International treaty examination of the Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

Report of the Finance and Expenditure Committee

Contents

Recommendation 2

Appendix A 3

Appendix B 4

Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

Recommendation

The Finance and Expenditure Committee has examined the Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, and recommends that the House take note of its report.

The committee supports the agreement and has no matters to bring to the attention of the House. The national interest analysis for the agreement is appended to this report.

Appendix A

Committee procedure

The international treaty examination of the Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance was referred to us by the Foreign Affairs, Defence and Trade Committee on 30 July 2015. We met on 12 and 19 August 2015 to consider the agreement.

Committee members

David Bennett (Chairperson)
Andrew Bayly
Chris Bishop
Hon Clayton Cosgrove
Julie Anne Genter
Stuart Nash
Rt Hon Winston Peters
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Appendix B

National Interest Analysis

Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

1 Executive summary

1.1 On 8 July 2015 in Apia, Samoa, New Zealand signed the Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (the Samoa DTA).

1.2 Double tax agreements (DTAs) are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. They do this by reducing tax impediments to cross-border services, trade and investment. When income is derived from one jurisdiction (the source jurisdiction) by a tax resident of the other jurisdiction (the residence jurisdiction), both countries typically impose tax on that income. DTAs primarily relieve such double taxation by allocating taxing rights between the two jurisdictions. The negotiation of, and giving of effect to, DTAs is provided for by section BH 1 of the Income Tax Act 2007. New Zealand has 39 DTAs in force, primarily with New Zealand's major trading and investment partners.

1.3 Samoa is not a major trading and investment partner for New Zealand. On the other hand, New Zealand is Samoa's second largest trading partner after Australia. (To demonstrate the importance of the New Zealand market to their economy, the Government of Samoa established the New Zealand Samoa Trade and Investment Commission in 2011 in order to encourage increased trade and investment flows between the two countries.) Finally, we note that New Zealand exports to Samoa are considerably higher than imports from Samoa.

1.4 New Zealand and Samoa also have a special relationship, as reflected by the 1962 Treaty of Friendship which recognised Samoa's progression from New Zealand trusteeship to an independent state. The relationship is supported by the large number of New Zealanders with a Samoan background living in New Zealand and the influence that Samoan culture has on New Zealand culture.

1.5 As in all negotiations, the Samoa DTA represents a compromise between the starting positions of both countries. The key compromise made by New Zealand relates to New Zealand's agreement to Samoa's request for a tax sparing provision to be included in the treaty, with the provision terminating after a 10-year period. Under the provision, tax sparing would only apply if and when the two Governments agree to tax sparing in an exchange of letters. It is not expected that the mechanism will become operational. We have agreed a similar provision with Papua New Guinea. Tax sparing provisions were once a common feature of DTAs

between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. From a tax policy perspective, we do not favour tax sparing provisions as research suggests that they are ineffective in meeting their goals of attracting foreign investment and can create avoidance concerns. The tax sparing mechanism agreed with Samoa therefore represents a concession - although, as noted above, it is not expected that the provision will become operational.

1.6 An issue of note relates to Samoa's international finance centre regime which provides certain foreign-owned entities that establish a presence in Samoa with broad tax exemptions under Samoan law, in order to encourage foreign investment into Samoa. We consider it inappropriate for these vehicles to access treaty benefits under the Samoa DTA on their New Zealand-sourced income, as such access could lead to cases of abuse of the treaty. We are, however, satisfied that these entities will not be entitled to the benefits of the Samoa DTA, as they will not qualify as "resident" of Samoa for the purposes of the DTA.

2 Nature and timing of the proposed treaty action

2.1 The Agreement between the Government of New Zealand and the Government of Samoa for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (the Samoa DTA) was signed in Apia, Samoa on 8 July 2015.

2.2 The proposed treaty action is to bring the Samoa DTA into force through an exchange of diplomatic notes that confirm the completion of the respective constitutional and legal requirements for entry into force by each country, pursuant to Article 26 of the Samoa DTA.

2.3 Before the treaty action is taken, the Samoa DTA must successfully undergo Parliamentary treaty examination, in accordance with Parliament's Standing Orders 397-400, and must successfully be given the force of law in New Zealand by an Order in Council made pursuant to section BH 1 of the Income Tax Act 2007.

