



International Tax Agreements Amendment Act (No. 2) 2007

No. 146, 2007

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 146, 2007

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

[Assented to 24 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Tax Agreements Amendment Act (No. 2) 2007*.

2 Commencement

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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—The 2006 Finnish agreement

International Tax Agreements Act 1953

1 Subsection 3(1) (before paragraph (d) of the definition of agreement)

Insert:

- (cc) the 1984 Finnish agreement;
- (cd) the 1984 Finnish agreement as amended by the 1997 Finnish protocol;

2 Subsection 3(1)

Insert:

the 1984 Finnish agreement means the Agreement between Australia and Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that agreement, being the agreement and protocol that were signed at Canberra on 12 September 1984.

3 Subsection 3(1)

Insert:

the 1997 Finnish protocol means the Protocol, signed at Canberra on 5 November 1997, between Australia and Finland amending the 1984 Finnish agreement.

4 Subsection 3(1)

Insert:

the 2006 Finnish agreement means the Agreement between the Government of Australia and the Government of Finland for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion and the protocol to that agreement, being the agreement and protocol a copy of each of which in the English language is set out in Schedule 25.

5 Subsection 3(1) (definition of *the Finnish agreement*)

Repeal the definition.

6 Subsection 3(1) (definition of *the second Finnish protocol*)

Repeal the definition.

7 Sections 11P and 11PA

Repeal the sections, substitute:

11P The 2006 Finnish agreement

Subject to this Act, on and after the date of entry into force of a provision of the 2006 Finnish agreement, the provision has the force of law according to its tenor.

11PA Previous Finnish agreements etc.

The provisions of:

- (a) the 1984 Finnish agreement; and
- (b) the 1984 Finnish agreement as amended by the 1997 Finnish protocol;

so far as those provisions affect Australian tax, continue to have the force of law for tax in respect of income in relation to which the agreements remain effective.

8 Schedules 25 and 25A

Repeal the Schedules, substitute:

Schedule 25—2006 Finnish agreement

Note: See section 3.

**AGREEMENT BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF FINLAND FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND THE PREVENTION OF FISCAL
EVASION**

The Government of Australia and the Government of Finland,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion,

Have agreed as follows:

CHAPTER I

SCOPE OF THE AGREEMENT

ARTICLE 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:
 - a) in the case of Australia:

the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia.
 - b) in the case of Finland:
 - (i) the state income taxes;
 - (ii) the corporate income tax;
 - (iii) the communal tax;
 - (iv) the church tax;
 - (v) the tax withheld at source from interest; and
 - (vi) the tax withheld at source from non-residents' income.
2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed under the federal law of Australia or the law of Finland

after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the law of their respective States relating to the taxes to which the Agreement applies within a reasonable period of time after those changes.

3. For the purposes of Article 23, the taxes to which this Agreement shall apply are taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions or local authorities.

4. For the purposes of Articles 25 and 26, the taxes to which this Agreement shall apply are:

- a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and
- b) in the case of Finland, taxes of every kind and description.

CHAPTER II

DEFINITIONS

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- b) the term “Finland” means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its subsoil and of the superjacent waters may be exercised;
- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- e) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- f) the term “tax” means Australian tax or Finnish tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;
- g) the term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
- h) the term “Finnish tax” means tax imposed by Finland or its local authorities, being tax to which this Agreement applies by virtue of Article 2;

- i) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Finland, the Ministry of Finance or a representative authorised by the Ministry of Finance;
- j) the term “business” includes the performance of professional services and of other activities of an independent character;
- k) the term “enterprise” applies to the carrying on of any business;
- l) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- m) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any company deriving its status as such from the laws in force in that Contracting State;
- n) the term “recognised stock exchange” means:
 - (i) the Australian Stock Exchange and any other Australian stock exchange recognised as such under Australian law;
 - (ii) the Helsinki Stock Exchange and any other Finnish stock exchange recognised as such under Finnish law; and
 - (iii) any other stock exchange agreed upon by the competent authorities.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State concerning the taxes to which the Agreement applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

ARTICLE 4

Residence

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:

- a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- b) in the case of Finland, a person who is liable under the laws of Finland to tax therein by reason of the person’s domicile, residence, place of management, place of incorporation (registration) or any other criterion of a similar nature.

The Government of a Contracting State or a political subdivision, local authority or statutory authority of that State is also a resident of that State for the purposes of the Agreement.

2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person’s status shall be determined as follows:

- a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
- b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;
- c) if the individual is a national of both States, or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

4. Where an item of income, profits or gains derived by an individual is exempt from tax in a Contracting State by reason only of the status of that individual as a temporary resident under the applicable tax laws of that State, no relief shall be available under this Agreement in the other Contracting State in respect of that item of income, profits or gains.

5. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which it is incorporated (registered).

