Submission Relating to the Expansion of Australia's Tax Treaty Network:

Australian – Ukrainian Tax Treaty

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Introduction

The Board would like to thank Treasury for this opportunity to make a submission.

My name is David Garth Pointon. I am a chartered accountant and financial planner, operating a boutique business in Gawler, South Australia. Before the war I spent a considerable amount of time in Ukraine over a five year period. I operate a company in Ukraine, in export and import and a travel agency, though both operations are still in their infancy and since the commencement of the war all activity has been suspended. The company also owns the rights to music that I have published in Ukraine. As an Australian citizen I am subject to the taxation regime in Ukraine and the taxation regime in Australia, a potential of paying tax in both countries without relief from any double tax agreement that Australia enjoys with many other countries around the world. To date I have not paid myself a salary from my Ukraine company so as not to pay personal taxation in both countries.

Australia does not have a double taxation agreement with Ukraine.

I am on the board of the Ukrainian Australian Chamber of Commerce and Industry (South Australia) Incorporated, having joined the Board on 11th October, 2020.

The Ukrainian Australian Chamber of Commerce and Industry SA Incorporated was officially launched by the Premier of South Australia in 1993. The Constitution was adopted in November, 1992. The Chamber was registered with the Australian Securities and Investment Commission on 13th September, 2002 with a registered Australian Business Number since 1st November, 1999.

The Objects and Purpose of the Board, as detailed in its Constitution, include the following:

1. The development and growth of the economic and trade relations between Ukraine and Australia;
2. The support of persons interested in the exchange of goods and services between Ukraine and Australia;
3. To maintain a regular dialogue with Ukrainian and Australian trade and industry bodies;
4. To maintain a directory of members of business contacts in Ukraine;
5. To provide an advisory service for members interested in becoming involved in business in Ukraine;
6. To arrange seminars, lectures and speakers on topics of interest to members;
7. To arrange cultural exchanges between South Australia and Ukraine.

Prime Minister Albanese, on his visit to Ukraine near the beginning of the war, made a commitment to the President of Ukraine, Volodymyr Zelensky, that Australia will assist in the rebuild in Ukraine, once the war is over. This commitment has been made without the consideration of the taxation effects for Australians who take up this offer in the future.

Currently all Australian citizens pay both Ukrainian and Australian taxation with no relief. Without an adoption of a double taxation agreement any Australia company or individual will be penalised if they wish to seek to provide Ukraine with their services and if establishing a tax entity there.

A Double Tax Agreement will also assist in trade between the two countries.

Overview of taxation system of Australia

Individuals

Individuals are taxed on income and capital gains. Both Australian resident individuals and non-resident individuals can be subject to income tax and CGT depending on the source of the income.

Australia uses a progressive tax scale system for the purposes of taxing individuals. Under this system, the rate of tax payable increases as taxable income increases.

Companies

A company in Australia is a distinct and separate entity from its shareholders. Income received by a company is taxable to the company, after applying residency and source rules similar to those that apply to individuals. Unlike individuals however, company profits are taxed at the flat base rate of 25% increasing to 30% for companies with an annual turnover of $10 million.

Dividends paid by companies to their shareholders are included in the shareholders' assessable income and are subject to a 'dividend imputation system'. This system therefore ensures that dividends are ultimately taxed at each shareholder's applicable income tax rate. Access to credits however only applies to Australian resident shareholders.

Medicare Levy and Medicare Levy Surcharge

The Medicare Levy and the Medicare Levy Surcharge are taxes imposed on Australian residents' taxable incomes. The Medicare Levy is imposed at a flat rate of 2.0% of an individual's taxable income, although exemptions may be given to low income earners and foreign residents. The Medicare Levy Surcharge is an additional flat rate of between 1-1.5% imposed on high income earners who do not have private hospital insurance.

Superannuation Guarantee Charge (SGC)

In Australia, every employer must pay a minimum level of superannuation guarantee to its employees. From 1 July 2023 the SGC rate is 11% of each individual's employment earnings. The minimum rate will increase progressively until it reaches 12% from 1 July 2025 onwards.

Other taxes and levies

Consumption taxes – the Goods and Services Tax (GST)

GST is a broad based consumption tax (similar to the Value Added Tax in other countries) imposed on the sale of most goods and services in Australia and those imported into Australia. It is levied at a flat rate of 10%. Some supplies such as food, exports, education and health are excluded from GST. All consumers are required to pay GST when making a purchase.

Fringe Benefits Tax (FBT)

FBT is imposed on the value of non-cash benefits provided by employers to employees. Generally, benefits must be connected to the employee's employment in order to be taxable. FBT is levied on the provider of the benefit at a flat rate of 47.0% and may be deductible against the employer's taxable income.

Luxury car tax

The luxury car tax is a flat rate of 33% imposed when a luxury car is sold or imported into Australia.