2.4 New Zealand has existing agreements with Samoa relating to the exchange of tax-related information and the allocation of taxing rights over certain types of personal income. The Agreement Between the Government of New Zealand and the Government of Samoa on the Exchange of Information with Respect to Taxes and the Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustment, both signed in Apia on 24 August 2010, shall terminate and cease to have effect when the Samoa DTA has effect, pursuant to Article 26 of the Samoa DTA.

2.5 Like other New Zealand DTAs, the Samoa DTA does not extend to the Cook Islands, Niue, or Tokelau.

3 Reasons for New Zealand becoming party to the treaty

General reasons for New Zealand's conclusion of double tax agreements

3.1 New Zealand began entering into double tax agreements (DTAs) in 1947, and currently has a network of 39 DTAs in force, predominantly with New Zealand's main trading and investment partners.

3.2 DTAs are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. DTAs do this by reducing tax impediments to cross-border services, trade and investment. Some impediments to cross-border economic activity can be addressed unilaterally. For example, New Zealand generally relieves double taxation by unilaterally allowing tax residents who derive foreign-sourced income to credit foreign tax paid against their New Zealand tax liability. New Zealand also unilaterally reduces withholding taxes on certain forms of inbound investment. However, unilateral solutions cannot address all of the issues that arise from cross-border activity. Moreover, the country applying unilateral measures must then bear the full cost of the relief. DTAs address these problems by facilitating bilateral solutions. DTAs enable a wider range of issues to be addressed than is possible unilaterally, and also enable the parties to a DTA to share the cost of providing relief.

3.3 DTA networks make an important contribution to the expansion of world trade and to the development of the world economy, which are key objectives of the Organisation for Economic Co-operation and Development (OECD). Internationally, the OECD has therefore assumed a leading role in promoting the use of DTAs. In particular, the OECD has produced a Model Tax Convention, and a comprehensive commentary, for member and non-member countries to use as a basis for concluding DTAs. As a member of the OECD, New Zealand is subject to an express recommendation issued by the OECD Council in 1997 for all member countries:

> 1. to pursue their efforts to conclude bilateral tax conventions … with those member countries, and where appropriate with non-member countries, with which they have not yet entered into such conventions …
>
> 2. when concluding new bilateral conventions or revising existing bilateral conventions, to conform to the Model Tax Convention, as interpreted by the Commentaries thereon.

3.4 At a practical level, DTAs are complex technical documents that provide an interface between two, often conflicting, tax systems. The key stakeholders in cross-border economic activity generally favour DTAs for the following reasons:

> *Taxpayers.* A primary concern for any taxpayer contemplating entering into commercial activity in another jurisdiction is that they must comply with the tax and other legal obligations of two separate jurisdictions. This can be perplexing, and obtaining professional advice or tax rulings can be costly and time consuming. Unique issues also arise from cross-border activities, ranging from complex matters such as transfer pricing disputes, to more mundane considerations such as whether taxes paid in the other jurisdiction are creditable against home jurisdiction tax. DTAs help alleviate many of these problems. They establish a framework for the taxation of cross-

border activity and establish a mutual agreement procedure for resolving tax disputes.

Investors. Investing across an international border always involves risk. Tax laws are often complex and can change suddenly. DTAs assist investors by specifying the maximum rates of tax that can be applied to dividends, interest and royalties. These “headline” rates reduce compliance costs for investors by making it easier to determine the after-tax returns on potential investments. The tax rates are “locked in” by the treaty, which means that investors can make business decisions with confidence. To encourage greater inward investment, governments can unilaterally reduce their taxation of investment income. However, lowering tax rates in a bilateral treaty setting ensures that the rates are also reduced on a reciprocal basis by the treaty partner. This provides benefits to domestic investors.

Governments. As double taxation distorts business decisions and generally hinders cross-border economic activity, most jurisdictions unilaterally relieve double taxation of their tax residents. (For example, New Zealand tax legislation provides a general tax credit mechanism.) However, in the absence of a DTA, a jurisdiction bears the full cost of relieving double taxation itself. DTAs allow the cost of relieving double taxation to be shared. They do this by allocating taxing rights between the jurisdictions concerned, on the basis of internationally accepted principles as set out in the OECD Model Tax Convention. Additionally, most countries tax their residents on income earned worldwide. International cooperation between tax authorities is therefore needed to enable tax authorities to verify that income earned in other countries is reported correctly by tax residents. DTAs facilitate this by authorising the exchange of tax-related information (such as tax records, business books and accounts, bank information and ownership information). The exchanged information assists tax authorities to detect and prevent tax evasion and tax avoidance. This is a key benefit of DTAs for governments.

