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## **TAX TREATY NETWORK EXPANSION**

This submission is in response to the consultation launched by Treasury on 18 November 2022 inviting submissions to support the expansion of Australia's tax treaties network. The consultation follows the media release of 16 November 2022 *'Tax treaty network expansion'* issued by the Honourable Mr Andrew Leigh, Assistant Minister for Competition, Charities and Treasury. The media release announced that new tax treaty negotiations were planned with seven countries: Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia and Lithuania, with these countries being added to the current program which includes Portugal, Slovenia, Greece and Luxembourg. The media release also stated that the expansion of Australia's tax treaty network would increase coverage to over 80 per cent of foreign investment in Australia. Treasury's consultation invites submissions on the key outcomes Australia should seek in negotiating these tax treaties and any other issues related to Australia's tax treaty network.

Some of the matters upon which Treasury has now invited comment were covered in detail in my submission dated 31 October 2021 in response to the consultation launched by Treasury on 16 September 2021 following the then Treasurer's media release of 15 September 2021 *'Expanding Australia's tax treaty network to cover 80 per cent of foreign investment'*. That submission adopted an analytical approach with a view to identifying potential objective reference points by which Australia's tax treaty network could be evaluated and included a number of recommendations in relation to Australia's (future) tax treaty negotiation program. Developments over the past 12 months have not fundamentally changed the underlying analysis or the recommendations contained in my earlier submission. A copy of my submission dated 31 October 2021 is attached.

Of the seven new countries to be added to Australia's tax treaty negotiation program, Colombia is an OECD member and the remainder are members of the European Union (EU). Apart from considerations such as the desire for Australia to conclude a comprehensive free-

trade agreement with the EU<sup>1</sup>, which is supported, based on the analysis in my submission of 31 October 2021, there is no compelling economic reason to enter into new tax treaties with any of these countries in priority to renegotiating Australia's generally very old tax treaties with our major trading partners. This is because new tax treaties with these seven countries will collectively add less than 0.15% to foreign investment into Australia (based on 2020 data).

### **Background**

I have specialised in the area of international transfer pricing and the attribution of profits to permanent establishments for more than 25 years, first at the Australian Taxation Office (ATO), then as a director with KPMG and since October 2015 through Damian Preshaw Consulting Pty Ltd.

While at the ATO, I was an Australian delegate to the OECD's Committee on Fiscal Affairs' Working Party No.6 (Taxation of Multinational Enterprises) (WP6) and to WP6's Steering Group on Transfer Pricing from September 1994 to June 2003. During this time, I was actively involved in the development of the 1995 OECD Transfer Pricing Guidelines and with the development of the Authorised OECD Approach for the attribution of profits to permanent establishments (AOA) which is now reflected in the new Business Profits Article included in the OECD Model Tax Convention on Income and on Capital and associated Commentaries.

Yours sincerely,



Damian Preshaw

**Company Director**  
**Damian Preshaw Consulting Pty Ltd**

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<sup>1</sup> Australia-EU Leaders' meeting 2022: joint press release by Australian Prime Minister Anthony Albanese, European Council President Charles Michel and European Commission President Ursula von der Leyen, 16 November 2022, paragraph 25.

## **SUMMARY OF RECOMMENDATIONS**

**Recommendation #1:** The government's goal to ensure that Australia's tax treaty network will cover 80 per cent of foreign investment in Australia should be broadened to also ensure that Australia's tax treaty network will cover 80 per cent of Australian investment overseas.

**Recommendation #2:** The government explore options with the ABS to reduce the incidence of 'unspecified' country in the foreign investment into Australia and Australian investment overseas data it collects to something less than 5% of total investment in each case.

**Recommendation #3:** Australia's tax treaty negotiation program should give the highest priority to renegotiating Australia's tax treaties with the United States, China and the Netherlands.

**Recommendation #4:** Australia's tax treaty negotiation program should aim to update tax treaties with countries that are in the Top 20 countries for foreign investment into Australia or the Top 20 countries for Australian investment overseas as an ongoing priority with the objective of avoiding such tax treaties becoming older than 20 years.

**Recommendation #5:** Australia's tax treaty negotiation program should, as a priority, take necessary steps to honour the long outstanding MFN obligations contained in the tax treaties with Austria, Italy, Korea, Mexico, the Netherlands, Romania, Spain and Taiwan.

**Recommendation #6:** Australia's tax treaty negotiation program should take necessary steps to give effect to an MFN obligation within a reasonable period of time once the obligation has been triggered.

**Recommendation #7:** Treasury should produce and keep updated a list of tax treaties that Australia has entered into which contain an MFN provision that was included at the request of a treaty partner country.

**Recommendation #8:** Where Australia enters into a tax treaty that contains an MFN provision that was included at Australia's request, Australia's tax treaty negotiation program should prioritise taking necessary steps to enable Australian businesses to obtain the expected benefits of the MFN obligation as quickly as possible once the obligation has been triggered.

**Recommendation #9:** Treasury produce and keep updated a list of tax treaties that Australia has entered into which contain an MFN provision that was included at Australia's request.

**Recommendation #10: Australia's tax treaty negotiation program should consider renegotiating the tax treaties with the countries shown in Table 4 (Germany, Israel and perhaps the United States aside) with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

**Recommendation #11: Australia's tax treaty negotiation program should consider renegotiating the tax treaties with the countries shown in Table 5 with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

**Recommendation #12: Australia's tax treaty negotiation program should consider renegotiating Australia's tax treaties with countries where the modifications made to the relevant tax treaty by the MLI have not substantially adopted Australia's position. In doing so, priority should be given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

## SUBMISSION

“Countries entering into tax treaty negotiations need a good understanding of why they are doing so, and the benefits and costs that arise from having tax treaties.”<sup>2</sup>

Ariane Pickering<sup>3</sup>

As noted by Ms Pickering in her article, there are a variety of reasons why a country may decide to enter into tax treaty negotiations with another country, not all of which might be reduced to considerations relating to increasing two-way investment. For example, previous Australian governments have said that such considerations may include strengthening Australia’s relationship with a particular country.<sup>4</sup> This submission does not consider such matters.

Further, a tax treaty is a negotiated outcome between two countries which necessarily will have regard to the domestic tax laws of the respective countries. The outcome agreed may also reflect the respective bargaining positions of the two countries. It is not possible to take such matters into account in this submission.

This submission is structured around the following four topics:

- The level of foreign investment into Australia and Australian investment overseas;
- Age analysis of Australia’s tax treaties;
- Most-favoured-nation obligations in Australia’s existing tax treaties; and
- Recent international tax developments.

## THE LEVEL OF FOREIGN INVESTMENT INTO AUSTRALIA AND AUSTRALIAN INVESTMENT OVERSEAS

### Introduction

The government’s plan, announced on 15 September 2021, is to expand Australia’s tax treaty network to ensure it will cover 80 per cent of foreign investment in Australia and about \$6.3 trillion of Australia’s two-way trade and investment. The government’s announcement provides further detail in relation to the October 2020 and May 2021 Budget announcements that the government:

- Intended to modernise and expand Australia’s tax treaty network by, amongst other things, “[prioritising] refurbishing Australia’s treaties with key strategic partners where necessary to maximise the benefits for Australia’s economy”;<sup>5</sup> and

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<sup>2</sup> *Why Negotiate Tax Treaties*, Papers on Selected Topics in Negotiation of Tax Treaties for Developing Countries, Paper No. 1-N, Ariane Pickering, May 2013.

<sup>3</sup> Former Australian Chief Tax Treaty Negotiator at Treasury and the ATO.

<sup>4</sup> *Review of International Taxation Arrangements*, the Honourable Peter Costello, Treasurer, media release dated 13 May 2003, Attachment E.

<sup>5</sup> *Lower Taxes: Supporting households, driving investment and creating jobs*, Budget 2020-21, p13.

- Is committing \$11.6 million towards delivering a significant expansion of Australia’s bilateral tax treaty network with the aim of “[reducing] the tax burden on cross-border operations for businesses and provide them with greater tax certainty”.<sup>6</sup>

In light of the government’s plan to ensure that Australia’s tax treaty network will cover 80 per cent of foreign investment in Australia, this section analyses the level of foreign investment in Australia, the level of Australian investment overseas and also whether such investment is covered by Australia’s tax treaty network.

