Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AND PROTOCOL

If you follow the information in this document, and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO will take that into account when determining what action, if any, we should take.

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Agreement between the Government of Australia and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol* signed on 7 September 2000 (the "Agreement"), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia and the Russian Federation on 7 June 2017.

This document was prepared in consultation with the competent authority of the Russian Federation and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of the Russian Federation submitted to the Depositary upon ratification on 18 June 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [2019] ATS 1 (provides the authentic legal text of the MLI).

Agreement between the Government of Australia and the Government of the Russian Federation for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol [2003] ATS 23 (provides, in the case of Australia, the authentic legal text of the Agreement signed on 7 September 2000).

Agreement between the Government of the Russian Federation and the Government of Australia for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol (provides, in the case of Russia, the authentic legal text of the Agreement signed on 7 September 2000).

Signatories and parties to the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of the Russian Federation submitted to the Depositary upon ratification on 18 June 2019).

Entry Into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Australia and the Russian Federation in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

26 September 2018 for Australia and 18 June 2019 for the Russian Federation.

Entry into force of the MLI:

1 January 2019 for Australia and 1 October 2019 for the Russian Federation.

In accordance with paragraphs 1 and 7 of Article 35 of the MLI, the provisions of the MLI have effect with respect to this Agreement:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2021;

b) with respect to all other taxes levied by Australia, for taxes levied with respect to taxable periods beginning on or after 30 November 2020; and

c) with respect to all other taxes levied by the Russian Federation, for taxes levied with respect to taxable periods beginning on or after 1 January 2021.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSRALIA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PERVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AND PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION,

The following paragraph 3 of Article 6 of the MLI is included in the preamble of this Agreement:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

[**REPLACED by paragraph 1 of Article 6 of the MLI]** ***DESIRING*** *to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,*

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by [*the Agreement*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Agreement*] for the indirect benefit of residents of third jurisdictions),

HAVE AGREED as follows:

Article 1

PERSONAL SCOPE

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

The following paragraph 1 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of [*the Agreement*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*].

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

[*The Agreement*] shall not affect the taxation by a [*Contracting State*] of its residents, except with respect to the benefits granted under [*paragraph 3 of Article 9, or Articles 19, 20, 22, 24* or *26*] of [t*he Agreement*].

Article 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are:

   a) in Australia:

      the income tax, and 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 Russia:

      (i) tax on profits (income) of enterprises and organisations; and

      (ii) tax on the income of individuals.

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the federal law of Russia after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

Article 3

GENERAL DEFINITIONS

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

   a) the terms "Contracting State" and "other Contracting State" mean Australia or Russia, as the context requires;

   b) - the term "Australia" means the territory of Australia including only the following external territories:

      (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 the exclusive economic zone and continental shelf of Australia (including the territories specified) 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 natural resources of the seabed and subsoil of the continental shelf;

      - the term "Russia" means the territory of the Russian Federation and includes its exclusive economic zone and continental shelf, defined in accordance with international law;

   c) the term "Australian tax" means tax imposed by Australia, being tax to which

this Agreement applies by virtue of Article 2;

d) the term "Russian tax" means tax imposed by Russia, being tax to which this Agreement applies by virtue of Article 2;

e) the term "person" includes an individual, an enterprise, a company and any other body of persons;

f) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Russia, as the context requires;

h) the term "international traffic" means any transportation 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;

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 Russia, the Ministry of Finance of the Russian Federation or its authorised representative;

j) the term "tax" means Australian tax or Russian 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.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State. In case of divergence between the law of that State concerning the taxes to which this Agreement applies and any other law of that State the law concerning the taxes to which this Agreement applies shall prevail.

Article 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of a Contracting State if the person is a resident of that State under the law of that State relating to its tax.

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 shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person, or if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are closer. For the purpose of this paragraph, an individual's citizenship of one of the Contracting States shall be a factor in determining the degree of the individual's personal and economic relations with that Contracting State.

4. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** *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 solely of the State in which its place of effective management is situated.*

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph 4 of Article 4 of this Agreement:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*the Agreement*] a person other than an individual is a resident of both [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting State*] of which such person shall be deemed to be a resident for the purposes of [*the Agreement*], having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [*the Agreement*].