Specific reasons for the double tax agreement with Samoa

3.5 New Zealand generally only enters into DTAs with countries with which it has an existing or potential significant economic relationship. Samoa is not a major trading and investment partner for New Zealand. However, New Zealand is Samoa’s second largest trading partner. To demonstrate the importance of the New Zealand market to the Samoan economy, the Government of Samoa established the New Zealand Samoa Trade and Investment Commission in 2011 in order to encourage increased trade and investment flows between the two countries.

3.6 New Zealand and Samoa also have a special relationship, as reflected by the 1962 Treaty of Friendship which recognised Samoa’s progression from New Zealand trusteeship to an independent state. The relationship is supported by the large number of New Zealanders with a Samoan background living in New Zealand and the influence that Samoan culture has on New Zealand culture.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

4.1 The Samoa DTA involves a trade-off between advantages and disadvantages to New Zealand. On balance, entering into the Samoa DTA is expected to be in New Zealand's overall interests.

Advantages of the treaty entering into force

4.2 The advantages to New Zealand of the Samoa DTA entering into force can be summarised as follows:

- The DTA can be expected to foster all forms of bilateral economic activity (such as services, trade and investment). This will benefit New Zealand in terms of employment and business opportunities and offshore earnings. As noted below in the section titled 8 The costs to New Zealand of compliance with the treaty, DTAs can generally be expected to give rise to a prima facie revenue cost. However, in the case of Samoa, these costs are expected to be negligible.
- For New Zealand business interests, the DTA will reduce the cost of importing capital.
- For investors in both jurisdictions, the DTA will reduce compliance costs and provide the certainty of low headline withholding tax rates, locked in by the treaty.
- For investors, businesses and taxpayers from both jurisdictions, the DTA will provide safeguards such as a mutual agreement procedure, which will facilitate the resolution of tax disputes (including disputes in complex areas such as transfer pricing).
- For taxpayers engaged in certain short-term income-earning activities in the other jurisdiction, the DTA will reduce compliance costs and provide cash-flow advantages by eliminating the need to pay tax in that jurisdiction and then claim that tax against their tax liability in their home jurisdiction.
- For New Zealand, the DTA will provide an equitable framework for sharing the cost of relieving double taxation between the two jurisdictions.
- In some circumstances, New Zealand will no longer need to provide credits for foreign tax paid.
- There is currently a tax information exchange agreement or TIEA in place between New Zealand and Samoa (The Agreement Between the Government of New Zealand and the Government of Samoa on the Exchange of Information with Respect to Taxes). The TIEA provides for the exchange of tax-related information upon request, and will be replaced by the Samoa DTA which contains a broader exchange of information mechanism to further assist in the detection and prevention of tax evasion and tax avoidance. The mechanism will also be a general deterrent against evasion and avoidance activity, and will further reduce the opportunities available to residents to escape legitimate New Zealand tax.

4.3 A final advantage of the Samoa DTA is that New Zealand and Samoa share many treaty policy positions. As a result, New Zealand was able to get agreement on all of its key negotiating positions (apart from a compromise made in relation to tax sparing). The Samoa DTA represents a good precedent for New Zealand in future negotiations with other countries.

Disadvantages of the treaty entering into force

4.4 As noted above, DTAs offer bilateral solutions to problems that are difficult or impossible to solve unilaterally. However, a potential downside to DTAs is that those solutions are then locked into place by the treaty and are difficult and costly to change. This can create difficulties if treaty provisions need to be changed urgently. Practical experience indicates that in genuine cases, treaty partners are usually amenable to making necessary changes. However, in extreme cases, if the treaty partner were to refuse to cooperate, the treaty could need to be terminated.

4.5 A second general disadvantage of DTAs is that they typically give rise to an up-front revenue cost. This is because DTAs lower withholding tax rates on investment income and allocate taxing rights between the two jurisdictions. The allocating of taxing rights means that New Zealand will lose the ability to tax some income streams that it previously could tax (this applies on a reciprocal basis). However, as noted below in section 8 below, titled The costs to New Zealand of compliance with the treaty, in the case of Samoa, the prima facie revenue costs are expected to be negligible.

