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Expanding the use of TIEAs: Will an increase in information sharing and further cooperation between the ATO, Australian and global governments and institutions have a noticeable impact on tax evasion?

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ABSTRACT: Tax evasion is a problematic and complex form of tax crime. It can take a variety of forms and can involve many highly sophisticated schemes established by individuals and organisations. The mechanisms implemented both domestically and internationally, aimed at reducing and significantly impacting on these crimes, have varied over the years. The integration of states in an increasingly globalised context has recently played a significant part in deciding how best to approach tax evasion. However, due to the secretive and sophisticated nature of tax evasion schemes, the extent of damage and the costs associated to economies is still extremely difficult to quantify.

This paper seeks to pinpoint one specific key measure that is regarded as a potential valuable solution in combating tax evasion crimes. The creation of bilateral Tax Information Exchange Agreements (TIEAs) in recent years has represented that key measure. An in depth analysis examining the nature of TIEAs and their effectiveness has, as of yet, been minimal, and gaps remain in terms of understanding their evolution, advantages and disadvantages.

This paper demonstrates the reality of bilateral TIEAs, in that they need time to take effect, given many countries are still yet to implement them and that their use remains fairly novel. Furthermore, due to the complexity of tax evasion, it may be necessary to consider multiple other approaches alongside TIEAs.

This paper, suggests that after examining recent events and various opinions which address the expansion of bilateral TIEAs, that it will undoubtedly take further investigation to establish whether the legislative reforms and programs associated with TIEAs are effective.

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1 INTRODUCTION

Tax evasion has remained a constant issue for many years, assisted with the creation of so-called ‘tax havens’.² These ‘havens’ are typically characterised as having low rates of tax and strict bank secrecy laws.³ As a result, investment in these countries is more attractive and offshore capital flows are abundant.⁴ The growth of bilateral TIEAs in recent years has marked a significant change in approach towards dealing with tax evasion particularly in regards to tax havens.⁵ During recent times, governments and tax agencies worldwide have sought to encourage greater cooperation between nations through information sharing and data exchange.⁶ These methods have revolutionised the manner in which tax evaders are investigated and how their evasion activities are uncovered.

It is clear that the onset of globalisation and technological innovation has caused a natural interdependence between nations.⁷ These developments have assisted the growth of tax evasion by allowing markets to become increasingly connected and for schemes to become more sophisticated.⁸ It therefore remains to be seen whether the growth of bilateral TIEAs in addition to other measures is a good solution and an effective means of reducing this type of tax crime.

This paper seeks to address the current developments regarding bilateral TIEAs and information sharing between tax agencies and government institutions, both domestically and

² Robin Woellner et al, *Australian Taxation Law* (Javier Dopico, 25th ed, 2015) 1402-1404; Niels Johannesen and Gabriel Zucman, ‘The end of bank secrecy?: an evaluation of the G20 Tax Haven Crackdown’ (2014) 6 *American Economic Journal: Economic Policy* 65, 65-66.

³ Jane G Gravelle, ‘Tax Havens: International Tax Avoidance and Evasion’ (Report, Congressional Research Service, 2015) 1-3.

⁴ Ibid; Malcolm Maiden, ‘Fat cats elusive targets for taxman’, *Sydney Morning Herald* (Sydney), 9 April 2015, 28.

⁵ Tony Anamourlis and Les Nethercott, ‘The T.I.E.A: Coming to a Tax Haven Near You’ (2010) 84 *Law Institute Journal* 44, 44-46.

⁶ Matthew Gilleard, ‘Information Sharing: How and why it is increasing’ (2013) 24 *International Tax Review* 38, 38-39.

⁷ Johannesen and Zucman, above n 2, 66.

⁸ Ibid; Dale Pinto, ‘Taxation Issues In A World of Electronic Commerce’ (1999) 2 *Journal of Australian Taxation* 227, 227-228; Brian Andrew and Mark Hughes, ‘Tax Issues in Cyberspace’ (2000-2001) 11 *Journal of Law and Information Science* 55, 55-59; Gravelle, above n 3, 24.

internationally. It is important to look at the context of TIEAs to understand how they have evolved and why they have become so widely used. Recent scandals involving Geneva based bank HSBC and the discovery of suspicious tax schemes by multinational corporations in Australia have prompted swift action by relevant agencies.⁹ In addition, the paper will provide an analysis of any current and potential progress envisaged for TIEAs. As a result, those benefits and disadvantages associated with this measure will be identified to evaluate whether TIEAs are likely to be successful. This evaluation is critical in understanding whether they can be used in a variety of ways to provide a more effective means of impacting on tax evasion crimes.

The paper is divided into four parts. The first part will explain the meaning of tax evasion and its relationship to tax havens. Discussion will centre on why tax agencies and governments have continued to view both as serious problems.¹⁰ The use of past and present examples will demonstrate how governments and tax agencies have responded so far in terms of implementing and expanding bilateral TIEAs. Part 2 will lead into a more thorough analysis of the nature of bilateral TIEAs and their evolution. The positive aspects of TIEAs will be considered in order to conclude whether they can make a substantial impact on tax evasion crimes.

Part 3 will identify some of the issues associated with increasing the use of TIEAs and information sharing. This part will present an alternative perspective and discuss problems that may arise if TIEAs are broadened on a multilateral level and whether they can deal with larger scale tax crimes by corporations.¹¹ These issues will be considered in evaluating

⁹ Jenny Cosgrave, *Tax dodgers are 'not acceptable': Luxembourg Fin Min*, (2 March 2015) CNBC <<http://www.cnbc.com/id/102467122>>; Ian Allison, *HSBC Scandal: Tax evasion not legal basis for Swiss money laundering against British bank*, (19 February 2015) International Business Times UK <<https://sg.news.yahoo.com/hsbc-scandal-tax-evasion-not-legal-basis-swiss-155743544--finance.html>>; Nassim Khadem, 'Corporate tax: billions going overseas...but not where its needed', *Sydney Morning Herald* (Sydney), 9 April 2015, 1, 4-5.

¹⁰ Anamourlis and Nethercott, above n 5.

¹¹ Anamourlis and Nethercott, above n 5, 46-47.

whether significant changes will be seen to the current level of tax evasion and the existence of tax havens. Finally, Part 4 will conclude by debating the likely future of bilateral TIEAs and potential measures that may be considered to further impact on tax evasion. Alternative measures to TIEAs are important to examine in light of the difficulties as discussed in Part 3.

In summary, this paper will seek to provide an in-depth analysis and perspective on recent developments to TIEAs. The discussion will bring to light some of the main issues associated with global TIEAs in dealing with tax evasion and tax havens. Furthermore, the paper will question whether recent increased collaboration between tax agencies, governments and institutions will work effectively to combat this ongoing problem.

1.1 Defining tax evasion and its importance – How recent issues, such as the HSBC Swiss bank scandal demonstrate the constant presence of tax evasion.

In order to analyse the current approach to addressing tax evasion globally through the use of bilateral TIEAs and information sharing, an understanding of tax evasion and its evolution is necessary. There is a clear relationship between tax havens and this particular type of tax crime, which has more recently become the subject of focus for governments and tax agencies worldwide.¹² As a result, there has been an increase in the development of legislation, policies and standards to address the problem of tax evasion.¹³

The exposure of tax evasion scandals involving banking and financial institutions, such as HSBC Swiss bank as well as the questionable legality of profit shifting by individuals and multinational corporations have been key catalysts for change.¹⁴ In addition, the growing popularity of information sharing through bilateral TIEAs has been associated with other factors such as globalisation and technological innovation.¹⁵ These forces have caused a natural interdependence between nations, due to the increased connection between individuals, governments, institutions and markets.¹⁶

Tax evasion has been distinguished from other forms of tax crime. It involves ‘the non-payment of the tax which would properly be chargeable to a tax payer if the taxpayer made a full and true disclosure of assessable income and allowable deductions.’¹⁷ To avoid confusion between tax evasion, avoidance and planning, a clear distinction was made by

¹² Anamourlis and Nethercott, above n 5, 45-46; Gravelle, above n 3, 1-2.

¹³ Gravelle, above n 3, 1-2, 5-6; Johannesen and Zucman, above n 2.

¹⁴ Tracy McVeigh, *Fury at corporate tax avoidance leads to call for a global response*, (19 May 2013) The Guardian <<http://www.theguardian.com/business/2013/may/18/corporate-tax-avoidance>>; Khadem, above n 9.

¹⁵ Anamourlis and Nethercott, above n 5; Johannesen and Zucman, above n 2, 66.

¹⁶ *Ibid*; Pinto, above n 8, 227-229, 238.

¹⁷ Woellner et al, above n 1, 1399.

Gleeson CJ in *R v Meares*,¹⁸ where he labeled tax evasion as being an action, which involves ‘using unlawful means to escape payment of tax.’¹⁹ One method often utilised to evade taxes is through the use of offshore tax havens.²⁰ The attractiveness of tax havens is often characterised by their ‘lenient tax laws’,²¹ ‘strict bank secrecy’,²² measures and a lack of transparency.²³ Although there is no definition that accurately describes a tax haven, there are and traditionally have been archetypical tax haven countries, which have attracted global attention.²⁴ Switzerland, Monaco, Liechtenstein and Ireland in the EU are traditional tax havens, as well as countries in the Caribbean and Pacific such as the Bahamas, Cayman Islands, British Virgin Islands, Vanuatu and Cook Islands.²⁵

In the past, there have been cases in Australia, which demonstrate the seriousness of tax evasion and the problems associated with the existence of tax havens.²⁶ *JMA Accounting Pty Ltd & Anor v Carmody & Ors*²⁷ was a case involving tax evasion by Queensland accounting firm JMA Accounting.²⁸ Clients were assisted in sending money offshore to a tax haven province in Malaysia.²⁹ The scheme involved 200 clients with a combined total of \$1.35 million being stashed overseas.³⁰ Similar schemes that have attracted severe penalties were shown in *R v Hili & Jones*³¹ where Mr Hili and Mr Jones evaded \$1.1 million worth of company and income tax by avoiding payment in Australia and instead basing operations in

¹⁸ (1997) 37 ATR 321, 323.