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which an enterprise of a Contracting State wholly or partly carries out business activities in the other State.

2. The term "permanent establishment" includes:

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;

g) an agricultural, pastoral or forestry property; and

h) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** *a building site or construction, installation or assembly project or supervisory activities in connection with them, but only if such site, project or activities continue for a period of more than 12 months.*

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the period referred to in [*subparagraph h) of paragraph 2 of Article 5 of the Agreement*] has been exceeded:

a) where an enterprise of a [*Contracting State*] carries on activities in the other [*Contracting State*] at a place that constitutes a building site, construction project, installation project or other specific project identified in [*subparagraph h) of paragraph 2 of Article 5 of the Agreement*], or carries on [*supervisory activities*] in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period referred to in [*subparagraph h) of paragraph 2 of Article 5 of the Agreement*]; and

b) where connected activities are carried on in that other [*Contracting State*] at [*or in connection with*] the same building site, construction project, installation project or other place identified in [*subparagraph h) of paragraph 2 of Article 5 of the Agreement*] during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction project, installation project or other place identified in [*subparagraph h) of paragraph 2 of Article 5 of the Agreement*].

3. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** *An enterprise shall not be deemed to have a permanent establishment merely by reason of:*

a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise; or

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display; or

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or

e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

The following paragraph 2 of Article 13 of the MLI modifies paragraph 3 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

(Option A)

Notwithstanding [*Article 5 of the Agreement*], the term 'permanent establishment' shall be deemed not to include:

a) the activities specifically listed in [*paragraph 3 of Article 5 of the Agreement*] as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:

[*Paragraph 3 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*Article 5 of the Agreement*]; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

4. Notwithstanding the provisions of the preceding paragraphs, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

a) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State manufactures or processes in the firstmentioned State for the enterprise goods or merchandise belonging to the enterprise; or

b) heavy industrial equipment including, for example, but not limited to, a platform, installation, drilling rig, or heavy machinery is being used in the firstmentioned State by, for or under contract with the enterprise.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom paragraph 6 applies -- shall be deemed to be a permanent establishment of that enterprise in the firstmentioned State if the person:

a) has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or

b) has no such authority but maintains in the firstmentioned State a stock of goods or merchandise from which delivery is made within that State on behalf of the enterprise.

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

7. 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.

The following paragraph 1 of Article 15 of the MLI applies to the provisions of this Agreement:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [*Article 5 of the Agreement*], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6

INCOME FROM REAL PROPERTY

1. Income from real property may be taxed in the Contracting State where such property is situated.

2. In this Article, the term "real property":

   a) for Australia, has the meaning which it has under the law of Australia, and includes:

      (i) 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;

   b) for Russia, means immovable property according to the law of Russia, and includes:

      (i) property accessory to immovable property; and

      (ii) rights known as usufruct of immovable property; and

      (iii) rights to which the provisions of the law respecting landed property apply; and

      (iv) 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

   c) for both Contracting States does not include ships, boats and aircraft.

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. The provisions of paragraphs 1, 3 and 4 shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

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 in that other State. If the enterprise carries on business in that manner, 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 in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might reasonably 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. Where profits include items 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.

Article 8

PROFITS FROM THE OPERATION OF SHIPS AND AIRCRAFT

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

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State to the extent that they are profits derived 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.

Article 9

ADJUSTMENTS TO PROFITS OF 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 reasonably be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might reasonably 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 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 reasonably 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 reasonably have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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 to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such 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) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** *5 per cent of the gross amount of the dividends:*

i) to the extent to which those dividends are paid out of profits that have borne the normal rate of tax, where those dividends are paid to a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends; and

(ii) provided that the resident of the other Contracting State has invested a minimum of 700,000 Australian Dollars or an equivalent amount in

Russian Roubles in the capital of that company; and

(iii) where, if the dividends are paid by a company that is resident in Russia, the dividends are exempt from Australian tax; and

b) 15 per cent of the gross amount of the dividends in all other cases.