4.6 A third general disadvantage of DTAs is that costs will need to be incurred in administering the exchange of information provisions of the DTA. If a treaty partner makes requests for information under a New Zealand DTA, New Zealand will incur costs in complying with those requests. However, in the case of Samoa, we currently have a TIEA in place, although the provisions are slightly narrower in scope. This means that the costs of administering the DTA's exchange of information mechanism will not be significantly different from the current costs incurred in administering the TIEA's provisions.

4.7 A fourth general disadvantage of DTAs is the potential for abuse, in particular, as regards "treaty shopping". However, the Samoa DTA incorporates treaty provisions which are likely to become international best practice, which should provide protection against abuse (discussed further under Access to treaty benefits in section 5, at paragraphs 5.6-5.11, below).

4.8 As noted above, New Zealand and Samoa share many treaty positions, and New Zealand was therefore able to get agreement on all of its key negotiating positions. The key compromise made by New Zealand in the Samoa DTA relates to New Zealand's agreement to Samoa's request for a tax-sparing provision to be included in the treaty, with the provision terminating after a 10-year period. Under the provision, tax sparing would only apply if and when the two Governments agree to tax sparing in an exchange of letters. It is not expected that the mechanism will become operational.We have agreed a similar provision with Papua New Guinea. Tax sparing provisions were once a common feature of DTAs between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. From a tax policy perspective, we do not favour tax sparing provisions as research suggests

that they are ineffective in meeting their goals of attracting foreign investment and can create avoidance concerns. The tax sparing mechanism agreed with Samoa therefore represents a concession - although, as noted above, it is not expected that the provision will become operational.

Advantages of the treaty not entering into force

4.9 It is an option not to have a DTA with Samoa. In that case, the disadvantages identified above will not arise.

Disadvantages of the treaty not entering into force

4.10 If the Samoa DTA does not enter into force, there may be tax barriers for New Zealand investors investing into Samoa and Samoan investors investing into New Zealand. Further, if the Samoa DTA does not enter into force, an opportunity to strengthen ties with Samoa will be missed.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, an outline of any dispute settlement mechanisms

Summary of key legal obligations

5.1 DTAs do not impose requirements on taxpayers. The Samoa DTA will not (and cannot) require the imposition of a tax that is not already imposed under domestic law. Thus the entry into force of the Samoa DTA will not change underlying tax policy. The obligations that the Samoa DTA imposes are on the New Zealand and Samoa Governments.

5.2 When income is derived from one jurisdiction (the source jurisdiction) by a tax resident of the other jurisdiction (the residence jurisdiction), both countries typically impose tax on that income. DTAs primarily relieve such double taxation by allocating taxing rights between the two jurisdictions. The key allocation of taxing rights in the Samoa DTA is as follows:

- **Business profits** of an enterprise will be taxable only in the jurisdiction in which the enterprise is resident, unless profits are derived through a permanent establishment in the source jurisdiction. In that case, the profits may also be taxed in the source jurisdiction (Article 7 refers). The term "permanent establishment" is generally defined in the Samoa DTA as meaning a fixed place of business through which the business of an enterprise is wholly or partly carried on. However, this general rule is supplemented by a number of clarifications and deeming rules which follow New Zealand's preferred formula, and which will ensure that New Zealand can continue to impose tax on significant business activities such as natural resource exploration or exploitation (Article 5 refers).

- **Investment income (dividends, interest and royalties)** may generally be taxed in both jurisdictions. However, the amount of withholding tax that can be imposed by the source jurisdiction is limited to 5% for dividends if the dividend is paid to a company that directly owns at least 10% of the voting power of the company paying the dividends, 15% for all other dividends (Article 10 refers), and 10% for interest and royalties (Articles 11 and 12 refer). The limitation does not apply if the dividends,

interest or royalties are derived in connection with a permanent establishment in the source jurisdiction.

- **Income from employment** will be taxable only in the jurisdiction in which the employee is resident unless the employee is present in the source jurisdiction for more than six months in a twelve-month period or the employer is a resident of the source jurisdiction (or is non-resident but the employee's remuneration is borne by a permanent establishment in the source jurisdiction). In that case, the employment income may also be taxed in the source jurisdiction (Article 14 refers).
- **Pensions** will generally be taxable only in the jurisdiction in which the recipient is resident (Article 17 refers). This largely mirrors the corresponding provision in the Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustment. However, the Samoa DTA excludes the provision that provides that the country where the pension is sourced may tax the pension if the country where the person is resident does not.