¹⁹ *Ibid.*

²⁰ Gravelle, above n 3.

²¹ Jeffrey Kraft, ‘Changing Tides: Tax Haven Reform and the Changing Views on Transnational Capital Flow Regulation and the Role of States in a Globalised World’ (2014) 21 *Indiana Journal of Global Studies* 599, 600

²² *Ibid.*

²³ *Ibid.*; Gravelle, above n 3, 3.

²⁴ Gravelle, above n 3, 3-4.

²⁵ Gravelle, above n 3, 4.

²⁶ Lydia Xynas, ‘Tax Planning, Avoidance and Evasion in Australia 1970-2010: The Regulatory Responses and Taxpayer Compliance’ (2010) 20 *Revenue Law Journal* 1, 22-24.

²⁷ [2004] FCAFC 274.

²⁸ *Ibid.*, 1.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ (unreported NSWDC) 13 Nov 2009, 35.

Vanuatu.³² In each case, the court made it clear that sentences would be imposed to prevent repetition of such offences and deter the community from committing crimes of a similar nature.³³ More importantly, the court aimed to emphasise the significant costs of tax evasion.³⁴ The Australian Tax Office (ATO) incurs these costs and they naturally flow to the Australian government, in terms of revenue losses through offshore profit and income shifting.³⁵

The list of tax havens has continually changed and has arguably been prone to shift, given that a country is free to implement its own taxation and legal structure.³⁶ Some Eastern European countries have been contemplated as having the potential to be labeled as 'tax havens'³⁷ as many have low flat tax rates between 10-20%.³⁸ Focus is often centered on tax havens given they are fundamentally accommodating the evasion of taxes by both individuals, high profile multinational corporations, banking and financial institutions.³⁹ Where countries have lower tax rates and attractive laws for investors, in terms of upholding confidentiality and refusing to exchange information, the potential for large capital flows is greater.⁴⁰ Therefore, in future, attention should be given to implementing TIEAs with countries that may not fall under the list of tax havens today but could be added in future.

To illustrate the complexity of tax havens, Switzerland has traditionally gained widespread attention over its strict bank secrecy laws attracting significant tax evaders, as proven by cases involving UBS AG Bank and HSBC.⁴¹ The issue here is the substantial

³² Ibid; Xynas, above n 26, 23.

³³ (unreported NSWDC) 13 Nov 2009, 35; Xynas, above n 26.

³⁴ Xynas, above n 26, 22.

³⁵ Heath Aston, 'Hockey, ATO keep mum on multinationals', *Sydney Morning Herald* (Sydney), 9 April 2015, 5; Khadem, above n 9.

³⁶ Gravelle, above n 3, 7-9.

³⁷ Ibid 7.

³⁸ Ibid 9.

³⁹ Ibid 5; Leo Shanahan, 'ATO Commissioner sees 'end of illegal tax havens around the world'', *The Australian* (Canberra), 2 March 2015, 18.

⁴⁰ Niels Johannesen and Gabriel Zucman, 'Knocking on haven's door' (2014) 6 *American Economic Journal: Economic Policy* 10, 11; Johannesen and Zucman, above n 2; Khadem, above n 9.

⁴¹ Allison, above n 9.

economic costs to governments in terms of losses in tax revenue and the need to enforce more expensive and up to date measures to prevent this activity.⁴² Switzerland's domestic policies on tax laws and their regulation of financial and banking sectors have drawn global attention, given these examples demonstrate the sheer scale of tax evasion.⁴³

Zucman has argued that despite global efforts to encourage greater cooperation and data exchange, bank secrecy is still a common, strong practice by many countries that are traditionally labeled as tax havens.⁴⁴ Deposits held in tax haven banks remained unchanged between 2007-2011.⁴⁵ Total offshore wealth in Switzerland stands at 1500 billion pounds in 2014, with around 12% of individual household global financial wealth held in tax havens.⁴⁶ The complications associated with strict bank secrecy laws, a lack of institutional transparency and relaxed tax rates are made clear with the actions of Geneva private bank HSBC.⁴⁷

HSBC has been frequently accused of assisting wealthy clients evade millions of dollars' worth of taxes. These activities were particularly highlighted after whistleblower IT worker Herve Falciani stole files in 2007 and provided them to French authorities.⁴⁸ Details emerged of the activities occurring between 2005-2007 involving 30 000 accounts holding approximately \$120 billion of assets.⁴⁹ The concern is that HSBC is not the first example of Switzerland's lack of regulation towards bank involvement in tax evasion, as UBS AG Bank

⁴² Ken Devos, 'The Role of Sanctions and Other Factors in Tackling International Tax Fraud' (2013) 42 *Common Law World Review* 1, 1-2, 5; Danica Kirka, *Too big to manage? HSBC's chiefs to testify on tax scandal*, (25 February 2015) Yahoo7 Finance Australia <<https://au.finance.yahoo.com/news/too-big-manage-hsbcs-chiefs-104655708.html>>; The Economist, *Tackling tax evasion: Follow the money* (7 February 2015) The Economist <<http://www.economist.com/node/21642184/print>>.

⁴³ Ibid.

⁴⁴ Johannesen and Zucman, above n 40, 10-11.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Kirka, above n 42.

⁴⁸ Stefano Pozzebon, 'HSBC Whistleblower: You have to know how banks work to understand just how big this scandal is', *Business Insider* (Sydney), 20 February 2015, 1; AFP, *Calls for probe against HSBC Swiss unit after tax evasion reports*, (9 February 2015) Yahoo7 Finance Australia <<http://au.finance.yahoo.com/news/calls-probe-against-hsbc-swiss-010101066.html>>.

⁴⁹ Kirka, above n 42.

and Credit Suisse have also paid fees to the US for engaging in evasion activities.⁵⁰ The broader issue is that this type of behaviour appears to have become part of the culture of tax havens with their banking and financial institutions being involved in these crimes, rather than cooperating to prevent them.⁵¹

Uncovering some of the practices of banking and financial institutions around the world, particularly following the Global Financial Crisis (GFC), has alarmed governments worldwide.⁵² Global awareness has increased in terms of recognising the influence and power of these institutions and multinational corporations.⁵³ In the eyes of politicians, governments and individuals worldwide, the prospect of high income and profit generating institutions engaging in such criminal behaviour is considered to be unacceptable.⁵⁴ In the past, penalties have proven to be severe: Swiss bank UBS AG was hit with a \$780 million fine from the US for assisting US citizens in evading tax.⁵⁵ It is not sufficient that a ‘Swiss leaks’⁵⁶ of HSBC files is the way that global attention and discovery is made on such actions.⁵⁷ Luxembourg Finance Minister Pierre Gramegna reiterated the concept of a uniform system of tax at the Global Financial Markets Forum in 2014.⁵⁸ This represents developments globally in understanding the importance of reviewing current practices.⁵⁹ Scandals such as HSBC scandal are partly the result of domestic laws of tax havens needing to change and banking and financial markets requiring more regulation.⁶⁰

⁵⁰ Ibid.

⁵¹ Ibid; Pozzebon, above n 48; Cosgrave above n 9.

⁵² Johannesen and Zucman, above n 2.

⁵³ Kirka, above n 42.

⁵⁴ Cosgrave, above n 9.

⁵⁵ AFP, above n 48.

⁵⁶ Ibid.

⁵⁷ Ibid; Cosgrave, above n 9.

⁵⁸ Ibid.

⁵⁹ Ibid; Roman Lanis and Peter Wells, *Will a ‘Google tax’ get them to finally pay up?* (10 December 2014) The Drum TV: ABC <<http://www.abc.net.au/news/2014-12-10/lanis-and-wells-will-a-google-tax-work-in-australia/5957710>>.

⁶⁰ Ibid; Johannesen and Zucman, above n 40, 10-11.

The complexity of dealing with tax evasion crimes involving high profile bank and financial institutions is presented through these past cases. Despite the negative ramifications, they have provided a means of reflecting on where law and regulatory mechanisms have been inadequate.⁶¹ Therefore, it is clear that tax agencies and governments have learned from these events and the use of other measures in addition to increasing TIEAs are a reaction to these cases.⁶² Since these events, progress has been significant both domestically and internationally.

Domestically, the ATO has successfully implemented a variety of measures to deal with various tax crimes. The development of cross-agency and joint taskforce, Project Wickenby in 2006 and new initiatives such as Project DO IT, assisted by the implementation of domestic laws, have been key measures aimed at addressing tax evasion.⁶³ The ATO has recently reported that as at 31 October 2014, Project Wickenby generated \$865.32 million worth of outstanding tax revenue, and a recovery of approximately \$2 billion in liabilities.⁶⁴ The implementation of Project Wickenby has been celebrated as a positive approach in catching tax evaders, as its relative success centres on its ability to generate greater cooperation between government agencies, domestically and internationally.⁶⁵

This follows through to the development of Project DO IT, which provides reduced penalties to individuals and companies that disclose offshore income bases.⁶⁶ The Project has encouraged a more collaborative approach, assisted by the ATO's relationship with financial

⁶¹ The Economist, above n 42; Roman Lanis and Peter Wells, above n 59; Roman Lanis and Ross McClure, *What's needed for Australia to seriously tackle tax avoidance* (2 October 2014) The Conversation <<http://theconversation.com/whats-needed-for-australia-to-seriously-tackle-tax-avoidance-32272>>.

⁶² Simon Benson, 'ATO leads global battle', *Daily Telegraph* (Sydney), 2 March 2015, 15.

⁶³ ATO, *Targeting tax crime: Project DO IT – October 2014* (30 October 2014) Australian Government: Australian Taxation Office <<http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Targeting-Tax-Crime-magazine/2014/Targeting-tax-crime--Project-DO-IT---October-2014/>>.

⁶⁴ ATO, *Project Wickenby* (10 September 2014) Australian Government: Australian Taxation Office <<http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/>>.