### **Analysis of foreign investment into Australia and Australian investment overseas**

For purposes of analysing foreign investment into Australia and Australian investment overseas, Australian Bureau of Statistics (ABS) data, in particular, ABS CAT No. 5352.0 has been used. This is the same source of data used by (i) the Department of Foreign Affairs and Trade (DFAT) in its annual publication *International Investment Australia*;<sup>7</sup> (ii) the Productivity Commission in its recent June 2020 Research Paper ‘*Foreign Investment in Australia*’; and (iii) Treasury in the past.<sup>8</sup>

#### **Top 40 countries for foreign investment in Australia**

Appendix A provides details of the Top 40 countries for foreign investment in Australia based on the most recent available data from the ABS (May 2021).<sup>9</sup> Appendix A also identifies whether Australia has entered into a tax treaty with each jurisdiction.

The following observations are made in relation to the information included in Appendix A:

- The Top 3 countries (United States, United Kingdom and Belgium) represent over half of total foreign investment in Australia. Australia has tax treaties with all three countries;
- The Top 10 countries represent just under three quarters of total foreign investment into Australia (73.4%) of which 67.3% is covered by tax treaties;
- Out of the Top 10 countries, there are only two where Australia does not have a tax treaty (Hong Kong and Luxembourg). These countries represent a combined 6.1% of total foreign investment in Australia;
- The Top 40 countries represent 86.3% of total foreign investment in Australia of which 76.9% is covered by tax treaties;
- Of the Top 40 countries, the proportion of total foreign investment in Australia from countries historically regarded as tax havens (Bermuda, British Virgin Islands, Cayman Islands and Jersey) is 2.3% of total foreign investment in Australia; and
- Of the Top 40 countries, the proportion of total foreign investment in Australia from oil producing countries in the Middle East (United Arab Emirates, Kuwait and Saudi Arabia) is 0.6% of total foreign investment in Australia.

<sup>6</sup> ‘Securing Australia’s Recovery - Building a more secure and resilient Australia’, Budget 2021-22, p12.

<sup>7</sup> *International Investment Australia 2019*, DFAT, October 2020.

<sup>8</sup> For example, ‘*Foreign Investment into Australia*’, Treasury Working Paper, 2016-01.

<sup>9</sup> <https://www.dfat.gov.au/trade/resources/investment-statistics/statistics-on-who-invests-in-australia>

### ***Top 40 countries where Australia invests***

Appendix B provides details of the Top 40 countries where Australia invests based on the most recent available data from the ABS (May 2021).<sup>10</sup> Appendix B also identifies whether Australia has entered into a tax treaty with each jurisdiction.

The following observations are made in relation to the information included in Appendix B:

- The Top 3 countries (United States, United Kingdom and New Zealand) represent over half of total Australian investment overseas. Australia has tax treaties with all three countries;
- The Top 10 countries represent just over 70% of total Australian investment overseas of which 66.6% is covered by tax treaties;
- The Top 40 countries represent 86.1% of total Australian investment overseas of which 77.8% is covered by tax treaties);
- Out of the Top 10 countries, there are only two where Australia does not currently have a tax treaty (Cayman Islands and Hong Kong) representing a combined 5.2% of total Australian investment overseas; and
- Of the Top 40 countries, the proportion of total Australian investment into countries historically regarded as tax havens (Cayman Islands, Bermuda and Jersey) is 4.3% of total Australian investment overseas.

The information in Appendices A and B and the summary of that analysis reflected in the observations above underpins much of the analysis in this submission.

### **Australian investment overseas has changed substantially over the past 20 years**

The level of Australian investment overseas as well as the diversity of that investment has changed substantially over the past 20 years. The following sections explore these changes in more detail.

### ***Australian investment overseas has significantly increased over the past 20 years***

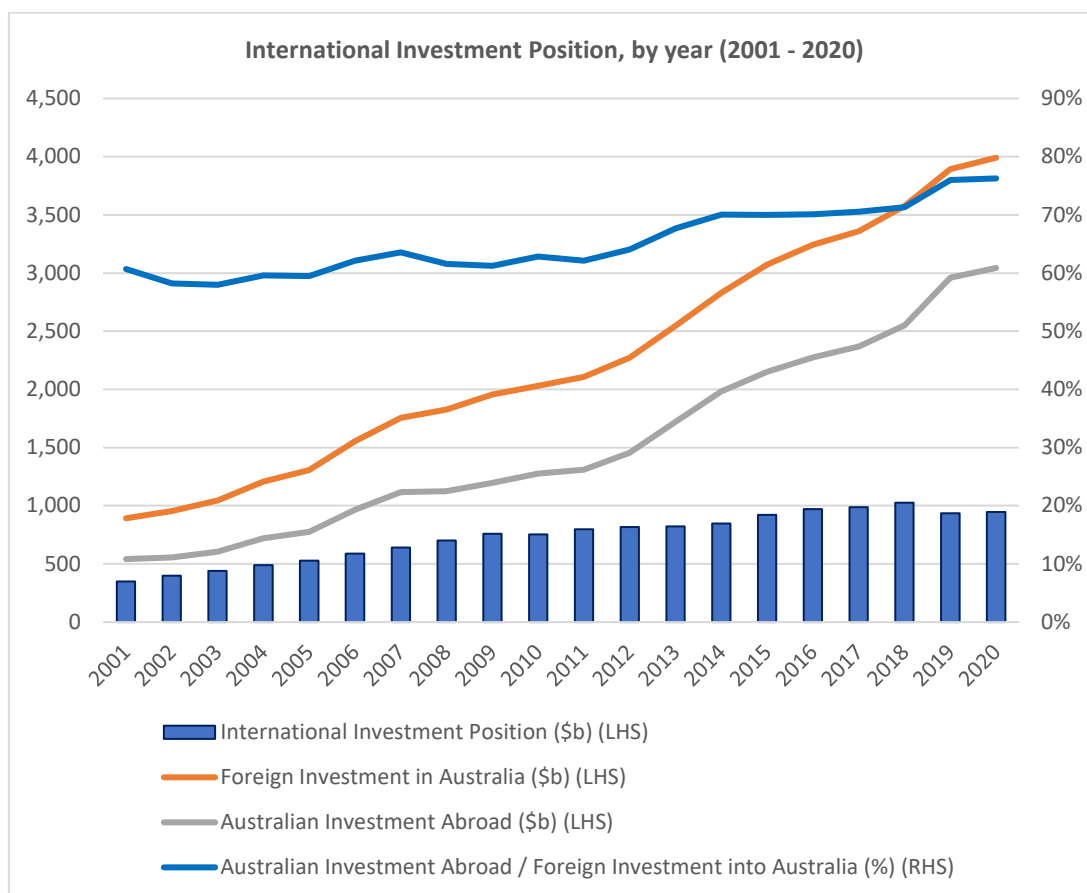
The level of Australian investment overseas as a percentage of foreign investment in Australia has significantly increased over the past 40 years from around 10-20% in the first half of the 1980s<sup>11</sup> to around 60% in 2001 to over 75% in 2020. This increase is shown by the blue line in Figure 1 for the period from 2001 to 2020.

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<sup>10</sup> <https://www.dfat.gov.au/trade/resources/investment-statistics/statistics-on-where-australia-invests>

<sup>11</sup> *Review of Business Taxation*, July 1999 (Ralph Review), Recommendation 22.24 (Review of DTA Policy).

**Figure 1: Australia’s international investment position – 2001 - 2020**



Source: ABS Cat No. 5352.0.

Amongst other things, this evidence provides support for the calls that have been made over the past 20 years or so for Australia to progressively adopt a more residence-based tax treaty policy. These calls have been acknowledged by previous Australian governments<sup>12</sup> and some steps taken in this direction.

**Australian investment overseas has become far more diverse over the past 20 years**

Over the past 20 years, Australian investment overseas has become far more diverse. In this respect, and for purposes of comparison, reference is made to the following table included in Treasury’s *Review of International Taxation Arrangements (RITA)* Consultation Paper, August 2002.

<sup>12</sup> *Review of International Taxation Arrangements*, the Honourable Peter Costello, Treasurer, media release dated 13 May 2003, Attachment E; Attachment to ‘Australia’s Tax Treaties - Industry’s Message to Government’, Treasury Ministers, Assistant Treasurer Chris Bowen, Media Release, 26 June 2008.