5.3 A number of exceptions to the above rules also apply. These include:

- **Income from real property** (referred to as "immovable property" in the Samoa DTA) will always be taxable in the jurisdiction where the property is situated (Articles 6 and 13 refer).
- Profits of an enterprise from the operation of **ships or aircraft** in international traffic will be taxable only in the jurisdiction in which the enterprise is resident. However, profits from domestic carriage by ship or aircraft will always be taxable in the source jurisdiction (Articles 8 and 13 refer).
- **Directors' fees** will always be taxable in the jurisdiction in which the company paying the fees is resident (Article 15 refers).
- Income from the activities of **entertainers and sportspersons** will always be taxable in the source jurisdiction (Article 16 refers).
- Salaries and wages for **services to a Government** of one jurisdiction will generally be exempt from tax in the other jurisdiction (Article 18 refers). This largely mirrors the corresponding provision in the Agreement between the Government of New Zealand and the Government of Samoa for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustment.

5.4 Where the allocation of taxing rights permits both jurisdictions to tax an item of income, the Samoa DTA will require New Zealand to relieve double taxation of its residents by allowing a credit for the tax paid in Samoa (Article 22 refers). This is consistent with the unilateral relief mechanism that already applies under New Zealand domestic law. The obligation also applies reciprocally, so Samoa must allow its residents a credit for New Zealand tax paid.

5.5 In addition to the above obligations, New Zealand will be required to comply with various administrative requirements imposed by the Samoa DTA. These are as follows:

- **Mutual agreement procedure**. New Zealand must comply with the procedures for settling disputes set out in the mutual agreement procedure article of the Samoa DTA (Article 23 refers). This is discussed below, in the section Dispute resolution.
- **Exchange of information**. The Samoa DTA includes an Article that provides for the exchange of tax-related information between tax authorities, for the purpose of detecting and preventing tax evasion and tax avoidance (Article 24 refers). New Zealand will be required to respond to requests for information from Samoa. If Inland Revenue receives a valid request, and if it does not already hold the requested information, it must use its information-gathering powers to obtain the information. Inland Revenue can similarly request information from Samoa. Note that the Samoa DTA exchange of information obligations will replace the exchange of information obligations that are currently in place under the TIEA between New Zealand and Samoa. Thus, it is not expected that there will be any significant additional administrative costs to comply with the exchange of information obligations in the Samoa DTA.

Access to treaty benefits

5.6 New Zealand has been actively involved in the on-going work at the Organisation for Economic Co-operation and Development (OECD) under its 15-point action plan to address base erosion and profit shifting (BEPS) concerns. The action plan was released in 2013. Of particular relevance to New Zealand's DTA network is the work being done under Action 6, which has identified treaty abuse, and in particular, treaty shopping, as a BEPS concern. Part of the work under Action 6 is to develop model treaty provisions to prevent the granting of treaty benefits in inappropriate circumstances. This work will likely result in changes to the OECD Model Tax Convention on Income and on Capital and its commentary, on which New Zealand bases its negotiating model. At this stage, the work is well progressed.

5.7 The Samoa DTA contains provisions that will likely form the basis of the new OECD minimum standard on preventing treaty abuse, as that work under Action 6 currently stands. These safeguards should future-proof the Samoa DTA, ensuring that it does not create opportunities for double non-taxation or reduced taxation through tax evasion or avoidance (including through "treaty shopping").

5.8 The Samoa DTA includes an entitlement to benefits Article, which applies to the whole DTA. It provides that a benefit under the DTA in relation to an item of income will not be granted if it is reasonable to conclude that one of the principal purposes of any arrangement or transaction was to obtain that benefit (either directly or indirectly). Benefits under the DTA will not be denied if it is established that granting the benefit in the relevant circumstances would be in accordance with the object and purpose of the relevant provisions of the DTA.

5.9 An issue of note particular to Samoa regarding potential abuse of the Samoa DTA concerns Samoa's international finance centre regime. In order to encourage

foreign investment into Samoa, Samoa has an international sector which is monitored and supervised by the Samoa International Financial Authority (SIFA). This international sector has its own internationally-focused suite of Samoan laws which provides preferential treatment for foreign-owned entities that establish a presence in Samoa.