⁶⁵ Devos, above n 42, 2.

⁶⁶ ATO, above n 63.

data collector AUSTRAC.⁶⁷ Between 2012-2013,⁶⁸ AUSTRAC has received ‘more than 84 million individual reports of financial transactions and suspicious matters from industry and government partner agencies’.⁶⁹ This project has been beneficial to the ATO in collecting the relevant information it needs where domestic taxpayers have not voluntarily disclosed offshore income and accounts.⁷⁰ One of Project DO IT’s successful outcomes has been the recovery of \$30 million in revenue from leaks related to Australian clients holding vast sums of money in HSBC accounts offshore.⁷¹ These measures have represented some of the key domestic policies implemented by the ATO, in addition to TIEAs.

Internationally, there are a variety of measures complementing TIEAs and the exchange of information aimed at cracking down on tax evasion. Following the aftermath of the GFC and the outbreak of scandals such as UBS and HSBC, initiatives have been implemented internationally as a means of reducing bank secrecy, increasing transparency and encouraging cooperation to combat tax evasion.⁷² The US has made significant progress by unilaterally implementing the *Foreign Account Tax Compliance Act* (FATCA) in 2010. This legislation has inspired many countries, particularly those in the EU to follow suit with their own domestic information exchange agreements.⁷³ In 2009, France and Switzerland made amendments to their tax treaties to implement information exchange measures where requested by the relevant tax authorities.⁷⁴ These changes have represented some of the global responses to the initiatives posed by the OECD and G20, who have advocated for more regulation of tax havens and bilateral tax treaties since the late 1990s.⁷⁵

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Shanahan, above n 39.

⁷² Johannesen and Zucman, above n 2, 65-66.

⁷³ Tracy A Kaye, ‘Innovations in the War on Tax Evasion’ (2014) 363 *Brigham Young University Law Review* 363, 364.

⁷⁴ Johannesen and Zucman, above n 2, 65-66.

⁷⁵ Ibid.

Currently, developments are being seen in terms of drawing global attention to multinational corporations and their cooperation with tax agencies in the countries where they conduct business.⁷⁶ Recent studies, such as that conducted by the US group Citizens for Tax Justice and the US Public Interest Research Group Education Fund have uncovered the widespread scale of tax evasion in the US in 2014-2015. The 500 largest American companies held more than \$2.1 trillion in accumulated profits offshore to avoid tax, owing approximately \$620 billion to the IRS. Microsoft alone holds \$103.8 billion in five tax haven subsidiaries as of 2014. These statistics have formed part of the reasoning behind global developments tackling offshore profit shifting and justifying the use of the effects of bilateral TIEAs.

Domestically, the Australian government has also moved beyond the scope of TIEAs by introducing new anti-avoidance tax legislation in the recent 2015 May Budget.⁷⁷ The ‘Multinational Anti-Avoidance Law’⁷⁸ will be introduced from the 1st January 2016, expanding on Part 4A of the *Income Tax Assessment Act 1936* (Cth) to introduce a broader ‘integrity’⁷⁹ measure and restrict the ability of companies diverting income overseas.⁸⁰ It appears that the government has taken OECD recommendations seriously regarding stricter controls and investigation into corporate tax structures, by unilaterally implementing this law.⁸¹ The Australian government has turned its attention to the tax schemes of

⁷⁶ Georgia Wilkins, *Heat on Joe Hockey over tax avoidance deal as government prepares to host G20*, (12 September 2014) Sydney Morning Herald <<http://www.smh.com.au/business/heat-on-joe-hockey-over-tax-avoidance-deal-as-government-prepares-to-host-g20-20140911-10f9io.html>>; McVeigh, above n 14.

⁷⁷ Daniel Meers, *Budget 2015: Treasurer Joe Hockey sticks it to Dirty Thirty multinationals avoiding tax in Australia*, (11 May 2015) Daily Telegraph <<http://www.dailytelegraph.com.au/news/nsw/budget-2015-treasurer-joe-hockey-sticks-it-to-dirty-thirty-multinationals-avoiding-tax-in-australia/story-fni0cx12-1227351107781>>.

⁷⁸ Australian Government, *Strong on multinational tax integrity* <<http://budget.gov.au/2015-16/content/overview/html/overview-14.htm>>.

⁷⁹ King & Wood Mallesons, *Australian Federal Budget 2015-16*, (12 May 2015) KWM <<http://www.kwm.com/en/au/knowledge/insights/australian-federal-budget-2015-16-analysis-key-changes-20150512>>.

⁸⁰ *Ibid*; *Income Tax Assessment Act 1936* (Cth) Pt 4A.

⁸¹ Gabrielle Chan, *Budget confirms 30 multinationals face tax avoidance crackdown*, (12 May 2015) The Guardian <<http://www.theguardian.com/australia-news/2015/may/12/budget-confirms-30-multinationals-face-tax-avoidance-crackdown>>.

approximately thirty multinational corporations.⁸² The new legislation appears to be an attempt at reclaiming any lost revenue, and positively reflects the global attitude towards addressing wide scale tax evasion crimes committed by different institutions.⁸³

The next set of regulations and policy debate, both domestically and internationally, will undoubtedly be focused on multinational corporations.⁸⁴ This development will be addressed more directly in Parts 3 and 4, as it is clear that TIEAs are becoming more commonly used in addition to other measures. How they will evolve in dealing with not only tax crimes committed by individuals, banks and financial institutions but multinational corporations as well must be considered in light of the advantages they pose, as addressed in Part 2.

⁸² Ibid.

⁸³ Ibid; The Australian, *Multinationals face tax avoidance crackdown*, (11 May 2015) The Australian <<http://www.theaustralian.com.au/business/news/multinationals-face-tax-avoidance-crackdown/story-e6frg906-1227350498619>>.

⁸⁴ Ibid.

1.2 Tax Information Exchange Agreements (TIEAs) – The growing movement towards increased global cooperation as a method of impacting on tax evasion.

As previously identified, many of the current measures implemented to deal with tax evasion and tax havens by the ATO and Australian government as well as internationally have centered on the use of bilateral TIEAs. In summary, the main aim of TIEAs is for increased cooperation between the countries that enter into such an agreement.⁸⁵ Tax or financial information is requested in order to obtain details of the persons involved in the investigation.⁸⁶ Participating nations are given the purpose and reasons for examination and a statement that the request is acceptable within their domestic laws.⁸⁷ TIEAs have been seen as a breakthrough for obtaining information from countries, especially those that have a tradition of strict bank secrecy laws.⁸⁸ They have the potential to significantly increase the transparency of the banking, financial, government and corporate sectors.⁸⁹

It is therefore unsurprising that there is a rise in the use and implementation of TIEAs in recent years, particularly following the GFC and they are expected to increase in future.⁹⁰ The advantages and therefore reasons for the expansion in TIEAs will be discussed in this part, along with measures which may be considered to intensify their effectiveness.

In Australia, the move towards developing bilateral TIEAs has been the result of inefficiency in aspects of the *Income Tax Assessment Act 1936* (Cth),⁹¹ particularly s 264A.⁹²

⁸⁵ Anamourlis and Nethercott, above n 5, 45-46.

⁸⁶ Ibid; Terry Hayes, 'Australia Takes Aim At International Tax Evasion' (2010) 21 *Journal of International Taxation* 57, 57-58.

⁸⁷ Ibid.

⁸⁸ Anamourlis and Nethercott, above n 5, 45-47.

⁸⁹ Viktoria Dendrinou, *EU to Widen Information-Sharing to Fight Tax Evasion; Data on All Forms of Financial Income to be Swapped* (14 October 2014) Wall Street Journal <<http://ezproxy.uow.edu.au/login?url=http://search.proquest.com/docview/1610998293?accountid=15112>>.

⁹⁰ Anamourlis and Nethercott, above n 5, 45-46.

⁹¹ *Income Tax Assessment Act 1936* (Cth) s 264A.

Currently, this section is significant for the ATO given it allows them to gather offshore information about taxpayers in Australia where criminal behaviour is suspected.⁹³ However, there have been difficulties shown in assessing information in countries overseas where regulations and laws are in conflict with domestic law.⁹⁴ Identifying perpetrators and gathering relevant information has also been difficult for the ATO.⁹⁵ In part, it is exacerbated by the growth of globalisation and technology, where individuals are involved in evasion crimes from a variety of nations and schemes are increasingly sophisticated.⁹⁶

As at 31st July 2013, Australia has signed and entered into 33 bilateral TIEAs and this is expected to grow in future.⁹⁷ Between 2011-2013, 799 exchanges of information were requested which was shown to be an increase from 2009-2011.⁹⁸ The result of TIEAs is that the ATO has been able to request for an exchange of information with a variety of countries, including traditional tax haven countries in the EU such as Monaco and Liechtenstein as well as The Bahamas, British Virgin Islands and Cayman Islands.⁹⁹

The implementation of bilateral TIEAs has provided the ATO with greater cooperation and assistance from other countries.¹⁰⁰ By providing direct information relevant to the case being investigated or where suspicious activity is under examination, investigations are more efficiently conducted.¹⁰¹ The scope of TIEAs is somewhat unlimited, as information that can be requested is significantly broad ranging from details on the person's identity, banking and financial institution information, trustee and beneficiary details as well as company information where necessary.¹⁰²

⁹² Ibid; Anamourlis and Nethercott, above n 5, 44-45.

⁹³ Anamourlis and Nethercott, above n 5, 44-45.

⁹⁴ Ibid, 44-46.

⁹⁵ Ibid, 45-46.

⁹⁶ Johannesen and Zucman, above n 2, 66.

⁹⁷ Gilleard, above n 6.

⁹⁸ Ibid.

⁹⁹ Anamourlis and Nethercott, above n 5, 45; Hayes, above n 86, 57.

¹⁰⁰ Ibid.

¹⁰¹ Anamourlis and Nethercott, above n 5, 45-46; Hayes, above n 86, 57-59.

