



# **International Tax Agreements Amendment Act (No. 1) 1997**

**No. 80, 1997**

**An Act to amend the *International Tax Agreements  
Act 1953*, and for related purposes**



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## **An Act to amend the *International Tax Agreements Act 1953*, and for related purposes**

[Assented to 18 June 1997]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *International Tax Agreements Amendment Act (No. 1) 1997*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to tax agreement with Vietnam**

### ***International Tax Agreements Act 1953***

#### **1 Subsection 3(1) (at the end of the definition of *the Vietnamese agreement*)**

Add “, as amended by the Vietnamese notes”.

#### **2 Subsection 3(1)**

Insert:

*the Vietnamese notes* means the Exchange of Notes between the Government of Australia and the Government of the Socialist Republic of Vietnam amending the Vietnamese agreement, that was carried out on 22 November 1996. A copy of the Notes is set out in Schedule 38A.

#### **3 After section 11ZC**

Insert:

#### **11ZCA Exchange of Notes between Australia and the Socialist Republic of Vietnam**

- (1) Subject to this Act, on or after the date of entry into force of the Vietnamese notes, the provisions of the notes, so far as those provisions affect Australian tax, have the force of law according to their tenor.
- (2) The Commissioner may amend an assessment made before the date of entry into force of the Vietnamese notes for the purpose of giving effect to subsection (1).

#### **4 Schedule 38, paragraph 9.3**

Omit “Where profits of which”, substitute “Where profits on which”.

#### **5 After Schedule 38**

Insert:

**Schedule 38A—Exchange of Notes between  
the Government of Australia and the  
Government of the Socialist Republic  
of Vietnam amending the Agreement  
between the Government of Australia  
and the Government of the Socialist  
Republic of Vietnam for the avoidance  
of double taxation and the prevention  
of fiscal evasion with respect to taxes  
on income**

N° ALA 96/568

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of the Socialist Republic of Vietnam and has the honour to refer to the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, done at Hanoi on 13 April 1992 (hereinafter referred to as “the Head Agreement”).

The Department notes that paragraphs 3, 4 and 5 of Article 23 of the Head Agreement provide for “tax sparing” by Australia in relation to tax forgone by Vietnam under the provisions of certain Vietnamese tax laws.

The Department has the honour to propose that Article 23 be amended as follows:

I. Paragraph 4 shall be deleted and replaced with the following:

“4. In paragraph 3, the term “Vietnamese tax forgone” means, subject to paragraphs 5 and 6, the total amount which, under the law of Vietnam relating to Vietnamese tax and in



accordance with this Agreement, would have been payable as Vietnamese tax on income but for an exemption from, or reduction of, Vietnamese tax on that income (which total amount shall be deemed to be no greater than 20 per cent of the Vietnamese taxable income that relates to the income the subject of the exemption or reduction), less the actual amount of Vietnamese tax payable on that income.”

II. Paragraph 5 shall be deleted and replaced with the following:

“5. Paragraph 4 shall apply only in respect of exemptions or reductions resulting from the operation of:

- (a) (i) Articles 26, 27, 28 or 32 of the Law on Foreign Investment in Vietnam 1987; or
- (ii) Articles 66, 67, 68, 69 or 72 of Decree No. 18-CP on implementing regulations of the Law on Foreign Investment in Vietnam dated 16 April 1993; or
- (iii) Circular No. 48-TC-TCT on Profits Tax Rates and Exemption from and Reduction of Profits Tax dated 30 June 1993; or
- (iv) Part A of Part II of Circular No. 51-TC-TCT on Taxation of Foreign Investment in Vietnam dated 3 July 1993; or

- (v) Decree No. 87-CP on  
Build-Operate-Transfer (BOT)  
Contracts dated 23 November 1993  
and the regulations issued with that  
Decree,

to the extent those provisions were in force on,  
and have not been modified since, the date of  
this Note, or have been modified only in minor  
respects so as not to affect their general  
character; or

- (b) any other provision which may subsequently be  
made granting an exemption from, or reduction  
of, Vietnamese tax which the Treasurer of  
Australia and the Minister of Finance of  
Vietnam determine from time to time in letters  
exchanged for this purpose to be provisions to  
which this paragraph applies. Subject to its  
terms, such a determination of applicable  
provisions shall be valid for as long as those  
provisions are not modified after the date of  
that determination or have been modified only  
in minor respects so as not to affect their  
general character.”