5.10 Except for trustee companies, all entities and arrangements registered under Samoa's international sector legislation can benefit from tax exemptions. Specifically, international companies, segregated fund international companies, international insurance companies, international partnerships and limited partnerships, international trusts, international banks, and international mutual funds are exempt from all taxes or duties (whether direct or indirect) on their profits or gains, or upon transactions and contracts.

5.11 Due to the broad tax exemptions that these vehicles are granted in Samoa, if such vehicles could access benefits under the Samoa DTA, it is possible that the Samoa DTA could be abused. More specifically, there is a risk that such vehicles would use Samoa as a conduit jurisdiction to access benefits under the Samoa DTA on their New Zealand-sourced income that would otherwise be unavailable. We are, however, satisfied that these entities will not be entitled to the benefits of the Samoa DTA, because they would not be a tax resident of Samoa for the purposes of the DTA (Article 4 refers).

Dispute resolution

5.12 The Samoa DTA establishes a "mutual agreement procedure" for resolving disputes. Under this procedure, a taxpayer who considers that they have been taxed incorrectly under the treaty, including in transfer pricing cases, can approach their local tax authority under Article 23 to invoke a mutual agreement procedure. If the tax authority considers the case to be justified, and is unable to resolve the case through its own actions, it must approach the tax authority of the other jurisdiction to seek a bilateral resolution. This bipartisan approach is particularly appropriate in the tax treaty context because a single issue will generally affect a person's tax position in both jurisdictions. The mutual agreement procedure is not a true disputes resolution mechanism, as the two sides are only obliged to "endeavour" to reach resolution. However, the taxpayer remains free to pursue a case through the courts (including if they do not agree with the decision reached under the mutual agreement procedure).

5.13 The mutual agreement procedure also authorises the tax authorities of the two jurisdictions to collectively resolve any difficulties or doubts about the correct interpretation or application of the Samoa DTA.

Reservations

5.14 The Samoa DTA does not allow parties to make a reservation upon ratification.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

6.1 Subject to the successful completion of the Parliamentary treaty examination process, the Samoa DTA will be incorporated into domestic legislation by Order in Council pursuant to section BH 1 of the Income Tax Act 2007. Section BH 1 provides for the giving of overriding effect to DTAs by Order in Council.

However, the override relates only to tax matters, and applies only in respect of the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993.

6.2 The override of the Inland Revenue Acts is necessary to give effect to the core provisions of the Samoa DTA, which may provide relief from tax that would otherwise be imposed under domestic law. The override of the Official Information Act 1982 is necessary to ensure that confidential communications with the other jurisdiction do not have to be disclosed. The override of the Privacy Act 1993 is necessary to ensure that information regarding natural persons can be exchanged according to the terms of the treaty.

6.3 Article 26 of the Samoa DTA provides for the agreement to be brought into force through an exchange of diplomatic notes between the Contracting States. The Samoa DTA will enter into force on the date of the last of these notes. New Zealand will be able to notify Samoa that all procedures required by domestic law have been completed once the Order in Council has entered into force, which will be 28 days after its publication in the New Zealand Gazette.

6.4 Thereafter, the provisions of the Samoa DTA will have effect from various dates, according to the terms of the DTA. In New Zealand, the provisions relating to withholding taxes will take effect on the first day of the second month after the date of entry into force. The provisions relating to other taxes will have effect for income years beginning on or after 1 April next following the date on which the DTA enters into force.

6.5 As an alternative to the above Order in Council mechanism, the Samoa DTA could be given legislative effect by means of the enactment of a dedicated statute. However, this option would unnecessarily increase the amount of primary tax legislation, and is therefore not preferred.

7 Economic, social, cultural, and environmental costs and effects

7.1 New Zealand and Samoa have a special relationship, as reflected by the 1962 Treaty of Friendship which recognised Samoa's progression from New Zealand trusteeship to an independent state. The relationship is supported by the large number of New Zealanders with a Samoan background living in New Zealand and the influence that Samoan culture has on New Zealand culture. Signing the Samoa DTA will support the special relationship that the two countries share.

7.2 As noted elsewhere in this National Interest Analysis, the overall economic effects of the Samoa DTA are expected to be favourable to New Zealand. This is because the Samoa DTA can be expected to encourage growth in trade and investment between New Zealand and Samoa. The overall economic benefits of signing the Samoa DTA are expected to outweigh the costs.