Table 2.3: Australian direct investment offshore by destination, 2000-01

Country	Percentage of total	Country list
United States	54.7	Broad exemption listed
United Kingdom	17.4	Broad exemption listed
New Zealand	7.2	Broad exemption listed
Hong Kong (SAR of China)	3.0	Unlisted
Asia not elsewhere stated	2.3	Mix of limited exemption listed and unlisted
Singapore	1.8	Limited exemption listed
Canada	1.4	Broad exemption listed
America not elsewhere stated	1.0	Mix of limited exemption listed and unlisted
Other	11.2	Mixed
<b>Total</b>	<b>100.0</b>	

Source: ABS Cat. No. 5352.0.

In relation to Australian direct investment overseas in 2000-01, the ABS data indicated that:

- The Top 3 countries were the United States, United Kingdom and New Zealand (ie the same three countries as in 2020), and represented nearly 80% of total Australian direct investment overseas.

By way of comparison, in 2020 the level of Australian investment in these countries was 52.7% of total Australian investment overseas;

- The Top 6 identified countries represented just over 85% of total Australian direct investment overseas (of which 80.2% was covered by tax treaties).

By way of comparison, in 2020, the level of Australian investment in these countries was 62.4% of total Australian investment overseas (of which 59.5% was covered by tax treaties);

- Out of the Top 6 identified countries, there was only one that Australia did not have a tax treaty with (Hong Kong) representing 3.0% of total Australian direct investment overseas.

While the United States, United Kingdom and New Zealand continue to be the Top 3 destinations for Australian investment overseas, it is evident that Australian businesses have greatly diversified where they invest overseas over the past 20 years.

This change in behaviour of Australian businesses should be taken into account in Australia's tax treaty policy/practice and provides additional support to the calls for Australia to progressively adopt a more residence-based tax treaty policy.

**Recommendation #1: The government's goal to ensure that Australia's tax treaty network will cover 80 per cent of foreign investment in Australia should be broadened to also ensure that Australia's tax treaty network will cover 80 per cent of Australian investment overseas.**

### Portfolio investment v direct investment

While this submission has not analysed in detail the various components of foreign investment into Australia and Australian investment overseas nor how those components have changed over time, Figure 2 provides a summary of these components for 2020. In particular, Figure 2 shows that the level of portfolio investment into Australia and portfolio investment by Australian businesses overseas significantly exceeded the level of direct investment in each case.

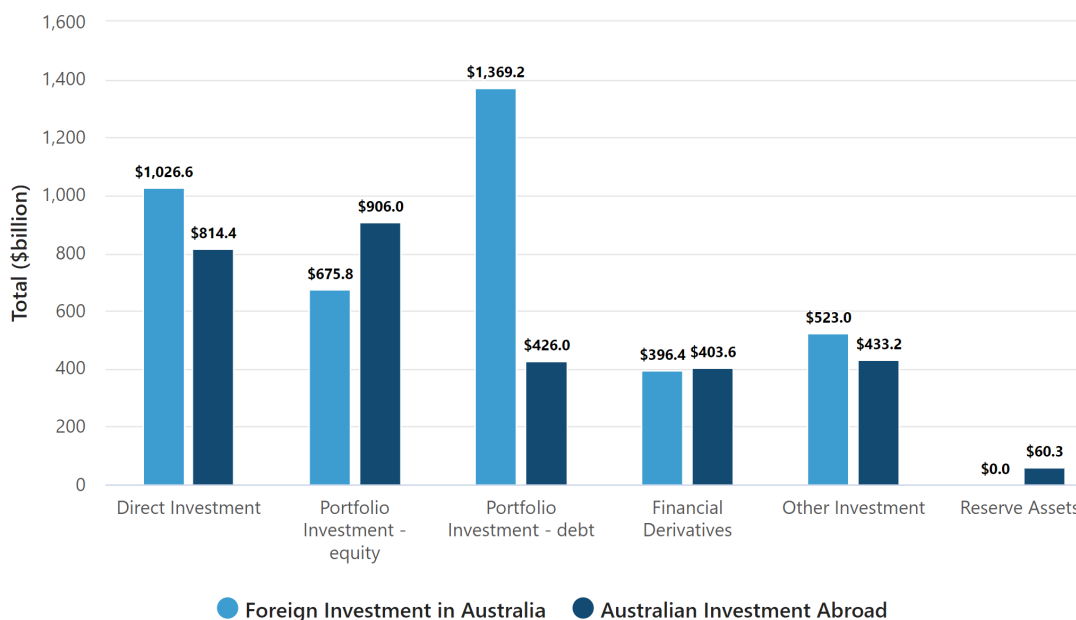
The distinction between direct investment and portfolio investment has recently been explained by the Productivity Commission in the following terms:<sup>13</sup>

“Foreign *direct* investment (FDI) is the portion of these holdings that is accompanied by a degree of foreign *control*, defined as an investor with at least a 10 per cent voting share over major company decisions. This is distinguished from portfolio investment, where the owner is a common creditor or shareholder that cannot make decisions, or directly influence decisions taken by the business.”

Previous governments have drawn attention to the distinction between direct investment and portfolio investment in the context of Australia’s tax treaties with the aim of reducing foreign dividend withholding taxes on non-portfolio investment.<sup>14</sup>

**Figure 2: Components of foreign direct investment into Australia and Australian investment overseas**

Level of investment, by components, 31 December 2020



Source: <https://www.abs.gov.au/statistics/economy/international-trade/international-investment-position-australia-supplementary-statistics/2020#data-download>

<sup>13</sup> ‘Foreign Investment in Australia’, Productivity Commission, Research Paper, June 2020, p3.

<sup>14</sup> *The New Business Tax System: Stage 2 Response*, Treasury Ministers, Treasurer, Peter Costello, media release, 11 November 1999, Attachment G.

Analysis of the ABS data for 2020 shows that more than 90% of the foreign investment from Belgium, the No.3 country for foreign investment into Australia, related to portfolio investment and that approximately 90% the foreign investment from Luxembourg, the No.7 country in terms of foreign investment into Australia, related to portfolio investment. Luxembourg is one of the countries the government has announced that Australia will have negotiations with in 2021 with a view to entering into a tax treaty.

The significant levels of portfolio investment relative to direct investment in relation to Australia's dealings with countries such as Belgium and Luxembourg raises questions as to whether Australia's tax treaty policy settings should be different in such cases and also whether changes to domestic tax policy settings should also be made.

### ***Limitations inherent in the ABS data***

While the ABS data is the best available in relation to where foreign investment into Australia comes from<sup>15</sup> and is based on the International Monetary Fund's *Balance of Payments and International Investment Position Manual, Sixth Edition (BPM6)*,<sup>16</sup> the following points should be noted.

#### *The ABS data does not show the country of the ultimate beneficial owner*

First, as Treasury has noted elsewhere, the ABS data is only collected on a first investing country (**FIG**) basis. As a result, the ABS data does not indicate whether foreign investment in Australia is from the country of the ultimate beneficial owner or from a 'third party' country.<sup>17</sup>

While 'third party' country investing may be indicated or inferred from investment via tax havens,<sup>18</sup> Appendix A shows that the proportion of total foreign investment in Australia from countries historically regarded as tax havens in the Top 40 countries in 2020 was not overly large, being 2.3% of total foreign investment in Australia. It is not, however, possible to identify or infer 'third party' country investing from tax treaty countries that are not tax havens.

Limitations in the ABS data not being able to identify ultimate owners was recently considered by the Joint Standing Committee on Trade and Investment Growth (**Committee**) in its February 2021 report '*Pivot: Diversifying Australia's Trade and Investment Profile*'.<sup>19</sup> Recommendation 17 of the Committee's report recommended that the government consider implementing the international standards for measuring foreign direct investment, to ensure both the 'immediate' and 'ultimate' owners of an investment are recorded. In its response to the Committee's report, the government agreed in principle with Recommendation 17 and said it would explore options with the ABS to produce statistics on actual foreign direct investment

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<sup>15</sup> '*Foreign investment in Australia*', Treasury Working Paper, January 2016, p6.

<sup>16</sup> Ibid.

<sup>17</sup> Further detail about this issue is discussed in Appendix B (Would the ultimate beneficial owner please stand up? A China-Australia case study) of '*Foreign Investment in Australia*', Productivity Commission, Research Paper, June 2020.

<sup>18</sup> '*Foreign investment in Australia*', Treasury Working Paper, January 2016, p6.