¹⁰² Ibid.

The ATO and Australian government have shown considerable effort and success by collaborating not only on an international level, but also domestically. The ‘multiagency approach’¹⁰³ taken by the ATO has been shown by the development of Project Wickenby in 2006.¹⁰⁴ The program involves multiple agencies such as the ATO, ASIC, Australian Crime Commission (ACC), Australian Federal Police and the Commonwealth DPP.¹⁰⁵ Project Wickenby has provided a 30% reduction in domestic capital flows to traditional tax haven nations that comply with the program.¹⁰⁶ The combined efforts of Project Wickenby and the increase of TIEAs are regarded as being a more ‘multifaceted’¹⁰⁷ approach towards working with domestic and international institutions.¹⁰⁸ Through sharing and exchanging detailed information in a wide variety of cases, these methods may provide a strong and effective mechanism in alleviating tax evasion.¹⁰⁹

Significant developments internationally have been seen by policies, measures and legislation implemented specifically by the US, and Global Forum members the EU, OECD and the G20.¹¹⁰ The US responded to the problem of offshore tax evasion by unilaterally implementing the FATCA in 2010, particularly in the wake of scandals such as Swiss bank UBS AG assisting US citizens in evading \$300 million a year in taxes.¹¹¹ The FATCA has represented a significant step towards international cooperation and the promotion of greater tax transparency standards.¹¹² Some have called the FATCA a ‘snowball effect’¹¹³ engaging governments and tax agencies globally in exchanging information bilaterally and potentially

¹⁰³ Hayes, above n 86, 58.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid 57-59; ATO, *Tax havens and tax administration* (18 October 2011) Australian Government: Australian Taxation Office <<http://www.ato.gov.au/Business/International-tax-for-businesses/Previous-years/Investing-overseas/Tax-havens-and-tax-administration/>>.

¹⁰⁸ Hayes, above n 86, 58.

¹⁰⁹ Ibid 57-60; Anamourlis and Nethercott, above n 5, 45-47; Benson, above n 62.

¹¹⁰ Ibid.

¹¹¹ Kaye, above n 73, 394.

¹¹² Ibid 366; Mary Beth Goodman, *Tax Evasion: The Noose Tightens Further* (17 December 2014) Newsweek <<http://www.newsweek.com/tax-evasion-noose-tightens-further-292762>>.

¹¹³ Kaye, above n 73, 366.

in future, multilaterally.¹¹⁴ The FATCA involves obliging financial institutions to declare financial assets and accounts held overseas by US taxpayers to the Internal Revenue Service and withholding tax where information is not provided.¹¹⁵ Over 100 jurisdictions are now involved in bilateral intergovernmental agreements with the US under FATCA including, France, the UK, Spain, Italy and Germany.¹¹⁶

Of particular importance has been the Swiss FATCA Cooperation Agreement signed in 2013.¹¹⁷ This has arguably been seen as a step towards breaking through Switzerland's bank secrecy laws and tax evasion activities by US citizens in their jurisdiction.¹¹⁸ The direct effect on tax evasion is yet to be determined in terms of specific revenue recovery as a result of the implementation of FATCA in the US and increased cooperation with other nations.¹¹⁹ However, the importance of the FATCA is that it has encouraged many jurisdictions to unilaterally implement information-sharing requirements.¹²⁰ Where a country has a similar FATCA law domestically; the countries can work together to catch tax evaders.¹²¹ This has made it easier for countries to cooperate to gather the relevant information needed where evasion is suspected, with the assistance of foreign financial institutions.¹²² Furthermore, it represents a broader form of TIEAs by somewhat overriding bank secrecy laws by requesting information from foreign banking and financial institutions directly.¹²³

The OECD has also provided foundational steps to the development of TIEAs by endorsing cooperation on a global level.¹²⁴ The OECD's relationship with the G20 was

¹¹⁴ Ibid.

¹¹⁵ Gravelle, above n 3, 1; Goodman, above n 112.

¹¹⁶ Goodman, above n 112.

¹¹⁷ Kaye, above n 73, 376.

¹¹⁸ Ibid.

¹¹⁹ Gravelle, above n 3, 1.

¹²⁰ John McCann, *Tax information sharing, the rise of 'FATCA-esque' agreements* (2013) AIMA <<http://www.aima.org/en/education/aimajournal/q12013/tax-information-sharing.cfm>>.

¹²¹ Ibid; Goodman, above n 112.

¹²² Ibid.

¹²³ Gravelle, above n 3, 26.

¹²⁴ David Rosenbloom, Noam Noked and Mohammed S Helal, 'The Unruly World of Tax: A Proposal For An International Tax Cooperation Forum' (2014) 15 *Florida Tax Review* 57, 61-62.

strengthened in 2001, by the establishment of the Global Forum on Transparency and Exchange of Information for Tax Purposes.¹²⁵ Central to their agenda is the idea of tax transparency and information exchange, but in comparison to the G20 its effectiveness is more limited given it lacks ‘political and diplomatic influence.’¹²⁶ However, it has been increasingly advocating the increased use of TIEAs and more importantly on a multilateral level, expanding information sharing and data exchange.¹²⁷

In addition, the G20 has been consistently influential since the GFC and post 2009.¹²⁸ They have viewed banking secrecy as being a critical aspect of the cause of the crisis and facilitating tax evasion crimes, resulting in significant losses in revenue to governments worldwide.¹²⁹ The G20 with the Global Forum has advocated for increased tax transparency standards globally which will develop with the move towards automatic exchange of information in 2017 and 2018 by 89 countries.¹³⁰ The EU has sought to widen information sharing in this manner which will include broadening bank data exchange laws to cover the exchange of additional income information such as dividend, interest and account balance data held in foreign financial institutions.¹³¹

These developments have been designed to comply with US FATCA legislation so that EU members can also cooperate with the US in these matters.¹³² Overall, the move towards broadening the basic nature of bilateral TIEAs and seeking to establish more multilateral agreements will undoubtedly lead to greater cooperation and efficiency. These agreements will also enable countries to directly obtain detailed information from global banking and financial institutions.¹³³ The issue will be whether enough countries will be

¹²⁵ Ibid 63.

¹²⁶ Ibid 65.

¹²⁷ Ibid; Goodman, above n 112.

¹²⁸ Ibid.

¹²⁹ Ibid; Rosenbloom, Noked and Helal, above n 124, 65-67.

¹³⁰ Goodman, above n 112.

¹³¹ Ibid; Dendrinou, above n 89.

¹³² Ibid.

¹³³ Ibid.

quick to respond and cooperate, as traditional tax haven nations such as Switzerland, Austria and Luxembourg have expressed concerns over exchanging data and contradicting their domestic bank secrecy laws and regulations.¹³⁴

If bilateral TIEAs are expanded globally and in future and the development of multilateral TIEAs becomes a reality, there is likely to be an impact on tax evasion. What is crucial about TIEAs is that they encourage a more uniform and efficient method of standardizing tax laws and policies worldwide.¹³⁵ This is achieved by making detailed exchanges of information about individuals, accounts, banks, and financial institutions and companies the norm.¹³⁶ If levels of tax evasion were to therefore decrease, governments will be able to claw back revenue losses from this particular tax crime.¹³⁷ Therefore, economically this provides a significant reason for considering TIEAs as a method to combat tax evasion.

The cost of tax evasion is considerably vast, with the EU Commission estimating that tax evasion and fraud costs the EU bloc \$1.26 trillion in revenue losses per year.¹³⁸ The Australian government has also recognised the significant revenue losses incurred from tax evasion crimes, particularly by large multinational corporations, which has been reflected in recent legislative and policy reforms.¹³⁹ Furthermore, in many cases the funds that are stored in offshore accounts are proceeds of crime and profits made by the wealthy which they seek to hide in tax havens to avoid paying tax.¹⁴⁰

The implementation of TIEAs in Australian tax operations reflects the OECD's stance.¹⁴¹ In the recent 2015 May Budget, the Australian government took note of the OECD's stance on company tax structures as being evasive and responded by implementing a

¹³⁴ Ibid.

¹³⁵ Anamourlis and Nethercott, above n 5, 59-60; Dendrinou, above n 89.

¹³⁶ Ibid; Goodman, above n 112.

¹³⁷ Ibid.

¹³⁸ Dendrinou, above n 89.

¹³⁹ The Australian, above n 83.

¹⁴⁰ Ibid; AFP, above n 48.

¹⁴¹ Chan, above n 81; Australian Government, above n 78.

change to Part 4A of the *Income Tax Assessment Act* (Cth).¹⁴² The changes to the current law have stemmed from concerns by officials of the Federal government who identified thirty multinationals diverting profits earned in Australia to either no or low tax jurisdictions. The ATO has assisted by having audit teams specializing in technology and e-commerce to understand the arrangements such as the ‘Double Irish Dutch Sandwich’ schemes. The changes to Part IVA along with implementing a new 100 per cent penalty regime has resulted over political and international pressure in 2014 over the consider the OECD’s position on Base Erosion and Profit Shifting (BEPS) Action Plan over company arrangements. The effects of this reform will take some time to eventuate, however it has been estimated that the Australian government will recover \$350 million in the next four years as a result.¹⁴³ This may potentially represent the future of TIEAs, with direct changes to legislation used as a means of strengthening their effectiveness in dealing with different types of tax evaders.

It is therefore important that TIEAs be used given they can help limit criminal activity by making it easier to trace funds and prevent illegal funds being transferred overseas.¹⁴⁴ By ensuring enough government revenue is collected from the payment of taxes, the provision of services can be achieved which is vital to the efficient functioning of an economy.¹⁴⁵

Despite recognising these developments and many of the advantages or possible benefits associated with the increase of bilateral TIEAs and information sharing, there are barriers that may limit their effectiveness. Exercising this strategy on a global scale, requiring the support and assistance of many global participants is not an easy task. Part 3 will provide a broader perspective on the nature of TIEAs and their relationship to various institutions, analysing some of the barriers that may affect the legitimacy of using expanding TIEAs as a method of combating tax evasion.