III. The following paragraphs shall be inserted after paragraph 5:

“6. Paragraph 4 shall apply only to the extent that the  
exemption or reduction is granted in respect of Vietnamese tax  
on income from the following activities:

- (a) construction of infrastructure facilities  
including communications, power production  
and supply, construction of infrastructure  
facilities for the export processing and industry  
intensive zones and information and  
telecommunication facilities in mountainous  
areas in which naturally and socio economically  
difficult conditions exist; or

- (b) plantation of new forests for commercial exploitation; or
- (c) extremely important activities listed in the investment portfolio announced by the Vietnamese State Committee for Co-operation and Investment for each period; or
- (d) exploitation of natural resources except oil, gas or rare and precious natural resources; or
- (e) heavy industry projects including metallurgy, mechanical engineering production, base chemical production, cement production, electrical and electronic materials manufacturing, fertiliser manufacturing and anti epidemic medicines for use in animal production or forestry; or
- (f) plantation of long term industrial crops; or
- (g) activities in mountainous areas in which naturally and socio economically difficult conditions exist including hotel undertaking projects; or
- (h) any project satisfying at least 2 of the following criteria:
  - (i) employing at least 500 Vietnamese; or
  - (ii) applying advanced technology which satisfies the requirements listed in Article 4 of the Ordinance on the Transfer of Foreign Technology dated 5 December 1988, subject to the approval of the Ministry of Science and Technology and Environment; or

- (iii) exporting at least 80% of the products manufactured by the project itself; or
- (iv) the prescribed capital or contributed capital for the implementation of the business co-operation contract is at least US \$10 million dollars; or
- (j) projects carrying out infrastructure activities within a definite time period in which the foreign partner transfers the infrastructure to the Vietnamese Government without any compensation.

7. Notwithstanding the operation of paragraph 4, Vietnamese tax forgone shall not be deemed to have been paid in respect of income derived from:

- (a) banking, insurance, consulting, accounting, auditing and commercial services of any kind; or
- (b) the operation of ships or aircraft, other than ships or aircraft operated principally from places in Vietnam and used solely in carrying on a business in Vietnam; or
- (c) any scheme entered into by an Australian resident with the purpose of using Vietnam as a conduit for income or as a location of property in order to evade or avoid Australian tax through the exploitation of the Australian foreign tax credit provisions or to confer a benefit on a person who is neither a resident of Australia, nor of Vietnam.

8. Paragraphs 4, 5, 6 and 7 shall not apply in relation to income derived in any year of income after the year of income that ends on:

- (a) 30 June 2003; or

- (b) any later date that may be agreed by the Treasurer of Australia and the Minister of Finance of Vietnam in letters exchanged for this purpose,

whichever is the later in time occurring.”

IV. Paragraph 6 shall be renumbered as paragraph 9.

If the foregoing is acceptable to the Government of the Socialist Republic of Vietnam, the Department has the honour to propose that this Note and the Embassy’s confirmatory Note in reply shall constitute an Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam to amend the Head Agreement. The amendment to the Head Agreement shall enter into force when the two Governments have notified each other by a further exchange of notes that they have completed their domestic requirements for the entry into force of such amendment. The amendment to the Head Agreement shall have effect in respect of Australian tax in relation to income, profits or gains of the year of income that began on 1 July 1993 and of subsequent years of income.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of the Socialist Republic of Vietnam the assurances of its highest consideration.

CANBERRA  
22 November 1996

**Note in Reply**

The Embassy of the Socialist Republic of Vietnam presents its compliments to the Department of Foreign Affairs and Trade and has the

honour to refer to the Department's Note No ALA 96/568 of 22 November 1996 which reads as follows:

“[Text of Note No ALA 96/568 of 22 November 1996 of the Department of Foreign Affairs and Trade of the Government of Australia.]”

The Embassy has the honour to advise that the Department's proposal is acceptable to the Government of the Socialist Republic of Vietnam and that accordingly the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, done at Hanoi on 13 April 1992, is to be regarded as amended from the date when the two Governments have notified each other by a further exchange of notes that they have completed their domestic requirements for the entry into force of such amendment. The amendment to the Head Agreement shall have effect in respect of Australian tax in relation to income, profits or gains of the year of income that began on 1 July 1993 and of subsequent years of income.

The Embassy of the Socialist Republic of Vietnam avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

CANBERRA  
22 November 1996

## **6 Application**

The amendment made by item 4 of this Schedule applies to assessments in respect of income of the first year of income to which the Vietnamese agreement, as defined under subsection 3(1) of the *International Tax Agreements Act 1953*, applied and all later years of income.

*[Minister's second reading speech made in—  
House of Representatives on 26 March 1997  
Senate on 26 May 1997]*

(46/97)

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I HEREBY CERTIFY that the above is a fair print of the International Tax Agreements Amendment Bill (No. 1) 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
1997