<sup>19</sup> Paragraph 4.96.

by the ultimate owner country on a Balance of Payments basis.<sup>20</sup> The government's desire to enhance the quality of the ABS data so that it captures foreign direct investment by the ultimate owner country is supported.

*Over 10% of foreign investment in Australia is from unspecified countries*

Second, Appendix A shows that 10.7% of total foreign investment in Australia in 2020 was from unspecified countries. Similarly, the ABS data in Appendix B in relation to Australian investment overseas in 2020 shows that 10.8% of Australian investment overseas was to unspecified countries. In each case, if 'unspecified' was a country, it would be the No.3 country for foreign investment into Australia and for Australian investment overseas.

The government's goal of expanding Australia's tax treaty network to ensure it covers 80% of foreign investment in Australia would be facilitated and also more objectively gauged if the ABS was asked to take necessary and appropriate steps to reduce the incidence of 'unspecified' country in the foreign investment data it collects, for example, to something less than 5% of total foreign investment.

**Recommendation #2: The government explore options with the ABS to reduce the incidence of 'unspecified' country in the foreign investment into Australia and Australian investment overseas data it collects to something less than 5% of total investment in each case.**

**Observations on the government's plan for Australia to enter into 10 new and updated tax treaties by 2023**

The plan identified to enable the government to achieve the goal announced on 15 September 2021 is for Australia to enter into 10 new and updated tax treaties by 2023, building on Australia's existing network of 45 bilateral tax treaties. In this respect, the government announced that negotiations with India, Luxembourg and Iceland are occurring in 2021 as part of the first phase of the program and that negotiations with Greece, Portugal and Slovenia are scheduled to occur in 2022 as part of the second phase.

Notwithstanding that negotiations have commenced or are scheduled to commence in the near future with these six countries, closer examination of this group of six countries in light of the analysis of foreign investment into Australia and Australian investment overseas in the preceding section is revealing.

***New tax treaties with Iceland, Greece, Portugal and Slovenia will make no meaningful contribution towards achieving the government's goal***

New tax treaties with Iceland, Greece, Portugal and Slovenia will make no meaningful contribution towards achieving the government's goal at the present time or into the foreseeable future. This is because, none of these countries are currently in the Top 40 countries for foreign investment in Australia (or Top 40 countries for Australian investment overseas). Based on ABS data for 2020 as shown in Appendix A, the aggregate contribution of

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<sup>20</sup> Australian Government response to the Joint Standing Committee on Trade and Investment Growth report: 'Pivot: Diversifying Australia's Trade and Investment Profile', July 2021, p24.

these four countries towards achieving the government's goal would be less than 0.1% of total foreign investment in Australia.

Notwithstanding this outcome, it is nevertheless acknowledged, as mentioned at the beginning of this submission, that there are a variety of reasons why a country may decide to enter into a tax treaty with another country, not all of which might be reduced to considerations relating to increasing two-way investment. However, the reasons for Australia seeking to enter into tax treaties with these four countries in priority to other countries or in priority to renegotiating existing tax treaties has not been explained by the government.

***A new tax treaty with Luxembourg would make a meaningful contribution to achieving the government's goal***

By contrast, a new tax treaty with Luxembourg would make a meaningful contribution to achieving the government's goal. Based on ABS data for 2020 as shown in Appendix A, Luxembourg was the No.7 country in terms of foreign investment into Australia (representing 2.6% of total foreign investment in Australia) and also the No.17 country in terms of Australian investment overseas (representing 0.6% of total Australian investment overseas).

The only other jurisdiction that would have a similarly large impact on achieving the government's goal would be if Australia were to conclude a tax treaty with Hong Kong (which represented 3.5% of foreign investment into Australia and 2.3% of Australian investment overseas in 2020).

***An updated tax treaty with India***

As India is an existing tax treaty country, renegotiating the tax treaty with India would not lead to an immediate increase in the level of foreign investment covered by tax treaties but is likely to facilitate one of the government's related goals of reducing the tax burden on cross-border operations for businesses and by providing them with greater tax certainty.

It is also worth noting that based on ABS data for 2020, India was the No.21 country for both foreign investment into Australia and also Australian investment overseas.

In relation to the forthcoming negotiations, it is to be hoped that the uncertainty arising out of the Full Federal Court's decision in *Satyam Computer Services Limited v Commissioner of Taxation* [2018] FCAFC 172 will be addressed in a mutually satisfactory way between the Australian and Indian governments and in a way that is simple for businesses to understand and apply.

**AGE ANALYSIS OF AUSTRALIA'S TAX TREATIES**

Appendix C provides an age analysis of Australia's tax treaties based on the information shown on Treasury's Income Tax Treaties web page.<sup>21</sup> Appendix C uses the date of signing of the tax treaty or the date of signing of the most recent protocol to the tax treaty as the indicative age of the tax treaty.






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<sup>21</sup> <https://treasury.gov.au/tax-treaties/income-tax-treaties>

Tables 1 and 2 below present a summary of the age of Australia’s tax treaties and also compare the age of Australia’s tax treaties with the level of foreign investment in Australia (from Appendix A) and the level of Australian investment into a particular jurisdiction (from Appendix B).






**Table 1: Age analysis of Australia’s tax treaties having regard to level of foreign investment in Australia**

Foreign investment in Australia

Age analysis of tax treaties (as at 1 Oct 2021)	All tax treaties	In Top 3 countries	In Top 10 countries	In Top 20 countries
 Less than 10 years old	4			2
 Between 10 and 20 years old	14	2	5	9
 Between 20 and 30 years old	10	1	1 (United States)	1 (United States)
 Between 30 and 40 years old	14		2 (Netherlands & China)	4 (Netherlands, China, Ireland & Korea)
 More than 40 years old	3			
	<u>45</u>	<u>3</u>	<u>8</u>	<u>16</u>

**Table 2: Age analysis of Australia’s tax treaties having regard to level of Australian investment overseas**

Australian investment overseas

Age analysis of tax treaties (as at 1 Oct 2021)	All tax treaties	In Top 3 countries	In Top 10 countries	In Top 20 countries
 Less than 10 years old	4		1	2
 Between 10 and 20 years old	14	2	5	6
 Between 20 and 30 years old	10	1	1 (United States)	2 (United States & Taiwan)
 Between 30 and 40 years old	14		1 (China)	5 (China, Netherlands, Ireland, Korea & PNG)
 More than 40 years old	3			
	<u>45</u>	<u>3</u>	<u>8</u>	<u>15</u>

**Observations on age analysis of Australian tax treaties and level of investment into and out of Australia**

The following observations are provided in relation to the information presented in Tables 1 and 2:

- Australia’s tax treaty with the United States, the No.1 Country for foreign investment in Australia and the No.1 Country for Australian investment overseas is between 20 and 30 years old;
- 60% of Australia’s tax treaties are more than 20 years old;
- Over one third of Australia’s tax treaties are more than 30 years old;

- Australia's tax treaties with China and the Netherlands are between 30 and 40 years old notwithstanding that both countries are in the Top 10 countries for foreign investment in Australia and the Top 20 countries for Australian investment overseas; and
- Australia's tax treaties with Ireland and Korea are between 30 and 40 years old notwithstanding that both countries are in the Top 20 countries for foreign investment in Australia and the Top 20 countries for Australian investment overseas.

It should also be noted that Australia's 3 oldest tax treaties, with Sweden, Denmark and the Philippines are all more than 40 years old and all three countries are in the Top 40 countries for foreign investment in Australia and also the Top 40 countries for Australian investment overseas. However, the aggregate level of foreign investment in Australia from these three countries and the aggregate level of Australian investment in these three countries in 2020 was less than 1.0% of the respective total investment in each case.

#### **Australia's tax treaty negotiation program should prioritise renegotiating aging tax treaties with Australia's key strategic partners**

The government's October 2020 Budget announcement said that the government intended to modernise and expand Australia's tax treaty network by, amongst other things, "[prioritising] refurbishing Australia's treaties with key strategic partners where necessary to maximise the benefits for Australia's economy". However, the budget announcement did not define or otherwise set out criteria by which countries might be determined to be 'key strategic partners'. No doubt this was intended as not doing so provides flexibility to the government in relation to determining such matters.

Nevertheless, objective data is available, such as the level of foreign investment into Australia and the level of Australian investment overseas that could be taken into account by the government to assist it in deciding which countries should be viewed as key strategic partners.