8 The costs to New Zealand of compliance with the treaty

8.1 DTAs constrain New Zealand from taxing certain income and limit the rate at which tax on dividends, royalties and interest can be imposed, and therefore typically can be expected, prima facie, to result in some reduction of New Zealand tax.

8.2 This potential upfront revenue cost is typically offset by other factors. For example, there will be an offsetting effect to the New Zealand tax base from the reduction of tax in the other country, and the reduced need for New Zealand to allow foreign tax credits. There will also be some revenue gains from the expected reduction in tax evasion and tax avoidance resulting from the DTA exchange of information provisions.

8.3 Data limitations prevent officials from accurately estimating the actual revenue cost of the Samoa DTA. However, due to the limited existing trade and investment flows between Samoa and New Zealand, any reduction of New Zealand tax is expected to be negligible.

8.4 The tax sparing provisions of the DTA are not expected to give rise to specific costs. The provisions will apply only in circumstances agreed to between the two Governments in an exchange of letters. Furthermore, the provisions will terminate after a 10-year period.

8.5 In general, as discussed above, DTAs are also expected to give rise to favourable economic benefits, such as increased cross-border services, trade and investment. Again, officials cannot quantify the economic benefits of the Samoa DTA but, overall, the benefits are expected to outweigh the costs.

8.6 Compliance with the exchange of information provisions of the Samoa DTA will result in some administrative costs for Inland Revenue, arising from the need to respond to requests for information from Samoa. However, as noted above, a TIEA is already in place between New Zealand and Samoa. Although the exchange of information provisions in the Samoa DTA are of broader effect, the costs of complying with the exchange of information mechanism in the Samoa DTA are likely to be substantially equivalent to those that would be borne under the existing TIEA. Based on previous experience, the numbers of requests are not expected to be significant. If requests are received, Inland Revenue already has efficient systems in place for administering the exchange of information provisions of New Zealand's other DTAs and TIEAs.

8.7 Compliance costs for New Zealand businesses are expected to be reduced under the Samoa DTA. This is because New Zealand businesses will have clear guidance about when they will be liable for tax on activities in Samoa, in line with internationally recognised norms.

9 Completed or proposed consultation with the community and parties interested in the treaty action

9.1 The Treasury and the Ministry of Foreign Affairs and Trade were consulted about the content of this extended National Interest Analysis.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

10.1 The Samoa DTA does not expressly set out the process for amendment of the agreement, and no specific amendments are currently anticipated. However, New Zealand will consider any future amendments on a case-by-case basis. Future amendments will be subject to New Zealand's normal domestic approvals and procedures for DTAs.

11 Withdrawal or denunciation provision in the treaty

11.1 Under Article 27 of the Samoa DTA, after the expiry of five years from the date of entry into force, either party may terminate the agreement by giving notice of termination through diplomatic channels. Article 27 generally follows the approach used in New Zealand's other DTAs.

12. Agency Disclosure Statement

12.1 Inland Revenue has prepared this extended national interest analysis (NIA). Inland Revenue has analysed the issue of implementing the new DTA between Samoa and New Zealand, and the legislative and regulatory proposals arising from that implementation. As part of that process, Inland Revenue considered the option of not entering into the treaty. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis. The policy aligns with the Government Statement on Regulation.

12.2 The allocation of taxing rights under the Samoa DTA is consistent with the New Zealand negotiating model, which in turn is based on the OECD's Model Tax Convention on Income and on Capital. The revenue cost to New Zealand as a result of the allocation of taxing rights under the DTA is expected to be negligible.

12.3 The tax sparing provisions agreed with Samoa represents a potential risk. However, the provisions will apply only in circumstances agreed to between the two Governments in an exchange of letters. Moreover, the mechanism will terminate after a ten-year period. Therefore, it is a manageable risk over which New Zealand has some control.

12.4 An Order in Council will be required to give the new DTA effect in New Zealand law. The Order in Council will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is provided for under section BH 1 of the Income Tax Act 2007 and is necessary to give effect to the terms of the new DTA.

12.5 The Treasury and the Ministry of Foreign Affairs and Trade have been consulted about the content of this extended NIA.

12.6 Inland Revenue's view is that the policy options considered will not impose additional costs on business interests; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.