¹⁴² Ibid; *Income Tax Assessment Act 1936* (Cth) s 264A.

¹⁴³ Chan, above n 81.

¹⁴⁴ Dendrinou, above n 89.

¹⁴⁵ Chan, above n 81; Woellner, above n 2, 3, 7, 10, 14-15.

1.3 Is it that simple? The potential barriers and issues limiting the effectiveness of increased information sharing through the use of TIEAs

The significant progress that has been made in recent years through the adoption of bilateral TIEAs globally and the advantages associated as discussed in part 2 is likely to have an impact on tax evasion activities in the future. However, the effects on the pace and intensity of tax evasion is still likely to take time to evolve and for drastic changes to eventuate. This is partly due to the difficulty in implementing bilateral TIEAs in greater numbers as well as moving towards developing multilateral TIEAs and a more ‘automatic’¹⁴⁶ exchange of information.¹⁴⁷ There are a variety of disadvantages associated with this method of tackling tax evasion. These factors need to be considered, as they are important in understanding the broad nature of tax evasion and whether alternatives to TIEAs as suggested in part 4, need to be addressed.

Legal issues represent some of the current and potential obstacles that exist which prevent the complete effectiveness of bilateral TIEAs.¹⁴⁸ These include concerns over the privacy of individuals, companies and institutions that are exposed to unnecessary scrutiny and excessive investigation.¹⁴⁹ Furthermore, many have considered international law issues, such as upholding the rights of states to maintain their sovereignty in relation to tax, economic and political policies.¹⁵⁰ Sovereignty of state has become a critical debate topic given many have argued that this right will erode where countries are forced to adopt uniform tax standards.¹⁵¹ The concern is that this interference may lead to the development of more

¹⁴⁶ Dendrinou, above n 89; Goodman, above n 112.

¹⁴⁷ Ibid; Anamourlis and Nethercott, above n 5, 46-47; Johannesen and Zucman, above n 2, 68-69.

¹⁴⁸ Pinto, above n 8, 227-229; Terry Dwyer, ‘The New Fiscal Imperialism’ (2002-2003) 18 *Policy* 12, 12-14.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Pinto, above n 8, 228-229.

serious problems, such as cross-jurisdictional conflicts if TIEAs become difficult to manage and regulate fairly.¹⁵²

In addition to some of the legal issues posed, in broader terms, more consideration should be given to the costs and pressures placed on government resources to deal with expanding, implementing, funding and overseeing TIEAs. The growth of Internet technology and globalisation brings with it greater flows of offshore capital, movement of people and a linking of nations worldwide.¹⁵³ The constant evolution of technology and globalisation somewhat assists tax evasion crimes becoming more sophisticated and for their frequency to increase, particularly on an individual and company level.¹⁵⁴ As a result, governments through their respective tax agencies should ensure they keep up with these changes and use TIEAs as efficiently as possible when exchanging data and information. This may therefore require greater levels of staff and administrators, data collectors, government agencies and tax agencies, legislators, auditors and various other institutions.¹⁵⁵ All parties involved have to ensure they can assist in keeping up with the pace and sophistication of tax evasion activities as well as the procedures involved with information sharing.

Difficulties may also arise in terms of dealing with traditional tax haven countries, such as Switzerland where there is a need to increase cooperation, given they receive large capital flows based on their attractive tax, banking and financial sector policies.¹⁵⁶ Progress will be seen where there is a certain degree of fragmentation in their long held domestic laws and policies, which uphold bank secrecy and confidentiality principles.¹⁵⁷ This has been difficult for many years, but recent progress has been made with Switzerland agreeing to

¹⁵² Ibid; Anamourlis and Nethercott, above n 5, 46-47.

¹⁵³ Johannesen and Zucman, above n 2, 66.

¹⁵⁴ Ibid; Pinto, above n 8, 231; Maiden, above n 4.

¹⁵⁵ Julian Bajkowski, *Multinational tax takes bleed after huge ATO staff cuts*, (9 April 2015) Government News < <http://www.governmentnews.com.au/2015/04/multinational-tax-take-bleeds-after-huge-ato-staff-cuts/>>.

¹⁵⁶ Johannesen and Zucman, above n 40, 10-11; Johannesen and Zucman, above n 2, 65-69, 87; Dendrinou, above n 89.

¹⁵⁷ Ibid.

exchange information with more countries, such as France and the US, which has been a significant development towards increased tax transparency.¹⁵⁸ Looking at Switzerland in particular, it has recognised some of the significant consequences associated with assisting tax evasion, as evidenced by the HSBC scandal.¹⁵⁹ There were serious political and economic ramifications that resulted, and it is clear that post GFC it has become important for countries to gather lost tax revenue from such crimes that can reach high monetary proportions.¹⁶⁰

However, despite some progress, it is questionable whether expanding information sharing with such countries will be enough both domestically and globally. This is currently being tested with developments now likely to focus on tax evasion by multinational corporations, who are now next in line to face scrutiny over their tax compliance.¹⁶¹ The Australian government has recognised the threat posed by multinational corporations in terms of revenue loss, taking drastic steps to address inefficiencies in domestic tax law rather than focusing on TIEAs as being the only solution to reduce tax evasion crimes.¹⁶² The issue here is whether the immense power and wealth of these institutions also represent a potential barrier for tax agencies and governments in implementing effective measures to address this problem.¹⁶³ This will be addressed in more detail in part 4 which will seek to focus on some of the main disadvantages and problems associated with a greater emphasis on TIEAs that may outweigh its advantages.

Significant legal barriers that arise in relation to TIEAs are the potential privacy issues associated with exchanging information about individuals, corporations and institutions.¹⁶⁴ Furthermore, there are issues with upholding sovereignty of state when

¹⁵⁸ Ibid; Kaye, above n 73, 376-377, 397.

¹⁵⁹ Kaye, above n 73, 397-398; AFP, above n 48.

¹⁶⁰ Ibid; Benson, above n 62; Johannesen and Zucman, above n 2, 66.

¹⁶¹ Benson, above n 62; Maiden, above n 4.

¹⁶² Ibid; Chan, above n 81.

¹⁶³ Ibid; McVeigh, above n 14.

¹⁶⁴ Dwyer, above n 148, 12-16.

seeking to implement uniform global tax laws.¹⁶⁵ The wide ambit of bilateral TIEAs means that the type of tax and financial information that can be requested and provided includes information on identity, ownership of a company or any other structure such as partnerships and trusts.¹⁶⁶ Names and addresses can also be requested and certain records can be examined to gather details on specific transactions and events related to an individual investigation.¹⁶⁷

In summary, the scope of TIEAs is wide and under a bilateral arrangement, each country can obtain via a ‘competent authority’¹⁶⁸, any information it requires to examine an individual, business, company or any other institution suspected of engaging in tax evasion.¹⁶⁹ This information can be sought if a country wants to investigate matters related to tax or if conduct is believed to constitute a crime.¹⁷⁰ However, it does not have to reach the point of being considered a serious tax crime, as information sharing as part of an investigation can be requested where there are mere suspicions.¹⁷¹ Despite some ‘safeguards’¹⁷² being in place to restrict the broad scope of information exchange and ensure requests are legitimate, it is clear that there is a push towards increased transparency of tax information to combat tax evasion activities and practices.¹⁷³

This issue has been raised by Vernardos, who has reinforced the importance of safeguarding and retaining confidentiality when implementing new tax laws and measures.¹⁷⁴ He identifies confidentiality and privacy laws as being a ‘basic human right’,¹⁷⁵ and therefore it cannot be ignored or disregarded when seeking to enforce broad information exchange

¹⁶⁵ Ibid, 13; Pinto, above n 8, 228-229.

¹⁶⁶ Hayes, above n 86, 57-58.

¹⁶⁷ Ibid, 57-59.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid; Goodman, above n 112.

¹⁷⁴ Angelo Vernardos, ‘The Hypocritical Stance by the OECD, Representing the Developed Nations – Inappropriate Pressure on Less Developed Nations to Adopt Compliance Tax Regimes’ (2006) 16 *Revenue Law Journal* 56, 56, 64.

¹⁷⁵ Ibid, 64.

schemes via TIEAs.¹⁷⁶ This is particularly an issue regarding countries with strict bank secrecy laws, which have at their core the principle of confidentiality of information.¹⁷⁷ This has been a tradition for many tax haven states such as Switzerland, and currently remains a difficult barrier to break through as it is deeply entrenched in domestic law.¹⁷⁸

However, Vernados argues that regard should be had to the rights of these countries which like all global states should have the ability to implement domestic laws and policies that protect economic and political interests and work to their advantage without interference from others.¹⁷⁹ This complex conflict in interests will therefore be an issue in recognising the rights of states in protecting the privacy of domestic and international citizens through confidentiality laws.¹⁸⁰ It is a difficult topic to address as it questions the correctness of international laws and other nations who interfere and force other countries to override their own laws in the interests of a global trend.¹⁸¹ Vernados makes a note of such debate surrounding the OECD and member states, as they appear to be breaking international law in this regard by ignoring principles of confidentiality and territorial sovereignty through enforcing bilateral TIEAs and encouraging their expansion.¹⁸²

Vernados also discusses the difficulty in balancing this issue and ensuring there is no cross-jurisdictional conflicts between states that want to uphold their domestic policies, such as bank secrecy.¹⁸³ He identifies that the main reason for the existence of such laws is for the purpose of protecting their economy and generating investment, by having a competitive edge in tax rates and a strong financial industry.¹⁸⁴ The difficult balance arises between upholding domestic interests whilst simultaneously cooperating with global member states

¹⁷⁶ Ibid, 64-65, 68-69.

¹⁷⁷ Ibid, 58.

¹⁷⁸ Ibid; Johannesen and Zucman, above n 40, 10-11; Johannesen and Zucman, above n 2, 65-66.

¹⁷⁹ Vernados, above n 174, 67.