#### ***Determining which countries should be viewed as 'key strategic partners'***

Based on current levels of foreign investment in Australia and Australian investment overseas as shown in ABS data in Appendices A and B, it would seem reasonable to regard countries in the Top 20 countries for foreign investment in Australia or the Top 20 countries for Australian investment overseas, as 'key strategic partners' as these countries represent in aggregate over 80% of foreign investment in Australia and also 80% of Australian investment overseas.

Significantly, resort to such a criterion would also closely align with the government's plan of ensuring that Australia's tax treaty network will cover 80 per cent of foreign investment in Australia and also maximise the potential for Australian businesses to take advantage of the opportunities that will emerge in the coming years.

Further, there is considerable overlap between the Top 20 countries for foreign investment in Australia and the Top 20 countries for Australian investment overseas which would keep the total number of countries and therefore tax treaties to prioritise to a manageable level.

Alternatively, a narrower approach could be taken which would regard countries in the Top 10 countries for foreign investment in Australia or the Top 10 countries for Australian investment

overseas, as ‘key strategic partners’. Such countries represent in aggregate around 70% of foreign investment in Australia and also Australian investment overseas. Again, there is considerable overlap between the countries which would keep the total number of countries and therefore tax treaties to an even more manageable level.

### ***Prioritising renegotiating aging tax treaties with key strategic partners***

Prioritising renegotiating aging tax treaties with key strategic partners is not a new idea as past Australian governments have expressed similar desires,<sup>22</sup> however, it is an objective worth pursuing on an ongoing basis by all Australian governments. Having regard to the above and to the observations provided in relation to Tables 1 and 2, the following recommendations are made.

**Recommendation #3: Australia’s tax treaty negotiation program should give the highest priority to renegotiating Australia’s tax treaties with the United States, China and the Netherlands.**

**Recommendation #4: Australia’s tax treaty negotiation program should aim to update tax treaties with countries that are in the Top 20 countries for foreign investment into Australia or the Top 20 countries for Australian investment overseas as an ongoing priority with the objective of avoiding such tax treaties becoming older than 20 years.**

## **MOST FAVOURED NATION OBLIGATIONS IN AUSTRALIA’S EXISTING TAX TREATIES**

Australia’s tax treaties sometimes include a most-favoured nation (MFN) provision. MFN provisions require a country to enter into negotiations with a view to providing similar treatment to its treaty partner if it subsequently agrees with a third country to a certain specified tax treatment.<sup>23</sup>

This section considers Australia’s tax treaties that contain an MFN provision that was included at the request of the treaty partner country and also Australia’s tax treaties that contain an MFN provision that was included at Australia’s request.

### **Tax treaties that contain an MFN provision included at the request of the treaty partner country**

The reduction in withholding tax rates agreed to by Australia in the Protocol to the tax treaty with the United States (which entered into force on 13 May 2003) triggered MFN obligations for Australia in eight tax treaties (with the Netherlands, France, Switzerland, Italy, Norway, Finland, Austria and Korea).<sup>24</sup>

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<sup>22</sup> *The New Business Tax System: Stage 2 Response*, Treasury Ministers, Treasurer, Peter Costello, media release, 11 November 1999, Attachment G.

<sup>23</sup> Explanatory Memorandum to International Tax Agreements Amendment Bill (No. 2) 2007, para 2.6, footnote 1.

<sup>24</sup> *Public to have a Say on Australian Tax Treaty Negotiations*, Treasury Ministers, Senator Helen Coonan, 6 November 2003; Explanatory Memorandum to International Tax Agreements Amendment Bill (No.1) 2002, page 9.



Similarly, Australia’s agreement to include a non-discrimination article in its tax treaty with the United Kingdom (which entered into force on 17 December 2003) triggered MFN obligations for Australia in eight tax treaties (with Finland, France, Korea, Mexico Romania, Spain, South Africa and Taiwan).<sup>25</sup>

On occasions, past governments have provided certain details about Australia’s outstanding MFN obligations, for example, in the media releases dated 6 November 2003 from Senator Helen Coonan, Minister for Revenue and Assistant Treasurer<sup>26</sup> and 26 June 2008 from the Honourable Chris Bowen, Assistant Treasurer.<sup>27</sup>

More recently, in a response to a Question on Notice in a Senate Estimates hearing, Treasury stated that currently nine of Australia’s tax treaties had outstanding MFN obligations (Australia’s tax treaties with Austria, Italy, Korea, Mexico, the Netherlands, New Zealand, Romania, Spain and Taiwan).<sup>28</sup>

Having regard to the above information, Table 3 sets out Australia’s outstanding MFN obligations over time by country.

**Table 3: Outstanding MFN obligations in Australia’s tax treaties over time**

As at date of 6 November 2003 media release	As at date of 26 June 2008 media release	As at date of Treasury’s response to QoN - 27 October 2020	Has tax treaty been renegotiated (or a protocol signed) or is MFN obligation still outstanding?
<b>Austria</b>	<b>Austria</b>	<b>Austria</b>	<b>Outstanding</b>
Finland			Tax treaty renegotiated
France	France		Tax treaty renegotiated
<b>Italy</b>	<b>Italy</b>	<b>Italy</b>	<b>Outstanding</b>
<b>Korea</b>	<b>Korea</b>	<b>Korea</b>	<b>Outstanding</b>
	<b>Mexico</b>	<b>Mexico</b>	<b>Outstanding</b>
<b>Netherlands</b>	<b>Netherlands</b>	<b>Netherlands</b>	<b>Outstanding</b>
		New Zealand <sup>29</sup>	Outstanding
Norway			Tax treaty renegotiated

<sup>25</sup> Treasury’s *Review of International Taxation Arrangements* Consultation Paper, August 2002, p41, although Australia’s tax treaties with Mexico and Romania were omitted.

<sup>26</sup> *Public to have a Say on Australian Tax Treaty Negotiations*, Treasury Ministers, Senator Helen Coonan, 6 November 2003; Explanatory Memorandum to International Tax Agreements Amendment Bill (No.1) 2002, page 9.

<sup>27</sup> Attachment to ‘*Australia’s Tax Treaties - Industry’s Message to Government*’, Treasury Ministers, Assistant Treasurer Chris Bowen, Media Release, 26 June 2008.

<sup>28</sup> Treasury’s response to Senator Eric Abetz’s (A0070\_Economics\_Budgetestimates\_Treasury - QoN – 27 Oct 2020).

<sup>29</sup> Includes an MFN obligation in Article 29(2) at Australia’s request where New Zealand provides more favourable treatment of interest derived by financial institutions.

	Romania	Romania	Outstanding
	Spain	Spain	Outstanding
Switzerland	Switzerland		Tax treaty renegotiated
	<i>Taiwan (was not mentioned)</i>	Taiwan	Outstanding
8	9 <i>(10 if include Taiwan)</i>	9	

The following observations are provided in relation to the information presented in Table 3:

- Australia has MFN obligations under its tax treaties with eight countries that have been outstanding for a very long time:
  - MFN obligations arose under Australia’s tax treaties with Austria, Italy, Korea and the Netherlands as a result of the Protocol with the United States entering into force and appear to have remained outstanding for more than 18 years;
  - MFN obligations arose under Australia’s tax treaties with Korea, Mexico Romania, Spain, and Taiwan as a result of Australia’s most recent tax treaty with the United Kingdom entering into force and appear to have remained outstanding for almost 18 years;
- Australia would appear to have had an outstanding MFN obligation with the Netherlands, one of Australia’s Top 10 countries for inbound investment and Top 20 countries for outbound investment, for more than 18 years; and
- Australia would appear to have had outstanding MFN obligations with Korea, one of Australia’s Top 20 countries for both inbound investment and outbound investment, in relation to reducing withholding tax rates for more than 18 years and the inclusion of a non-discrimination article for almost 18 years.

Without wishing to get into the technical nuances of what the obligation arising in a particular MFN provision means, whichever way the information in Table 3 is looked at, it does not seem consistent with a commitment given to another country by Australia that has been reflected in a tax treaty that such a commitment can remain outstanding for nearly 20 years.

