ABSTRACT FOR 2015 ATTA CONFERENCE

Taxation of Sovereign Wealth Funds – Options for Reform

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Sovereign wealth funds (SWFs) are used by governments all around the world for large-scale offshore investment of government funds.[1] In accordance with the sovereign immunity doctrine, a SWF is generally immune from the jurisdiction of another sovereign state – including tax laws.[2] Australia has largely observed this principle since 1901. In 2009, the Australian government announced its intention to codify its practices in dealing with SWFs. The application of tax to SWFs has seen limited research. Yet it is an issue of vital importance to Australia and to its international competitiveness and security. This paper proposes a set of best practice criteria, which Australia could adopt for taxing these foreign investment vehicles.

The paper reviews the practices adopted by Australia and nine selected countries in relation to taxing SWFs, viz. Australia's top five two-way trading partners - the United States, Japan, Republic of Korea, Singapore and China. Also included are the United Kingdom, Canada and New Zealand as other common law countries whose approaches are a helpful guide to how SWFs might be treated in Australia. Norway is also assessed, as it is the home country of the largest SWF. Australia's taxation regime, both current and proposed, is discussed as are the framework criteria for world best tax practice. These are applied to assess the proposed rules and suggest a model for Australia that embraces best practice in an important area for Australia's international competitiveness as an investment destination.

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[1] Daniel W Drezner, 'BRIC by BRIC: The Emergent Regime for Sovereign Wealth Funds' (Princeton University Summer Workshop "Rising States and Rising Institutions", 2008).
[2] David R Tillinghast, 'Sovereign Immunity from the Tax Collector: United States Income Taxation of Foreign Governments and International Organisations' (1978) 10 *Law and Policy of International Business* 495.