Other considerations when trading between Australia and other countries

Transfer pricing

Australia has transfer pricing rules that need to be considered where goods or services are bought or sold between Australia and other countries. The transfer pricing rules have particular relevance to transactions between related parties in a corporate group for the supply of goods, services or finance that are not priced on terms which would be comparable to those that would be charged between parties transacting at arm's length.

Customs duty

Customs duty is imposed on goods imported into Australia. The rate of customs duty is generally around 5% of the 'customs value' of goods, although this often changes depending on the type of good that is imported.

Excise duty

Excise duty is imposed on alcohol, tobacco, fuel and petroleum products that are produced or manufactured in Australia. If these products are imported into Australia rather than produced or manufactured in Australia, customs duty applies to their importation at a rate comparable to the excise rate. Excise duty is paid by either the manufacturer or distributor at a flat rate.

Overview of taxation system of Ukraine

Corporate income tax (CIT)

The CIT is paid from profit that has its source origin from Ukraine and abroad. Resident business entities, foreign legal entities that derive profits from Ukrainian sources and permanent establishments of foreign entities are subject to an 18% CIT rate. Non-commercial structures (state-funded organizations, charity organizations and political parties), entities that chose a Unified tax regime (with an annual transaction income of under around EUR 162 thsd) and manufacturers of agricultural products are exempt from CIT.

Withholding tax

The Tax Code of Ukraine provides a withholding tax rate of 15% to be withheld by a resident entity or by the permanent establishment of a foreign entity from the amount of any Ukrainian-sourced income, unless otherwise provided by an applicable bilateral double taxation treaty. A resident entity or permanent establishment of a non-resident entity is liable to withholding tax (WHT) with a 15% WHT rate when paying Ukrainian source income to a non-resident.

Personal income tax (PIT)

PIT rate is 18% (tax accrued on income). PIT is payable by any natural person (either resident or non-resident) on receipt of taxable income. Income for PIT purposes includes income obtained from transactions with investment assets. Non-residents are also subject to PIT on receipt of Ukrainian source income, including gains from the disposal of shares and corporate rights issued by Ukrainian companies.

Value added tax (VAT)

The sale of goods (services) on and within the customs territory of Ukraine, the import of goods into the customs territory of Ukraine and the export of goods out of the customs territory of Ukraine are subject to VAT. The basic VAT rate is 20% of the contractual value of the relevant goods (services). Non-residents may be subject to VAT through permanent establishments that are registered for VAT.

Environmental tax (Eco tax)

Eco tax rate depends on the pollutant. The object and tax base of eco-taxation are volumes and types of the pollution. There are some eco tax rates that are defined separately.

Unified tax

A unified tax that can be paid instead of CIT and personal income tax by individuals-entrepreneurs and legal entities. Employers are also liable to make payroll-based Unified Mandatory State Social Insurance Contributions for insured employees to the State Pension Fund at 22% rate. The tax base is capped at 15% of the minimum monthly salary.

Summary

A double tax agreement (DTA) or a double tax treaty is an agreement signed by two countries to avoid tax complications for their citizens and businesses. The agreement will eliminate the double taxation with respect to taxes on income, capital, fringe benefits and withholding tax without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

A DTA has mainly two objectives, to avoid double taxation and to prevent fiscal evasion in assisting each countries' tax authorities in enforcing their respective tax laws including transfer pricing, customs duty in Australia and withholding tax in both countries.

Each of the differing taxes in each country will need to be addressed where there is an overlap. At this time I have funds tied up my company in Ukraine that I am not able to "pay" myself otherwise I would lose a large portion in paying taxation in both Ukraine and in Australia.

With the war in Ukraine and the need for Ukraine to be rebuilt it is imperative that a DTA be put into place otherwise there would be a disadvantage for any Australian to be involved in this process as they currently would be taxed in Ukraine and then taxed again in Australia without any offset because a DTA does not exist between Australia and Ukraine. This would effectively penalize any Australian organization that would like to assist Ukrainian going forward. Australian resident individuals are subject to Australian tax on their worldwide income with a foreign income tax offset which allows for most for most foreign income taxes paid to the extent of the Australia tax payable on foreign sourced in foreign tax amounts.

When an Australian tax resident has foreign income, the DTA for a country where the foreign income is sourced needs to be assessed. The DTA will clarify whether the foreign income is taxable in Australia, taxable only in the foreign country, or taxable in both countries (subject to foreign tax offsets being available to avoid double taxation).

The following issues and sources of income, among others, will need to be considered for inclusion in any DTA between Australia and Ukraine:

1. Determining residency of individuals and/ or company
2. Income from employment.
3. Directors' fees.
4. Profits made by a company or if utilising the unified tax system
5. Capital gains.
6. Income from immovable property.
7. Income from dividends.
8. Income from interest.
9. Income from royalties.
10. Income from pensions, annuities and similar payments.
11. Alienation of property.

Without a DTA Australia will not have a seat at the table when it comes to the reconstruction of Ukraine.