**Recommendation #5: Australia’s tax treaty negotiation program should, as a priority, take necessary steps to honour the long outstanding MFN obligations contained in the tax treaties with Austria, Italy, Korea, Mexico, the Netherlands, Romania, Spain and Taiwan.**

**Recommendation #6: Australia’s tax treaty negotiation program should take necessary steps to give effect to an MFN obligation within a reasonable period of time once the obligation has been triggered.**

**Recommendation #7: Treasury should produce and keep updated a list of tax treaties that Australia has entered into which contain an MFN provision that was included at the request of a treaty partner country.**

### **Tax treaties that contain an MFN provision that was included at Australia's request**

A number of Australia's tax treaties include MFN provisions that were included at Australia's request, for example, the tax treaties with Argentina<sup>30</sup>, Chile,<sup>31</sup> Korea,<sup>32</sup> New Zealand,<sup>33</sup> and South Africa.<sup>34</sup>

As Australian businesses increase their overseas investment and also increasingly diversify the countries in which they invest, Australia's tax treaty negotiation program should monitor developments in countries where the tax treaty includes an MFN provision that was included at Australia's request and then take necessary steps to enable Australian businesses to obtain the expected benefits as quickly as possible once an MFN provision has been triggered.

**Recommendation #8: Where Australia enters into a tax treaty that contains an MFN provision that was included at Australia's request, Australia's tax treaty negotiation program should prioritise taking necessary steps to enable Australian businesses to obtain the expected benefits of the MFN obligation as quickly as possible once the obligation has been triggered.**

**Recommendation #9: Treasury should produce and keep updated a list of tax treaties that Australia has entered into which contain an MFN provision that was included at Australia's request.**

### **RECENT INTERNATIONAL TAX DEVELOPMENTS**

Australia's tax treaty negotiation program needs to keep pace with international tax developments otherwise the anticipated benefits associated with such developments will either be delayed or foregone.

The most significant international tax development that has occurred and been implemented in recent years has been the outcomes associated with the OECD/G20 *Base Erosion and Profits Shifting (BEPS)* project. That is not to diminish the potential impact of the OECD/G20 Finance Ministers and Central Bank Governors endorsement of the final political agreement set out in the *Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy and in the Detailed Implementation Plan*, released by the OECD/G20 Inclusive Framework on BEPS on 8 October 2021 (**Two-Pillar Solution**), however, the Two-Pillar Solution has not yet been implemented.

One of the key outcomes of the OECD/G20 BEPS project was the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*

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<sup>30</sup> Item 5 of the Protocol.

<sup>31</sup> Items 5, 6 and 7 of the Protocol.

<sup>32</sup> Item 5 of the Protocol.

<sup>33</sup> Article 29(2).

<sup>34</sup> Item 2 of the 1<sup>st</sup> Protocol.

**(Multilateral Instrument or MLI)** which is a multilateral treaty that enables jurisdictions to swiftly modify the operation of their tax treaties to implement measures designed to better address multinational tax avoidance and more effectively resolve tax disputes. The MLI entered into force for Australia on 1 January 2019.

Australia’s ability to obtain the full anticipated benefits associated with the MLI is dependent upon the approach or position taken by Australia’s tax treaty partners. This section considers this matter in relation to the following:

- Tax treaties not modified by the MLI;
- Countries that have signed but not yet ratified the MLI; and
- Tax treaties that have been modified by the MLI but which have not resulted in material acceptance of Australia’s position.

#### **Tax treaties not modified by the MLI**

According to the ATO’s website,<sup>35</sup> Australia’s tax treaties with the countries listed in Table 4 have not been modified by the MLI. This is because either the country has not signed the MLI or because while the country has signed the MLI, the country’s current MLI position does not lead to its tax treaty with Australia being modified.

Table 4 also provides information in relation to the age of each tax treaty and whether the treaty partner country is in Top 3, Top 10, Top 20 or Top 40 countries for investment into Australia or investment out of Australia.






**Table 4: Australia’s tax treaties that have not been modified by the MLI**

<b>Tax treaty country</b>	<b>Age of tax treaty (pre-BEPS unless stated)</b>	<b>MLI not signed or Tax treaty with Australia not modified by MLI</b>	<b>Whether in Top 3, Top 10, Top 20 or Top 40 countries for inbound or outbound investment</b>
Austria		Tax treaty not modified	Top 40 (inbound)
Germany	Post-BEPS	Tax treaty not modified	Top 20 (inbound) & Top 10 (outbound)
Israel	Post-BEPS	Tax treaty not modified	–
Kiribati		Not signed MLI	–
Philippines		Not signed MLI	Top 40 (inbound & outbound)
Sri Lanka		Not signed MLI	–
Sweden		Tax treaty not modified	Top 40 (inbound & outbound)
Switzerland		Tax treaty not modified	Top 20 (inbound) & Top 40 (outbound)
Taiwan		Not signed MLI	Top 40 (inbound & outbound)

<sup>35</sup> <https://www.ato.gov.au/general/international-tax-agreements/in-detail/multilateral-instrument/>

Thailand		Not signed MLI <sup>36</sup>	Top 40 (inbound)
United States		Not signed MLI	<b>Top 3 (inbound &amp; outbound)</b>
Vietnam		Not signed MLI	–

The same colour code used in Appendix C to indicate the age of Australia’s tax treaties is used for purposes of Table 4. This is reproduced below.

Legend		Age of tax treaty (as at 1 Oct 2021)
	Signed after 1/10/2011	Less than 10 years old
	Signed after 1/10/2001 but before 30/09/2011	Between 10 and 20 years old
	Signed after 1/10/1991 but before 30/09/2001	Between 20 and 30 years old
	Signed after 1/10/1981 but before 30/09/1991	Between 30 and 40 years old
	Signed before 30/09/1981	More than 40 years old

The following observations are provided in relation to the information presented in Table 4:

- The tax treaties with Germany and Israel were negotiated to take into account BEPS outcomes and therefore can be put to one side in this context;
- The tax treaty with the United States would appear to be a special case in relation to the MLI. It was widely reported that the US did not sign the MLI for a variety of reasons including that the bulk of the MLI was consistent with US tax treaty policy and because of the political situation in the US which requires amongst other things getting the US Senate to approve tax treaties;<sup>37</sup>
- Australia’s tax treaties with nine of the twelve countries included in Table 4 are more than 20 years old (with six of those tax treaties being with countries that are in either the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas); and
- Australia’s tax treaties with six of the twelve countries included in Table 4 are more than 30 years old (with four of those tax treaties being with countries that are in either the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas).

At the present time, Australia will only reap the anticipated benefits of the MLI by renegotiating its tax treaties with the countries shown in Table 4 (Germany, Israel and perhaps the United States aside). Australia’s tax treaty negotiation program should therefore consider renegotiating the tax treaties with these countries with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.

<sup>36</sup> Thailand has expressed the intention to sign the MLI.

<sup>37</sup> *Treasury Official Explains Why U.S. Didn’t Sign OECD Super-Treaty*, Kevin A. Bell, BNA Transfer Pricing Report, 8 June 2017.

**Recommendation #10: Australia’s tax treaty negotiation program should consider renegotiating the tax treaties with the countries shown in Table 4 (Germany, Israel and perhaps the United States aside) with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

**Countries that have signed but not yet ratified the MLI**

A number of countries that Australia has tax treaties with signed the MLI on 7 June 2017, however, have not yet ratified it (ie by depositing the necessary Instrument of Ratification, Acceptance or Approval).<sup>38</sup> These countries are shown in Table 5.

According to the ATO’s website,<sup>39</sup> while the provisional positions of the countries shown in Table 5, when taken together with Australia’s position, indicate that the tax treaty with Australia will be modified in at least some respects once ratification has taken place, this has not yet happened.

**Table 5: Australia’s tax treaty partners that have signed but not yet ratified the MLI**

Tax treaty country	Age of tax treaty (pre-BEPS unless stated)	Whether in Top 3, Top 10, Top 20 or Top 40 countries for inbound or outbound investment
Argentina		–
China		<b>Top 10 (inbound &amp; outbound)</b>
Fiji		–
Italy		Top 40 (inbound) & Top 40 (outbound)
Mexico		Top 40 (outbound)
Papua New Guinea <sup>40</sup>		Top 40 (inbound) & Top 20 (outbound)
Romania		–
South Africa		Top 40 (inbound) & Top 40 (outbound)
Turkey		Top 40 (outbound)

The same colour code used in Appendix C to indicate the age of Australia’s tax treaties is used for purposes of Table 5.

The following observations are provided in relation to the information presented in Table 5:

- China is in the Top 10 countries for foreign investment into Australia and also the Top 10 countries for Australian investment overseas. Australia’s tax treaty with China is also more than 30 years old;

<sup>38</sup> Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, Status as at 30 September 2021, OECD. Available on the OECD’s website.