¹⁸⁰ Ibid; 64-65, 68-69; Pinto, above n 8, 227-229; Kaye, above n 73, 411-413.

¹⁸¹ Ibid.

¹⁸² Vernados, above n 174, 57-59, 61.

¹⁸³ Ibid.

¹⁸⁴ Ibid, 71.

through bilateral TIEAs, which are aimed at reducing tax evasion crimes.¹⁸⁵ He identifies that privacy and confidentiality measures will be ‘sacrificed’¹⁸⁶ given the need to disclose greater and more detailed amounts of information in order to resolve serious tax evasion activity.¹⁸⁷ This will become increasingly relevant given the recent intense and mounting focus on developing more bilateral TIEAs, possibly expanding them on a multilateral scale to address more difficult and serious cross-jurisdictional tax evasion cases.¹⁸⁸ Nonetheless, consideration must be given to this potential and serious legal barrier and the significance of upholding state independence, since it is likely to arise as an argument against disclosure and increased information sharing relating to tax issues.

Following on from the issue of sovereignty of state, what also becomes an issue is attempting to enforce and implement uniform tax laws globally.¹⁸⁹ It is difficult to establish and enforce tax laws from one state to another, which has been acknowledged as being against the implied freedom of countries to design their own domestic tax laws.¹⁹⁰ International cooperation has been possible between countries, that have implemented bilateral TIEAs, or FATCA style arrangements, without which it would mean a country, cannot be forced to assist other states in investigating potential tax crimes.¹⁹¹

It has been a challenge for many governments to encourage cooperation from traditional tax haven countries, such as Switzerland and Austria.¹⁹² Having to break through long held domestic laws has been challenging and is still in its early stages.¹⁹³ Overcoming this barrier has been difficult, as many countries rely on the free flow of capital from

¹⁸⁵ Ibid, 72; Pinto, above n 8, 227-229, 259.

¹⁸⁶ Vernados, above n 174, 72.

¹⁸⁷ Ibid.

¹⁸⁸ Pinto, above n 8, 227-229, 259; Anamourlis and Nethercott, above n 5, 46-47.

¹⁸⁹ Vernados, above n 174, 68-69

¹⁹⁰ Ibid, 70-72; Pinto, above n 8, 228-229.

¹⁹¹ Anamourlis and Nethercott, above n 5, 46-47; Hayes, above n 86, 57-58; Kaye, above n 73, 412-413.

¹⁹² Kaye, above n 73, 376-377, 402, 405-407, 411; Johannesen and Zucman, above n 2, 65-66.

¹⁹³ Ibid; Johannesen and Zucman, above n 40, 10-11.

investors overseas as a result of their attractive and competitive tax rates.¹⁹⁴ This abundant flow of funds to countries such as Switzerland and other tax havens has supported their economic growth and benefited their banking and financial institutions by strengthening their gathering of capital and increasing their client base.¹⁹⁵

There has to be an advantage to a country in agreeing to share private information with another state and a significant reason for them to break domestic law, justify a breach of privacy and override data protection and bank secrecy standards.¹⁹⁶ For changes to be seen, firstly there has to be a continual push for adjustments to domestic laws and government policies related to taxation law and regulations.¹⁹⁷ The involvement of so many individuals, institutions and stakeholders as well as governments has made the transition to agreements of global tax standards and transparency as of yet, slow to develop.¹⁹⁸

A further consideration and logical difficulty with expanding bilateral TIEAs and developing measures to deal with tax evasion is the potential for increased costs and greater resource pressure.¹⁹⁹ Increasing bilateral TIEAs and developing more methods of information sharing between the ATO and other tax agencies globally will become an increasingly costly exercise, given that there will be a need for updated and efficient technology systems to deal with information exchange and data collection.²⁰⁰

Recently, there have been significant cuts to the ATO's staff numbers by the Australian government in its 2014 budget cuts to the public sector.²⁰¹ Many have argued this will cause significant disadvantage to the ability of the ATO to conduct audits and

¹⁹⁴ Ibid.

¹⁹⁵ Johannesen and Zucman, above n 2, 67-69; Lanis and Wells, above n 59; Maiden, above n 4; Pinto, above n 8, 227-229, 237-238.

¹⁹⁶ Dwyer, above n 148, 15.

¹⁹⁷ Anamourlis and Nethercott, above n 5, 46-47; Lanis and McClure, above n 61.

¹⁹⁸ Ibid; Rosenbloom, Noked and Helal, above n 124, 76.

¹⁹⁹ Lanis and McClure, above n 61; Bajkowski, above n 155.

²⁰⁰ Ibid; King and Wood, above n 79.

²⁰¹ Bajkowski, above n 155; Noel Towell, *Australian Tax Office compliance ability gutted, say departing insiders*, (15 July 2014) Sydney Morning Herald <<http://www.smh.com.au/federal-politics/political-news/australian-tax-office-compliance-ability-gutted-say-departing-insiders-20140715-zt92a.html>>.

investigations, particularly in terms of multinational corporations who are now at the forefront of suspicious tax activities both domestically and internationally.²⁰² In order for TIEAs to work efficiently and for there to be significant developments in reducing tax evasion, the technology used by the ATO and tax agencies worldwide needs to be capable of coping with higher levels of data collection.²⁰³ This may become an issue for many tax agencies and governments, not just in Australia, as many countries are struggling with budgetary black holes and the public sector often faces revenue cuts as a result.²⁰⁴

Given that there have been recent developments towards implementing a new standard of ‘automatic’²⁰⁵ exchange of tax information by 2017 or 2018, involving banks and other financial institutions automatically directing information to government and tax agencies, it is important that these agencies are able to efficiently respond to these changes.²⁰⁶ If the OECD’s Common Reporting Standard is followed and mirrored in domestic tax information exchange policies, it will involve the exchange of names, addresses, and tax identification numbers, bank account information in significant and detailed numbers on request.²⁰⁷ An increased difficulty in maintaining a standard for tax agencies in terms of costs and resource numbers would likely lead to TIEAs suffering from inefficiency and the ability to address tax evasion crimes will be an increasingly challenging task.²⁰⁸

It is therefore important that the costs of TIEAs and the expansion of information sharing are reasonable and manageable. Furthermore, where there are cost cuts and staff reduction in tax agencies it is important to ensure these changes do not hinder the ability of

²⁰² Ibid.

²⁰³ Ibid; Lanis and Wells, above n 59.

²⁰⁴ Ibid; Johannesen and Zucman, above n 2, 65-66; Benson, above n 62.

²⁰⁵ Goodman, above n 112.

²⁰⁶ Ibid; Dendrinou, above n 89.

²⁰⁷ Dendrinou, above n 89; Goodman, above n 112; OECD, *Automatic Exchange of Information*, (2015) OECD <<http://www.oecd.org/tax/exchange-of-tax-information/automaticexchange.htm>>; Kaye, above n 81, 407, 409-410.

²⁰⁸ Lanis and Wells, above n 59; Lanis and McClure, above n 61.

these institutions in exercising their power to investigate tax crimes.²⁰⁹ Domestically, the recent 2015 May Budget did provide some positive news to the ATO, as it was announced that the agency would receive \$87.6 million over the next three years as part of the introduction of the anti-avoidance legislation.²¹⁰ The government believes it is necessary to assist the ATO in combating profit shifting by multinationals and offset recent resource cuts.²¹¹ It will be interesting to see in future whether other countries will follow the same trend as recently experienced domestically, and if so, what will be the impact on the progress and effectiveness of their respective tax agencies in successfully catching tax evaders.

These barriers will require consideration if there is to be a greater emphasis on TIEAs as the main mechanism for targeting tax evasion now and in the future. The difficulties associated with implementing and enforcing TIEAs and information sharing understandably lead to considerations of possible alternatives to this method as well as looking at broader issues associated with tax evasion crime. As such, part 4 will seek to present an in-depth analysis into current developments that are clearly an indication of where tax agencies and governments are headed in terms of dealing with tax evasion.

²⁰⁹ Ibid; Bajkowski, above n 155.

²¹⁰ King and Wood, above n 79; Joanna Mather, *Federal Budget 2015: Multinational tax cheats 'will pay back double'*, (5 May 2015) Australian Financial Review <<http://www.afr.com/news/policy/budget/federal-budget-2015-multinational-tax-cheats-will-pay-back-double-20150512-ggud3u>>.

²¹¹ Ibid.

1.4 Should alternatives be considered? Will an increase of TIEAs make enough of an impact on tax evasion and change the current pace of this crime?

In the current era of rapid globalisation as well as the increasing use and development of technology, it is no wonder that TIEAs have become a more realistic method of catching both individual and larger scale tax evasion crimes.²¹² Given the fact that bilateral TIEAs are now firmly embedded in many domestic legal systems as a method of encouraging greater cooperation and information sharing, it is unlikely that the current trend of implementing them will slow down.²¹³ This is particularly the case regarding multinational corporations, who are coming increasingly under the spotlight for their suspicious tax arrangements and activities.²¹⁴ However, as previously identified, it is impossible to ignore the potential barriers, difficulties and some disadvantages associated with the increase of bilateral TIEAs.

Interesting and logical ideas have arisen both in a domestic and international sense, opening up avenues that show the wide scope and complexity of tax evasion.²¹⁵ This part will identify and analyse the impact of current developments and consider alternative measures to TIEAs. It is clear that some of the proposed ideas are viable and reasonable to consider, given the belief that the ‘gap between Australia and tax havens will never be closed’²¹⁶ and this remains an issue internationally.²¹⁷

²¹² Johannesen and Zucman, above n 2, 65-66; Anamourlis and Nethercott, above n 5, 45-47.

²¹³ Gilleard, above n 6.

²¹⁴ Khadem, above n 9; Maiden, above n 4.

²¹⁵ Edward Tanenbaum and Heather Ripley, ‘International Tax Developments’ (2013) 14 *Corporate Business Taxation Monthly* 7, 7-8, 42; Johannesen and Zucman, above n 2, 65-67; Gravelle, above n 3.