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
- g) an agricultural, pastoral or forestry property situated in Australia.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 6 months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

- a) carries on supervisory or consultancy activities in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period in connection with a building site or construction or installation project which is being undertaken in that other State;
- b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
- c) operates substantial equipment in the other State (other than as provided in subparagraph b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period,

such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.

- 5.
- a) The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.
 - b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.
 - c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:
 - (i) one is controlled directly or indirectly by the other; or
 - (ii) both are controlled directly or indirectly by the same person or persons.

6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e) of this paragraph,

provided that such activities are, in relation to the enterprise, of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 8 applies — is acting on behalf of an enterprise and:

- a) has, and habitually exercises, in a Contracting State an authority to substantially negotiate or conclude contracts on behalf of the enterprise; or
- b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for that enterprise,

unless the activities of such person are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a person who is a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of the person's business as such a broker or agent.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

10. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

Income from Real Property

1. Income derived by a resident of a Contracting State from real property, including income from an agricultural, pastoral or forestry property situated in Finland, may be taxed in the Contracting State in which the real property is situated.

2. For the purposes of this Article, the term "real property":

- a) in the case of Australia, has the meaning which it has under the law of Australia, and includes:
 - (i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil

or gas deposits or other natural resources, and a right to mine those deposits or resources; and

- (ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources; and
- b) in the case of Finland, means such property which, according to the laws of Finland, is immovable property and shall in any case include buildings, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

Ships and aircraft shall not be regarded as real property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property.

5. Where the ownership of shares or other rights in a company, trust or comparable institution entitle a person to the enjoyment of real property held by or on behalf of that company, trust or comparable institution, income derived from the direct use, letting or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the real property is situated.

6. The provisions of paragraphs 1, 3 and 4 shall also apply to income from real property of an enterprise.

7. The provisions of paragraph 5 shall also apply to income of an enterprise derived from the direct use, letting or use in any other form of a right of enjoyment referred to in that paragraph.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
6. Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the application of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. Where:

- a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

ARTICLE 8

Ships and Aircraft

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the operation of ships or aircraft may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.

3. The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

ARTICLE 9

Associated Enterprises

1. Where:
 - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other

State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged therein on those profits, where that first-mentioned State considers the adjustment justified. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State for the purposes of its tax, being dividends beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either Contracting State at the date of signature of this Agreement is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax if the beneficial owner of the dividends is a company that is a resident of the other Contracting State that has owned shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the

dividend is declared and the company that is the beneficial owner of the dividends:

- a) has its principal class of shares listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph n) of paragraph 1 of Article 3 and is regularly traded on one or more recognised stock exchanges;
- b) is owned directly or indirectly by one or more companies whose principal class of shares is listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph n) of paragraph 1 of Article 3 and is regularly traded on one or more recognised stock exchanges;
- c) does not meet the requirements of subparagraphs a) or b) of this paragraph but the competent authority of the first-mentioned Contracting State determines, in accordance with the law of that State, that the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of the Agreement under this subparagraph.

4. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not

impose any tax on the dividends paid by the company — being dividends beneficially owned by a person who is not a resident of the other Contracting State — except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Finland for the purposes of Finnish tax.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State if:

- a) the interest is derived by a Contracting State or by a political or administrative sub-division or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or
- b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a

bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

4. Notwithstanding paragraph 3, interest referred to in subparagraph b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5. The term “interest” in this Article includes interest from government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.

6. The provisions of paragraphs 1 and 2, subparagraph b) of paragraph 3 and paragraph 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned

amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the indebtedness in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, those royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- b) the supply of scientific, technical, industrial or commercial knowledge or information;
- c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph a) or any such knowledge or information as is mentioned in subparagraph b);
- d) the use of, or the right to use:
 - (i) motion picture films;

- (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;
- e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a spectrum licence, being spectrum of a Contracting State where the payment or credit arises; or
- f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the amount of the payments or credits shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or

assignment of the rights in respect of which the royalties are paid or credited to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than real property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests in an entity, where more than half of the value of the assets of that entity, whether they are held directly or indirectly, is attributable to real property situated in the other State, may be taxed in that other State.
5. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so

exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income of that other State, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors or any other similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 17

Pensions and Annuities

1. Subject to the provisions of paragraph 3, any pension or annuity paid to a resident of a Contracting State shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Pensions paid by a Contracting State or a political subdivision, local authority or statutory authority thereof to any individual in respect of services rendered to that State or subdivision or authority and pensions paid and other payments made under the social security legislation of a Contracting State may be taxed in that State. The provisions of this paragraph shall apply only to individuals who are citizens or nationals of the Contracting State from which the payments are made.

4. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

ARTICLE 18

Government Service

1. a) Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision, local authority or statutory authority thereof to an

individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision, local authority or statutory authority thereof.

ARTICLE 19

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 20

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or

property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement from sources in the other Contracting State may also be taxed in the other Contracting State.

ARTICLE 21

Source of Income

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 or 10 to 18, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to arise from sources in that other Contracting State.

2. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 or 10 to 18, may be taxed in the other Contracting State shall for the purposes of Article 22 and of the law of the first-mentioned Contracting State relating to its tax be deemed to arise from sources in the other Contracting State.

CHAPTER IV

RELIEF FROM DOUBLE TAXATION

ARTICLE 22

Relief from Double Taxation

1. Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), Finnish tax paid under the law of Finland and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Finland shall be allowed as a credit against Australian tax payable in respect of that income.

2. Subject to the provisions of Finnish law regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Finland as follows:

- a) where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Australia, Finland shall, subject to the provisions of subparagraph b), allow as a deduction from the Finnish tax of that person, an amount equal to the Australian tax paid under Australian law and in accordance with the Agreement, as computed by reference to the same income by reference to which the Finnish tax is computed;
- b) dividends paid by a company being a resident of Australia to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax;
- c) where in accordance with any provision of this Agreement any income derived by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on any other income of such resident, take into account the exempted income.

CHAPTER V

SPECIAL PROVISIONS

Article 23

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably

levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances. This provision shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.

5. This Article shall not apply to any provision of the laws of a Contracting State which:

- a) is designed to prevent the avoidance or evasion of taxes;
- b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;
- c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that a company, being a resident of that State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, may access such consolidation treatment on the same terms and conditions as other companies that are residents of the first-mentioned State;
- d) does not allow tax rebates or credits in relation to dividends paid by a company that is a resident of that State for purposes of its tax;

- e) provides deductions to eligible taxpayers for expenditure on research and development; or
- f) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

6. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:

- a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
- b) controlled foreign company, transferor trusts and foreign investment fund rules; and
- c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

7. The provisions of this Article shall apply to the taxes which are referred to in paragraph 3 of Article 2 of this Agreement.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which the Agreement applies, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic law concerning taxes referred to in paragraph 4 of Article 2, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable by the competent authority under the law or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 26

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes referred to in paragraph 4 of Article 2, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which

the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that

State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

ARTICLE 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special international agreements.

CHAPTER VI

FINAL PROVISIONS

ARTICLE 28

Entry into Force

1. The Contracting States shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Agreement. The Agreement shall enter into force 30 days after the date of the later of the notifications and its provisions shall have effect:

- a) in Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following the date on which the Agreement enters into force;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following the date on which the Agreement enters into force;
- b) in Finland:
 - (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
 - (ii) in respect of other taxes on income for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
- c) for purposes of Article 25, from the date of entry into force of this Agreement.

Notwithstanding the provisions of subparagraphs a) and b), Article 26 shall have effect from the date agreed in an exchange of notes through the diplomatic channel.

2. The Agreement between Finland and Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Canberra on 12th September 1984, as modified by the Protocol signed at Canberra on 5th November 1997 (hereinafter referred to as “the 1984 Agreement”), shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 1. The 1984 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provision of this paragraph.

ARTICLE 29

Termination

This Agreement shall continue in effect indefinitely, but either Contracting State may terminate the Agreement by giving written notice of termination, through the diplomatic channel, to the other State at least 6 months before the end of any calendar year beginning after the expiration of 5 years from the date of its entry into force and, in that event, the Agreement shall cease to be effective:

- a) in Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- b) in Finland:
 - (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;

- (ii) in respect of other taxes on income for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

DONE in duplicate at Melbourne this twentieth day of November 2006, in the English and Finnish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA: **FOR THE GOVERNMENT OF FINLAND:**

Hon. Peter Costello
Treasurer
[signatures omitted]

Eero Heinäluoma
Minister for Finance

PROTOCOL

At the signing today of the Agreement between the Government of Australia and the Government of Finland for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion (hereinafter referred to as “the Agreement”), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. With reference generally to the application of the Agreement
 - a) Nothing in the Agreement shall be construed as restricting, in any manner, the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes.
 - b) It is understood that nothing in the Agreement prevents the application of the provisions of Article 26 to the exchange of information that existed prior to the entry into force of the Agreement.

2. With reference to Articles 4, 17 and 18

The term “statutory authority” means any legal entity of a public character created by the laws of a Contracting State in which no person other than the State itself, a political subdivision or a local authority thereof, has an interest, and, in the case of Finland, includes the Bank of Finland, the Helsinki University and the Social Insurance Institution of Finland.

3. With reference to paragraph 7 of Article 5

The Contracting States note that the term “substantially negotiate” is included at Australia’s request to remove any doubt as to the existence of a permanent establishment where contracts that have been negotiated by an agent in one State are formally concluded in the other State by signature in that other State.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Protocol.

DONE in duplicate at Melbourne this twentieth day of November 2006, in the English and Finnish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA: **FOR THE GOVERNMENT OF FINLAND:**

Hon. Peter Costello
Treasurer
[signatures omitted]

Eero Heinäluoma
Minister for Finance

*[Minister's second reading speech made in—
House of Representatives on 21 June 2007
Senate on 12 September 2007]*

(113/07)