<sup>39</sup> <https://www.ato.gov.au/general/international-tax-agreements/in-detail/multilateral-instrument/>

<sup>40</sup> Signed MLI on 23 January 2019.

- Australia’s tax treaties with six of the nine countries included in Table 5 are more than 20 years old (with three of those tax treaties being with countries that are in either the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas); and
- Australia’s tax treaties with four of the nine countries included in Table 5 are more than 30 years old (with three of those tax treaties being with countries that are in either the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas).

The benefits Australia anticipated obtaining from signing the MLI are not being obtained with respect to the tax treaties with the countries shown in Table 5 and there is an ongoing risk of further slippage occurring. Australia’s tax treaty negotiation program should therefore consider renegotiating the tax treaties with these countries with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.

**Recommendation #11: Australia’s tax treaty negotiation program should consider renegotiating the tax treaties with the countries shown in Table 5 with priority being given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

**Tax treaties that have been modified by the MLI but which have not resulted in material acceptance of Australia’s position**

A detailed analysis of the extent to which the modifications made to Australia’s tax treaties by the MLI have substantially adopted Australia’s position<sup>41</sup> is beyond the scope of this submission. Nevertheless, as noted by Treasury, the extent to which the MLI will modify Australia's tax treaties will depend on the final adoption positions taken by other countries.<sup>42</sup> As such, Australia’s ability to obtain the full anticipated benefits of the MLI may only be achieved by renegotiating tax treaties on a bilateral basis with certain tax treaty partners notwithstanding that the relevant tax treaty has already been modified by the MLI.

**Recommendation #12: Australia’s tax treaty negotiation program should consider renegotiating Australia’s tax treaties with countries where the modifications made to the relevant tax treaty by the MLI have not substantially adopted Australia’s position. In doing so, priority should be given to countries that are in the Top 40 countries for foreign investment into Australia or the Top 40 countries for Australian investment overseas.**

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<sup>41</sup> <https://www.oecd.org/tax/treaties/beps-ml-position-australia-instrument-deposit.pdf>

<sup>42</sup> <https://treasury.gov.au/tax-treaties/multilateral-instrument>

## **CONCLUSION**

Based on the analysis undertaken, it would seem reasonable to draw the following conclusions about Australia's tax treaty network at the present time:

- It is, on the whole, old;
- It contains a number of tax treaties that are more than 30 years old with countries that are in the Top 20 countries for foreign investment into Australia or the Top 20 countries for Australian investment overseas;
- That Australia could be viewed as not being prepared to honour its obligations under MFN provisions with its tax treaty partners; and
- That Australia would appear to be missing out on the full anticipated benefits from the OECD/G20 BEPS project.

A number of the above conclusions mean that the ability of Australian businesses to take advantage of the opportunities that will emerge in the coming years – being the government's stated goal – could be constrained until such time as the vast majority of Australia's tax treaties with countries in the Top 20 countries for foreign investment into Australia or the Top 20 countries for Australian investment overseas have been renegotiated, in particular, Australia's tax treaties with the United States, China and the Netherlands.

This submission includes a number of recommendations that if adopted would go a long way towards enabling the government to achieve its goals of (1) giving priority to refurbishing Australia's treaties with key strategic partners where necessary to maximise the benefits for Australia's economy; and (2) reducing the tax burden on cross-border operations for businesses and provide them with greater tax certainty, consistent with its October 2020 and May 2021 Budget announcements.

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### **List of Appendices**

Appendix A: Top 40 countries for foreign investment into Australia in 2020

Appendix B: Top 40 countries for Australian investment overseas in 2020

Appendix C: Age analysis of Australia's tax treaties (as at 1 October 2021)



APPENDIX A: Top 40 countries for investment into Australia in 2020 (in billions of AUD)

Rank in 2020	Economy	2018	2019	2020	% of total	Cumulative % of total	Tax treaty (as at Sep 2021)
1	United States	957.2	1013.5	929.4	23.3	23.3	yes
2	United Kingdom	583.8	687.3	737.6	18.5	41.8	yes
3	Belgium	315.3	348.0	408.6	10.2	52.0	yes
4	Japan	234.4	243.9	264.5	6.6	58.6	yes
5	Hong Kong (SAR of China)	123.7	144.5	141.6	3.5	62.1	NO
6	Singapore	90.2	100.1	116.5	2.9	65.0	yes
7	Luxembourg	78.1	86.7	104.7	2.6	67.6	NO
8	Netherlands	84.1	88.6	84.0	2.1	69.7	yes
9	China (excludes SARs and Taiwan)	68.5	79.3	79.2	2.0	71.7	yes
10	New Zealand	47.1	64.5	66.3	1.7	73.4	yes
11	Canada	53.3	59.8	64.9	1.6	75.0	yes
12	Switzerland	50.7	58.3	57.5	1.4	76.4	yes
13	Germany	48.4	50.4	47.2	1.2	77.6	yes
14	France	48.8	35.7	42.7	1.1	78.7	yes
15	Bermuda	46.6	44.7	41.7	1.0	79.7	NO
16	Ireland	22.1	28.6	35.8	0.9	80.6	yes
17	Republic of Korea	30.7	31.7	32.7	0.8	81.4	yes
18	Norway	19.7	25.4	25.9	0.6	82.0	yes
19	British Virgin Islands	24.0	24.4	25.6	0.6	82.6	NO
20	Malaysia	22.4	22.4	19.2	0.5	83.1	yes
21	India	14.8	16.0	np	approx 0.3	83.4	yes
22	Cayman Islands	12.6	13.8	16.4	0.4	83.8	NO
23	Taiwan	9.6	10.3	15.6	0.4	84.2	yes
24	Jersey	11.5	16.5	12.9	0.3	84.5	NO
25	United Arab Emirates	11.0	12.1	11.6	0.3	84.8	NO
26	Kuwait	12.5	13.4	11.4	0.3	85.1	NO
27	South Africa	7.6	8.4	9.3	0.2	85.3	yes
28	Thailand	6.9	8.2	8.7	0.2	85.6	yes
29	Sweden	7.2	7.8	7.2	0.2	85.7	yes
30	Macau (SAR of China)	7.3	7.5	5.4	0.14	85.9	NO
31	Denmark	3.2	3.6	3.9	0.10	86.0	yes
32	Austria	3.3	3.5	3.7	0.09	86.1	yes
33	Spain	1.3	2.3	2.4	0.06	86.1	yes
34	Italy	1.3	1.5	1.7	0.04	86.2	yes
35	Philippines	0.4	0.6	1.4	0.04	86.2	yes
36	Czechia	0.6	0.8	1.3	0.03	86.2	yes
37	Brazil	2.1	0.9	1.3	0.03	86.3	NO
38	Indonesia	1.1	0.9	1.2	0.03	86.3	yes
39	Papua New Guinea	1.1	1.3	1.1	0.03	86.3	yes
40	Saudi Arabia	4.0	np	0.9	0.02	86.3	NO
	All other countries	87.7	95.5	120.1	3.0	89.4	
	Total Unspecified	421.6	431.1	427.8	10.7	100.1	
	<b>All economies</b>	<b>3577.8</b>	<b>3893.8</b>	<b>3990.9</b>	<b>100</b>	<b>100</b>	


























Source: ABS catalogue 5352.0. Last Updated: May 2021.






