The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Agreement:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

[*Subparagraph a) of paragraph 2 of Article 10 of this Agreement*] shall apply only if the ownership conditions described in [*that provision*] are met through a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

3. For the purposes of subparagraph a) of paragraph 2 of this Article, profits have borne the normal rate of tax:

a) in Australia, to the extent to which the dividends have credits attached for tax paid on their profits by Australian companies in accordance with its law relating to tax; and

b) in Russia, to the extent that they are assessable to tax.

4. The term "dividends" as used in this Article means income from shares, 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 and 2 shall not apply if the person beneficially entitled to 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, 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 to which a person who is not a resident of the other Contracting State is beneficially entitled -- except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, even if the dividends paid 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 a Contracting State for the purposes of its tax and which is also a resident of the other Contracting State for the purposes of the other Contracting State's tax.

Article 11

INTEREST

1. Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, that 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. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, including premiums and prizes attaching to such securities, bonds and 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 and all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a local authority of that State, or a person who 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 or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the person beneficially entitled to 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 reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, 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 10 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means amounts paid or credited as due and payable, 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; or

b) the use of, or the right to use, any industrial, commercial or scientific equipment; or

c) the supply of scientific, technical, industrial or commercial knowledge or information; or

d) the supply of any assistance that is incidental, 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), any such equipment as is mentioned in subparagraph b) or any such knowledge or information as is mentioned in subparagraph c); or

e) the use of, or the right to use:

(i) motion picture films; or

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

f) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:

(i) satellite; or

(ii) cable, optic fibre or similar technology; or

g) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:

(i) satellite; or

(ii) cable, optic fibre or similar technology; or

h) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence; or

i) 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 person beneficially entitled to 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a local authority of that State, or a person who 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 or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to 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 reasonably have been expected to have been agreed upon by the payer

and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

INCOME FROM ALIENATION OF PROPERTY

1. Income or profits derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State. The meaning of the term "real property", and its situation, shall be determined in accordance with Article 6.

2. Income or profits 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 or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purpose of performing independent personal services, including income or profits from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income or profits from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in that State.

4. **[MODIFIED by subparagraph a) of paragraph 1 of Article 9 of the MLI]** *Income or profits derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to real property, situated in the other Contracting State, may be taxed in that other State.*

The following subparagraph a) of paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Agreement:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROMIMMOVABLE PROPERTY

[*Paragraph 4 of Article 13 of the Agreement*] shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of capital gains derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Article 14

INCOME FROM INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities. If such a fixed base is available

to the individual, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is 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 from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned 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 twelve 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 that other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base 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 by an enterprise of a Contracting State in international traffic may be taxed in that State.

Article 16

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

INCOME OF ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and sportspersons from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer or sportsperson as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions and annuities 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.

Article 19

INCOME FROM GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State, a political subdivision or local authority of that State to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

a) is a citizen of that State; or

b) did not become a resident of that State solely for the purpose of rendering the services.

2.

a) Any pension paid by, or out of the funds created by, a Contracting State, a political subdivision or a local authority of that State, to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State.

b) However, that pension shall be taxable only in the other Contracting State if the individual:

(i) is a resident of, and a citizen of that State; and

(ii) the services in respect of which that pension is paid were rendered in that State.

3. The provisions of paragraphs 1 and 2 shall not apply to salaries, wages and other similar remuneration or to pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or local authority of that State. In that case, the provisions of Articles 15, 16 or 18, as the case may be, shall apply.

Article 20

PAYMENTS TO STUDENTS

Where a student, who is a resident of a Contracting State or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of the student's education, receives payments from sources outside that other State for the purpose of the student's maintenance or education, those payments shall be exempt from tax in that other State.

Article 21

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 where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In that case the provisions of Article 7 or Article 14, as the case may be, 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 this Agreement derived from sources in the other Contracting State may also be taxed in that other State.

Article 22

METHODS OF ELIMINATION OF DOUBLE TAXATION

1. Subject to the law of Australia as it may be amended from time to time (without changing the general principle of this Article), Russian tax paid under the law of Russia, and in accordance with this Agreement, whether directly or by deduction in respect of income derived from sources in Russia by a resident of Australia, shall be allowed as a credit against Australian tax payable in respect of that income.

