with New Zealand and the countries we have listed. I can be contacted on (03) 9273 6395 should you wish to speak in greater technical detail with our taxation team.

Yours sincerely

Stephen Green
General Manager Taxation