**APPENDIX B: Top 40 countries where Australia invested in 2020 (in billions of AUD)**

Rank in 2020	Economy	2018	2019	2020	% of total	Cumulative % of total	Tax treaty (as at Sep 2021)
1	United States	730.2	836.8	863.6	28.4	28.4	yes
2	United Kingdom	406.6	510.3	615.2	20.2	48.6	yes
3	New Zealand	96.4	130.9	124.7	4.1	52.7	yes
4	Japan	113.4	139.5	112.4	3.7	56.4	yes
5	Canada	80.6	82.4	94.1	3.1	59.5	yes
6	Cayman Islands	79.5	82.3	89.6	2.9	62.4	NO
7	Germany	74.0	98.5	88.9	2.9	65.3	yes
8	Hong Kong (SAR of China)	52.6	66.8	71.1	2.3	67.6	NO
9	China	79.2	85.3	64.0	2.1	69.7	yes
10	Singapore	73.5	83.7	63.2	2.1	71.8	yes
11	France	54.2	52.4	62.9	2.1	73.9	yes
12	Netherlands	45.8	44.2	44.0	1.4	75.3	yes
13	Bermuda	37.9	38.6	37.9	1.2	76.5	NO
14	Switzerland	26.8	34.3	32.4	1.1	77.6	yes
15	Ireland	15.5	20.9	31.6	1.0	78.6	yes
16	Republic of Korea	21.3	22.2	24.9	0.8	79.4	yes
17	Luxembourg	21.2	19.0	17.7	0.6	80.0	NO
18	Papua New Guinea	17.4	17.1	17.6	0.6	80.6	yes
19	Timor-Leste	10.5	np	16.9	0.6	81.2	NO
20	Taiwan	10.1	16.8	15.6	0.5	81.7	yes
21	India	15.6	19.8	15.4	0.5	82.2	yes
22	Sweden	9.7	9.4	11.9	0.4	82.6	yes
23	Malaysia	10.2	12.4	11.0	0.4	83.0	yes
24	Norway	8.9	9.9	10.7	0.4	83.3	yes
25	Brazil	9.9	11.7	9.6	0.3	83.6	NO
26	Spain	7.1	9.9	8.6	0.3	83.9	yes
27	Italy	6.4	7.9	7.4	0.2	84.2	yes
28	Philippines	9.2	9.8	7.2	0.2	84.4	yes
29	Denmark	4.3	5.6	6.6	0.2	84.6	yes
30	United Arab Emirates	4.0	4.0	6.3	0.2	84.8	NO
31	Belgium	5.6	7.5	5.9	0.2	85.0	yes
32	Mexico	5.0	6.3	5.6	0.2	85.2	yes
33	Jersey	6.0	5.5	5.2	0.2	85.4	NO
34	South Africa	4.9	5.7	4.6	0.2	85.5	yes
35	Thailand	3.9	4.8	4.1	0.13	85.6	yes
36	Finland	3.8	4.1	3.8	0.12	85.8	yes
37	Indonesia	5.7	8.2	3.2	0.11	85.9	yes
38	Chile	3.3	3.0	2.9	0.10	86.0	yes
39	Turkey	np	1.8	2.8	0.09	86.1	yes
40	Russian Federation	2.2	2.8	2.3	0.08	86.1	yes
	All other countries	91.2	108.6	90.8	3.0	89.1	
	Total Unspecified	287.1	318.7	329.5	10.8	99.9	
	<b>All economies</b>	<b>2550.7</b>	<b>2959.4</b>	<b>3043.7</b>	<b>100</b>	<b>100</b>	

Source: ABS catalogue 5352.0. Last Updated: May 2021.

## Appendix C: Age analysis of Australia's tax treaties (as at 1 October 2021)

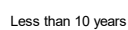
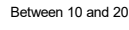
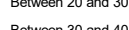


Country or Jurisdiction	Text and information	Signature	Status of treaty	Multilateral Instrument			Age of tax treaty (from date of signing of tax treaty or of most recent amending protocol)
				Modified by the Multilateral Instrument	Date of Entry into Force	Synthesised Text Available	
Argentina	DTA	29/08/1999	In force				
Austria	DTA	8/07/1986	In force				
Belgium	Second Amending Protocol	24/06/2009	In force	Yes	1/10/2019	Yes	
	Amending Protocol	20/03/1984	In force				
	DTA	13/10/1977	In force				
Canada	Amending Protocol	23/01/2002	In force	Yes	1/12/2019	Yes	
	DTA	21/05/1980	In force				
Chile	DTA	10/03/2010	In force	Yes	1/03/2021		
China	DTA	17/11/1988	In force				
	Airline Profits Agreement	22/11/1985	In force				
Czech Republic	DTA	28/03/1995	In force	Yes	1/09/2020	Yes	
Denmark	DTA	1/04/1981	In force	Yes	1/01/2020		
Fiji	DTA	15/10/1990	In force				
Finland	Exchange of Notes on AIC article	17/08/2009	In force	Yes	1/06/2019	Yes	
	DTA	20/11/2006	In force				
France	Exchange of Notes on AIR article	27/03/2018	In force	Yes	1/01/2019	Yes	
	DTA	20/06/2006	In force				
Germany	DTA	12/11/2015	In force				
Greece	Airline Profits Agreement	5/05/1977	In force				
Hungary	DTA	29/11/1990	In force	Yes	1/07/2021		
India	Amending Protocol	16/12/2011	In force	Yes	1/10/2019	Yes	
	DTA	25/07/1991	In force				
Indonesia	DTA	22/04/1992	In force	Yes	1/08/2020	Yes	
Ireland	DTA	31/05/1983	In force	Yes	1/05/2019	Yes	
Israel	DTA	28/03/2019	In force				
Italy	DTA	14/12/1982	In force				
	Airline Profits Agreement	13/04/1972	In force				
Japan	DTA	31/01/2008	In force	Yes	1/01/2019	Yes	
Kiribati	DTA	23/03/1991	In force				
Korea (Republic of)	DTA	12/07/1982	In force	Yes	1/09/2020	Yes	
Malaysia	Third Amending Protocol	24/02/2010	In force	Yes	1/06/2021		
	Second Amending Protocol and Exchange of Letters	28/07/2002	In force				
	Exchange of Letters prolonging DTA provisions	9/11/1999	In force				
	First Amending Protocol	2/08/1999	In force				
	DTA	20/08/1980	In force				
Malta	DTA	9/05/1984	In force	Yes	1/04/2019	Yes	
Mexico	DTA	9/09/2002	In force				

Country or Jurisdiction	Text and information	Signature	Status of treaty	Multilateral Instrument			Age of tax treaty (from date of signing of tax treaty or of most recent amending protocol)
				Modified by the Multilateral Instrument	Date of Entry into Force	Synthesised Text Available	
Netherlands	Second Amending Protocol	30/06/1986	In force	Yes	1/07/2019	Yes	
	DTA and First Amending Protocol	17/03/1976	In force				
New Zealand	DTA	26/06/2009	In force	Yes	1/01/2019	Yes	
Norway	2011 Exchange of Notes on AIC article	19/05/2011	In force	Yes	1/11/2019	Yes	
	DTA	8/08/2006	In force				
Papua New Guinea	DTA	24/05/1989	In force				
Philippines	DTA	11/05/1979	In force				
Poland	DTA	7/05/1991	In force	Yes	1/01/2019	Yes	
Romania	DTA	2/02/2000	In force				
Russia	DTA	7/09/2000	In force	Yes	1/10/2019	Yes	
Singapore	Second Amending Protocol	8/09/2009	In force	Yes	1/04/2019	Yes	
	First Amending Protocol	16/10/1989	In force				
	1989 Exchange of Letters	16/10/1989	In force				
	1981 Exchange of Letters	11/03/1981	In force				
	1975 Exchange of Letters	21/05/1975	In force				
	DTA	11/02/1969	In force				
Slovakia	DTA	24/08/1999	In force	Yes	1/01/2019	Yes	
South Africa	Amending Protocol	31/03/2008	In force				
	AIC Article	31/03/2008	In force				
	DTA	1/07/1999	In force				
Spain	DTA	24/03/1992	In force				
Sri Lanka	DTA	18/12/1989	In force				
Sweden	DTA	14/01/1981	In force				
Switzerland	2013 Revised Treaty	30/07/2013	In force				
Taiwan	DTA	29/05/1996	In force				
Thailand	DTA	31/08/1989	In force				
Turkey	DTA	28/04/2010	In force				
United Kingdom	DTA and Exchange of Notes	21/08/2003	In force	Yes	1/01/2019	Yes	
United States of America	Amending Protocol	27/09/2001	In force				
	DTA	6/08/1982	In force				
Vietnam	2002 Exchange of Letters to amend DTA	5/08/2002	In force				
	1996 Exchange of Notes to amend Art 23	22/11/1996	In force				
	DTA	13/04/1992	In force				

**Legend**

	Signed after 1/10/2011
	Signed after 1/10/2001 but before 30/09/2011
	Signed after 1/10/1991 but before 30/09/2001
	Signed after 1/10/1981 but before 30/09/1991
	Signed before 30/09/1981

**Age of tax treaty (as at 1 Oct 2021)**

	Less than 10 years old
	Between 10 and 20 years old
	Between 20 and 30 years old
	Between 30 and 40 years old
	More than 40 years old