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Appendix A

Virgin Australia Holdings Pty Limited
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28 October 2021

Tax Treaties Branch
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Email: [redacted]

Dear Sir/Madam,

SUBMISSION REGARDING THE EXPANSION OF AUSTRALIA'S TAX TREATY NETWORK – IRELAND

Virgin Australia Holdings Pty Ltd (and its subsidiaries (**Virgin Australia** or **VA**)) welcomes the opportunity to make a submission on Australia's tax treaty network.

In particular, VA would like to see the *Agreement between the Government of Australia and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains* (**Australia and Ireland DTA**) renegotiated as a key priority.

VA is headquartered in Brisbane and prior to the COVID-19 global pandemic, flew to 39 destinations across Australia and a range of destinations around the world. It operated a fleet of over 130 commercial passenger aircraft and employed more than 10,000 people. As a result of the pandemic and ensuing Voluntary Administration process, there have been significant changes to the VA fleet, network operations and workforce. These changes will continue to evolve with the opening of domestic and international borders. VA continues to source a substantial proportion of its aircraft fleet via lease agreements with a range of different lessor counterparties globally. A significant portion of the aircraft leasing industry is based in Ireland.

To compete in a global market, VA requires efficient access to a wide range of leasing and capital markets in securing its aircraft. It is vitally important for existing treaties to be renegotiated where they contain outdated articles regarding cross-border leasing of equipment which leaves VA and other Australian based airlines at a disadvantage to its competitors in other jurisdictions. Specifically, we request that the Australia and Ireland DTA (from 1983) be prioritised for renegotiation and modernisation and that the following changes be made:

- Updating Article 5 Permanent establishment, paragraph 4(b); and
- Removing Article 13 Royalties, paragraph 3(b).

Detail on VA's rationale for these changes is set out in the confidential Appendix 1. As Appendix 1 contains commercially sensitive and confidential information, it should not be made publicly available.

Thank you for taking the time to review our submission and should you want to discuss any of the issues raised further, please contact me on 0481 033 932 or at rhys.jones@virginaustralia.com.

Yours sincerely

Rhys Jones
Tax Manager

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Appendix B

Australia and New Zealand Tax Treaty

Positions to be retained:

Article	Item	Position to be Retained
Art 8	Taxation of Profits from Shipping and Air Transport	• Profits of an Airline derived from the operation of ships or aircraft in international traffic shall be taxable only in the state of residency of the Airline. • VA does not support any move to amend Art 8 so that taxing rights with respect to airline profits from international traffic (in whole or in part) are allocated to a jurisdiction based on the source principle.
Art 13 (3)	Taxation of profits related to alienation of aircraft	• VA supports that income, profits or gains from the alienation of aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of such aircraft, being only taxable in the state of residency of the Airline.
Art 5 (4)(2)	Deemed PE regarding substantial equipment	• That an entity "operates substantial equipment in the other State (including as provided in subparagraph *b)*) for a period or periods exceeding in the aggregate 183 days in any twelve-month period..." • VA specifically supports the retention of the word "operates" to clearly describe the circumstances when using substantial equipment in the other State gives rise to a taxable presence and income tax obligations in that State. This language is preferred to other less clear alternatives used in other treaties such as "using" or "maintaining" that equipment. • VA also supports timeframes such as the 183 days so short-term operation of substantial equipment in a jurisdiction does not give rise to a deemed PE.
Art 12 (3)	Definition of Royalty	• VA supports the current and continued non-inclusion in the definition of a "royalty"

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		of payments in consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
Art 14 (3)	Income from employment for airline crew on aircraft operated in international traffic	• VA support the position that remuneration for airline crew in respect of employment exercised aboard an aircraft in international traffic should only be taxable in the country of residency of the particular individual. • In contrast, in some treaties the right to tax is provided to the country in which the airline operator is resident, rather than the employee. This alternate position remains non preferred.
Art 14(4) and (5)	Income from employment relating to temporary secondments to another state	• VA supports retention of these paragraphs so that an employee (i.e., non-flight crew such as ground crew, office workers, etc) remains taxable only in their country of residence where they are on short term secondments of 90 days or less in aggregate to the other jurisdiction. • Importantly, these paragraphs apply regardless of whether the remuneration is in respect of any PE the employer may have in the other jurisdiction (compared to Article 14(2) regarding the normal 183-day exclusion which generally appears in other treaties). This is of particular relevance for an airline that may have a PE in any given jurisdiction by virtue of operating aircraft into that jurisdiction; albeit that the profits are airline profits article protected. • The inclusion of articles of this nature means that there are no tax impediments to employees undertaking short-term duty travel to fulfil operational requirements of the airline in the other jurisdiction.

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Amendments for consideration:

Some other specific areas of trans-Tasman alignment to encourage cross border investment and business efficiencies include:

- A bilateral social security agreement between Australia and New Zealand be introduced, to make it clear that that there is no risk of an employer being required to bear the cost of "double superannuation coverage" in relation to employees working in New Zealand who are covered by the Australian Superannuation Guarantee scheme.
- An alignment in the treatment and valuation of benefits for fringe benefits tax (FBT) purposes in Australia and New Zealand; specifically with respect to Airline transport (Australian FBT) and Subsidised transport (NZ FBT) benefits.
- Clarification provisions that an Australian tax consolidated group be treated as "a company" or an "enterprise" for purposes of interpreting tax treaties.