²¹⁶ Maiden, above n 4.

²¹⁷ Ibid.

Tax evasion has to be viewed on a broader scale and therefore questions need to be considered regarding reforms to domestic individual and corporate tax rates and laws.²¹⁸ Many view high individual and corporate tax rates assisting the continual shift of capital and income to offshore havens as they have a competitive advantage.²¹⁹ It is likely to be an important consideration given the likelihood of future tax havens arising due to their more attractive tax laws and rates.²²⁰ Targeting particular sectors such as the banking, financial and overall corporate sector more directly through other regulatory reforms and measures that monitor their tax compliance may also be relevant.²²¹ There may need to be a direct request to institutions to cooperate with governments and tax agencies or offer incentives to encourage greater compliance.²²² This may improve the pace of progress for change and instigate a reduction in tax evasion, shifting to alternative programs besides relying on information sharing and audits conducted by tax agencies worldwide.²²³ Introducing domestic laws that directly target banks and multinationals, requiring increased collaboration and ensuring financial information provided is more transparent and accessible to tax agencies may represent a more fundamental step forward.²²⁴

This will undoubtedly be a complex measure to administer both domestically and internationally, however, it is likely to be more achievable if TIEAs are increased and developed on a multilateral scale.²²⁵ It would involve information exchange between more than two states at a time for a particular investigation.²²⁶ As a result, greater assistance on a multilateral level would possibly resolve complex cross-jurisdictional tax evasion

²¹⁸ Ibid; Lanis and McClure, above n 61.

²¹⁹ Ibid.

²²⁰ Ibid; Gravelle, above n 3, 7-9.

²²¹ Lanis and Wells, above n 59; Lanis and McClure, above n 61.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid; Maiden, above n 4; Tanenbaum and Ripley, above n 215.

²²⁵ Anamourlis and Nethercott, above n 5, 46-47.

²²⁶ Ibid.

investigations more promptly and efficiently.²²⁷ It is likely to be a more effective way of dealing with multinationals especially since their operations are wider and borders can be unlimited in terms of capital flow and business headquarters.²²⁸ Their activities and profit shifting can be more difficult to trace and unravel; therefore multilateral TIEAs would be beneficial in these circumstances.²²⁹

These considerations somewhat represent a starting point towards looking at different ways of dealing with tax evasion. It is especially important to look at alternative ideas and concepts, given the complex and wide scope of this crime, particularly in this diverse globalised context.²³⁰ In reality, it will likely take a few years and significant cooperation between countries before we see the complete effects of bilateral TIEAs and whether their expansion will make some difference to the pace and scope of tax evasion. Before any consideration is likely to be given to other alternatives or developing multilateral arrangements, the use of TIEAs must be shown to be successful.

In looking at tax evasion as a whole and trying to understand why so many individuals and corporations seek to hold income or profits offshore, a key issue to consider, particularly in the Australian context is domestic tax policy and legislation.²³¹ The subject matter in question is whether our tax rates for individuals and companies are too high and therefore a contributing factor to continual tax evasion activities.²³² If we focus primarily on Australia, it currently has one of the highest corporate tax rates in the world, standing at 30%.²³³ The problem with countries that have similar high corporate or individual tax rates, or both, in comparison to neighbouring countries or other regions is that they become less

²²⁷ Ibid.

²²⁸ Ibid; Maiden, above n 4; Gravelle, above n 3, 1-3; Pinto, above n 8, 257-260.

²²⁹ Ibid.

²³⁰ Johannesen and Zucman, above n 2, 65-66.

²³¹ Maiden, above n 4.

²³² Ibid; Lanis and Wells, above n 59.

²³³ Ibid.

attractive investment targets.²³⁴ Individuals and companies understandably seek more advantageous markets to invest in, where income and profits are taxed at lower rates.²³⁵ This has become an increasingly common scenario for multinational corporations that represent the growing category of tax evaders under scrutiny.²³⁶

On Wednesday, April 8th 2015, a Senate Inquiry into corporate tax avoidance and possible evasion by major global corporations Google and Apple was held in Sydney.²³⁷ The aim was to question their representatives over the tax arrangements of both companies, and how revenue and sales figures are reported and taxed in Australia.²³⁸ This was an important discussion as it has become clear that many multinational companies are shifting large sums of profit to lower tax regions, such as Singapore and to traditional tax havens such as Switzerland and Ireland.²³⁹ In the midst of the current economic environment post – GFC, Australia represents another country among the growing number whose government is seeking to claw back lost revenue and funds to cover significant budget deficits.²⁴⁰ Furthermore, the position of the Australian government in this regard is part of the global movement of governments and tax agencies.²⁴¹ They are part of the attempt to reduce tax evasion crimes and target classes of individuals and corporations that raise substantial profits and are a significant source of revenue.²⁴²

This was clearly the case also on an international scale, as the uncovering of the HSBC Swiss bank scandal brought to light the breadth of tax evasion crimes.²⁴³ The assistance given by the bank to wealthy clients to help them hide profits and income in bank

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Khadem, above n 9.

²³⁸ Ibid.

²³⁹ Ibid; Aston, above n 35; Maiden, above n 4; Matt Wade, 'Tech giants insist they pay their legal dues in Australia', *Sydney Morning Herald* (Sydney), 9 April 2015, 4-5.

²⁴⁰ Ibid; Johannesen and Zucman, above n 2, 65-66; Dendrinou, above n 89.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Gravelle, above n 3, 5; The Economist, above n 42; Allison, above n 9.

accounts set up by staff caused significant outrage.²⁴⁴ Governments and tax agencies recognised the implications of this activity and the fact that banks were assisting not only the concealment of untaxed wealth, but also potentially the proceeds of criminal activity.²⁴⁵ There was clearly not just crime, but also legitimate amounts of funds that remained untaxed and therefore a loss of revenue to governments affected by the shifting of income overseas.²⁴⁶

It is understandable that many companies are looking at finding more attractive ‘hubs’,²⁴⁷ in the Asia-Pacific region and further abroad in setting up entities to recognise and collect income and profits.²⁴⁸ It is purely due to the fact that the economies of Singapore and Hong Kong with corporate tax rates of 17% and 16.5% respectively, represent examples of countries with high levels of offshore funds flowing due to their competitively advantaged tax rates.²⁴⁹ The effects are visible with a reported \$31.4 billion transferred in revenue by various companies operating in Australia in the 2012 financial year, to avoid the payments under the domestic tax rate.²⁵⁰

In addition, Switzerland has been a long time receiver of offshore funds to its banking and financial sector for similar reasons.²⁵¹ Tax rates are comparatively lower and with the additional benefit of strict bank secrecy laws, this explains why it has long been regarded a tax haven.²⁵² Therefore, the higher rates that remain embedded in Australia’s tax regime are clearly a barrier to progress in reducing the broad scope of tax evasion.

Furthermore, many have recognised the potential for many new tax havens to emerge, if their lower tax rates attract high flows of offshore capital.²⁵³ The problem appears to be

²⁴⁴ Ibid.

²⁴⁵ Allison, above n 9; AFP, above n 48.

²⁴⁶ Ibid.

²⁴⁷ Maiden, above n 4; Khadem, above n 9.

²⁴⁸ Ibid.

²⁴⁹ Ibid; Aston, above n 35; Khadem, above n 9; Michael West, ‘Sandwiches on the menu as chiefs front tax inquiry’, *Sydney Morning Herald* (Sydney), 9 April 2015, 4.

²⁵⁰ Aston, above n 35.

²⁵¹ Khadem, above n 9; Kaye, above n 81, 376-377; Johannesen and Zucman, above n 2, 67.

²⁵² Ibid.

²⁵³ Gravelle, above n 3, 7-9.

circular in nature. The elimination of traditional tax havens through tighter regulation and TIEAs somewhat creates new tax havens as evaders seek to hide funds in countries that have not been seen as threats, but whose tax rates are comparatively attractive.²⁵⁴ This is most currently seen in many Eastern European countries, where flat taxes are common and can be between 10-20%.²⁵⁵ It is a relevant issue, as in many instances the countries themselves are open to invite flows of capital if they find it provides significant benefits to sectors of the economy and therefore will boost domestic economic growth.²⁵⁶

Ireland, a commonly criticised tax haven, has come under significant scrutiny in 2015 given its somewhat unfairly competitive tax rates and implementing its 6.25% special tax regime for income gained from innovation, allowing companies to take advantage of further tax loopholes. It has resulted from Ireland taking steps to tighten its corporate tax rules as a result of global criticism as well as phasing out the ‘Double Irish’ loophole in 2014, which allowed multinationals to shift their profits through Ireland to various tax havens.

It appears that the problem of tax evasion will undoubtedly remain in reality a challenging task to resolve and impacting on its pace through TIEAs will potentially be slow given the somewhat continual existence and re-emergence of tax havens.²⁵⁷ However, it is important that some consideration is given to the notion of reducing high corporate tax rates not just in Australia, but worldwide.

If tax rates are disadvantaging competition and potentially increasing the rate of tax evasion by domestic individuals and entities, this cannot be ignored. The reduction of the so called ‘arbitrage gap’²⁵⁸ that exists between Australia and countries such as Singapore would represent a starting point.²⁵⁹ This could be achieved where Australia would obtain a greater

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid; Maiden, above n 4.

²⁵⁸ Maiden, above n 4.

²⁵⁹ Ibid.

competitive edge against these low tax regions and potentially minimise large flows of offshore funds, which are fundamental to the existence of tax havens.²⁶⁰ The reduction of domestic tax rates may add strength to the use of bilateral TIEAs and therefore increase the impact of reducing tax evasion crimes.

Approaching the issue of tax evasion more broadly, we can also look at more general approaches to TIEAs. Firstly, it is critical that in future, there is a growth in movement towards implementing TIEAs on a multilateral scale.²⁶¹ This would involve two or more countries at a time, cooperating and sharing information on a particular investigation where necessary.²⁶² The development of globalisation and increased use and innovation of Internet technology will undoubtedly make it easier for capital to flow across many jurisdictions.²⁶³ These factors will likely assist tax evaders by enabling them to take advantage of these changes, by establishing accounts across many jurisdictions or using details that are difficult to trace and investigate.²⁶⁴ The implementation of multilateral arrangements will be complex, given the significant diversity between domestic and international tax laws and customs.²⁶⁵ However, it has been increasingly popular as a standard to consider when creating TIEAs and impacting on tax evasion in general.²⁶⁶ Anamourlis and Nethercott claim that a ‘multijurisdictional approach’²⁶⁷ towards dealing with tax evasion is necessary, given the current trend of integrating nations, which facilitates wider business transactions across many states.²⁶⁸

²⁶⁰ Ibid.

²⁶¹ Anamourlis and Nethercott, above n 5, 46-47; Pinto, above n 8, 252-253, 257-260.

²⁶² Ibid.

²⁶³ Johannesen and Zucman, above n 2, 65-66.

²⁶⁴ Ibid; Vernardos, above n 174, 63-65, 67-72

²⁶⁵ Pinto, above n 8, 252-253, 257-260.

²⁶⁶ Anamourlis and Nethercott, above n 5, 45-47.

²⁶⁷ Ibid, 46.

²⁶⁸ Ibid; Khadem, above n 9.

The trend poses challenges for tax agencies worldwide in extracting data and tracing activity necessary to identify crimes.²⁶⁹ The diverse spread of multinational operations across many countries has made the development and use of multilateral TIEAs a more viable and necessary option to consider.²⁷⁰ This is due to the fact that it may reduce administrative burdens and make investigations more easy and efficient, as more countries can cooperate on matters that affect them.²⁷¹ Multilateral TIEAs can therefore improve the quality and collection rate of information, giving TIEAs a more broad purpose and justifying their usefulness as a method of impacting tax evasion.

A final consideration is developing different regulatory measures and strategies that directly target potential tax evaders.²⁷² It may be necessary to consider how best to regulate larger sectors of the economy, particularly banks, financial institutions and multinational corporations in terms of ensuring they comply with domestic tax laws.²⁷³ The implementation of specific legislative regimes that force greater disclosure and cooperation with governments and tax agencies should be considered.²⁷⁴ As discussed previously, multinational corporations have become a recent target for tax agencies and governments worldwide over their lack of transparent and legitimate tax arrangements.²⁷⁵

The Australian government, in its recent May 2015 Budget sought to re-focus on domestic tax laws to target multinationals.²⁷⁶ On the 16th September 2015, the Federal Government introduced the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 which will apply after 1st January 2016. The current proposals reflect the Australian government's cooperation with the G20 and OECD in establishing the Base

²⁶⁹ Khadem, above n 9; Aston, above n 35.

²⁷⁰ Anamourlis and Nethercott, above n 5, 45-47.

²⁷¹ Ibid.

²⁷² Lanis and McClure, above n 61; Lanis and Wells, above n 59.

²⁷³ Ibid; Hayes, above n 86, 57-60.

²⁷⁴ Ibid; McCann, above n 120; Kaye, above n 73, 412-413.

²⁷⁵ Khadem, above n 9; Lanis and Wells, above n 59; McVeigh, above n 22.

²⁷⁶ The Australian, above n 83.

Erosion and Profit Shifting Action Plan (BEPS) in 2013.²⁷⁷ BEPS involves strengthening tax systems worldwide by ‘limiting the opportunities for double non-taxation and ensuring a globally coordinated approach to international tax challenges.’²⁷⁸ In response, the Australian government has taken significant action in specifically targeting multinationals by implementing the ‘Multinational Anti-Avoidance Law.’²⁷⁹

The legislation, which was passed by the House of Representatives and the Senate on 3 December 2015 with support from the Greens, seeks to target thirty companies in Australia with more than \$1 billion in revenue earned from 2016.²⁸⁰ Penalties will be more severe and wide-ranging, with double the tax they are required to pay and interest added if it is discovered that the companies are operating structures which assist them in avoiding or paying Australian or international tax debts.²⁸¹ The ‘Tax Laws Amendments (Tax Integrity Multinational Anti-Avoidance Law)’²⁸² proposes to amend Part 4A of the *Income Tax Assessment Act 1936*,²⁸³ introducing ‘integrity’²⁸⁴ measures by cracking down on ‘contrived arrangements’²⁸⁵ involving profit exporting internationally.²⁸⁶ The new law applies a ‘principal purpose test’ as opposed to the ‘dominant purpose test’ applied for the majority of Part IVA. This new test is less onerous and allows the courts broad interpretation powers and the burden is on the taxpayer to provide evidence to the ATO commissioner about taxes paid under foreign rates and laws.

As discussed in part 3, difficulties may be encountered in terms of increased resource pressures by the change. Corporate lawyers have expressed concerns over the potential for

²⁷⁷ Joe Hockey, ‘Global leaders to tackle profit shifting and tax evasion’ (Media Release, 20 September 2014) 1 <<http://jbh.ministers.treasury.gov.au/media-release/052-2014/>>.

²⁷⁸ Ibid.

²⁷⁹ The Australian, above n 83.

²⁸⁰ King and Wood, above n 79.

²⁸¹ Ibid; The Australian, above n 83.

²⁸² King and Wood, above n 79.

²⁸³ *Income Tax Assessment Act 1936* (Cth), Pt. 4A.

²⁸⁴ King and Wood, above n 79.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

their workload to intensify and there is likely to be more demand placed on the ATO, as a result of these legislative reforms.²⁸⁷ Recent budgetary cuts in 2014 to staff and funding, has been somewhat addressed however by the government in its 2015 May Budget, demonstrating that they recognise the importance of assisting the ATO in dealing with difficult tax evasion crimes.²⁸⁸ The government has indicated they will provide \$127.6 million over four years to assist the Serious Financial Crime Taskforce in dealing with various tax crimes and legislative changes, following on from the measures implemented under Project Wickenby.²⁸⁹ According to the Tax Justice Network, Project Wickenby has been replaced and broadened under the current coalition government in 2015 with the Serious Financial Crime Taskforce which along with the multinational tax avoidance legislation and Australia's decision to adopt the OECD's Common Reporting Standard for automatically exchanging financial information has represented an 'innovative and highly proactive approach' towards global tax haven and tax evasion crackdowns in recent decades.

These developments represent a significant step forward by the government, and may provide a template for other governments worldwide in terms of alternative measures to TIEAs that may target multinationals more directly. Where a gap or inefficiency in domestic law is recognised, this development may provide a positive avenue for change. However, focus should not be limited to forcing compliance by legislation or policy, but also whether incentives can be provided to companies if they do not establish offshore centres for capital flows.²⁹⁰ To encourage domestic investment and for profits and income to be taxed in the country in which a company operates, incentives should be provided to direct them to do so.²⁹¹ For example, it may be reasonable to offer tax refunds for greater cooperation with

²⁸⁷ Ibid; Stefanie Garber, *Impact of 'passive' Budget on lawyers revealed* (14 May 2015) Lawyers Weekly <<http://www.lawyersweekly.com.au/news/16514-impact-of-passive-budget-on-lawyers-revealed>>.

²⁸⁸ King and Wood, above n 79; Towell, above n 201.

²⁸⁹ King and Wood, above n 79.

²⁹⁰ Maiden, above n 4; Johannesen and Zucman, above n 2, 89-90.

²⁹¹ Ibid.

agencies and where a company does not set up hubs in other jurisdictions to avoid or evade the payment of tax.²⁹² This may be unlikely and considerably difficult, as it would require significant discussion and measures in future to enforce these kinds of policies or tax regimes on a domestic and international level. However, it is important to recognise the breadth of these sectors in terms of wealth and operations on a global scale.²⁹³ Therefore, governments with the assistance of tax agencies need to establish greater and more efficient regulatory reforms and measures that directly target the major sources of tax revenue they receive.

As discussed above, there are certain alternative measures and schemes that could present additional benefits if used in addition to TIEAs or individually. It is likely to take some time before significant impacts are shown both domestically and internationally by the use of TIEAs, and so alternatives may not be necessary if they are shown to be successful. However, some of the suggestions above should provoke some thought given that the scope and complexity of tax evasion crime is quite substantial, and there are still many issues that can arise with TIEAs as addressed in part 3.

²⁹² Ibid.

²⁹³ Benson, above n 62; Khadem, above n 9.

CONCLUSION

In addressing the nature and evolution of TIEAs both domestically and internationally, this paper has aimed to analyse the benefits and potential barriers that are relevant in considering whether TIEAs will be an effective mechanism in impacting on tax evasion.

TIEAs certainly provide a more logical and efficient mechanism for both identifying and investigating tax evasion crimes, given they concentrate on greater cooperation between multiple institutions and tax agencies worldwide.²⁹⁴ Information gathering is fundamentally easier and more accessible, which is key in unraveling complex and broad tax evasion schemes. However, as addressed in part 3, there are legal issues among other concerns that may act as obstacles limiting the scope and success of TIEAs. Their impact will take time to eventuate, given their numbers continue to grow and it is difficult to physically record in terms of monetary value, the impact this method will make on tax evasion globally.

These difficulties have been recognised, as evidenced by the recent legislative reforms posed by the Australian government. They have approached the complex tax avoidance and evasion schemes by multinationals as a legislative issue.²⁹⁵ This is reflective of the alternative proposals suggested in part 4, which is relevant to consider. The variety of different measures considered is important, given they may fill some of the gaps or inefficiencies associated with TIEAs. However, they may be useful to use in addition to TIEAs to strengthen the overall attack on tax evasion crimes both domestically and internationally.

It is likely to be the case that governments worldwide will take a similar approach. Hopefully in future, tax evasion will be seen as an increasingly complex issue that requires

²⁹⁴ Anamourlis and Nethercott, above n 5, 45-47.

²⁹⁵ King and Wood, above n 79; Chan, above n 81.

many solutions and in creating them; they should be flexible and applicable to many jurisdictions.