2. Subject to the law of Russia as it may be amended from time to time (without changing the general principle of this Article), Australian tax paid under the law of Australia, and in accordance with this Agreement, whether directly or by deduction in respect of income derived from sources in Australia by a resident of Russia, shall be allowed as a credit against Russian tax payable in respect of that income.

The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

[*Article 22 of the Agreement*] shall not apply to the extent that the provisions of [the Agreement] allow taxation by that other [*Contracting State*] solely because the income is also income derived by a resident of that other [*Contracting State*].

Article 23

LIMITATION OF BENEFITS

1. The benefits of this Agreement shall not apply to income or profits arising from:

   a) activities such as banking, shipping, financing or insurance, and Internet activities; or

   b) activities such as headquarter or coordination centre or similar arrangements providing company or group administration, financing or other support; or

   c) activities which give rise to passive income, such as dividends, interest and royalties; or

   d) other activities the performance of which do not require substantial presence in the State of source,

where, under the laws or administrative practices of a Contracting State, such income or

profits are preferentially taxed and, in relation thereto, information is accorded confidential treatment beyond the usual or general protection of information accorded for tax purposes under the laws or administrative practices of that State.

2. For the purposes of paragraph 1, income or profits are preferentially taxed in a Contracting State if, other than by reason of the preceding Articles of this Agreement, an amount of income or profits:

a) is exempt from tax; or

b) is included in taxable income of a taxpayer but that amount is subject to a rate of tax that is lower than the rate applicable to an equivalent amount that is included in the tax base of similar taxpayers who are residents of that State; or

c) a credit, rebate or other concession or benefit is provided directly or indirectly in relation to that income or profits, other than a credit for foreign tax paid.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. **[The first sentence of paragraph 1 of Article 24 of this Agreement is REPLACED by first sentence of paragraph 1 of Article 16 of the MLI]** *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 this Agreement applies, present a case to the competent authority of the Contracting State of which the person is a resident.* The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with this Agreement.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 24 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*the Agreement*], that person may, irrespective of the remedies provide by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

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 with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. The solution so 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 jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the avoidance of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic law of the Contracting States concerning taxes to which this Agreement applies insofar as the taxation under that law is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as confidential 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, or the determination of appeals in relation to, the taxes to which this Agreement applies. 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.

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

a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State; or

b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of [*the Agreement*], a benefit under [*the Agreement*] shall not be granted in respect of an item of income […] if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Agreement*].

Article 27

ENTRY INTO FORCE

Both Contracting States shall notify each other in writing through the diplomatic channel of the completion of their respective procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and

thereupon the provisions of this Agreement shall have effect:[1]

a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July in the calendar year next following that in which the Agreement enters into force;

(ii) in respect of other Australian tax, in relation to income or profits of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;

b) in Russia:

for taxable years and periods beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

Article 28

TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, the provisions of the Agreement shall cease to be effective:

a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July 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 or profits 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 Russia:

for taxable years and periods 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, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Canberra, on 7 September 2000, in duplicate, each in the English and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION
C R KEMP	SERGEI SHATALOV

[1] Entered into force on 17 December 2003 in accordance with Article 27.

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

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION,

HAVING REGARD to the Agreement between the Government of Australia and the Government of Russian Federation for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today at Canberra (in this Protocol called "the Agreement"),

HAVE AGREED on the following, which shall form an integral part of the Agreement:

1. With respect to the Agreement as a whole (including this Protocol):

    a) income or profits derived by a resident of a Contracting State which, under at least one of Articles 6 to 8, 10 to 17 and 19, may be taxed in the other Contracting State shall, for the purposes of Article 22 and of the income tax laws of the respective Contracting States, be deemed to be income from sources in that other State; and

    b) the terms "income" and "profits" shall, in the case of Australia, include capital gains.

2. With respect to Articles 13 and 15:

the term "international traffic" shall not include any transportation which commences at a place in a Contracting State and returns to that place, after travelling through international waters, but not visiting another State (including, but not limited to, the other Contracting State) or Territory (other than a Territory of the firstmentioned Contracting State).

3. With respect to Article 3:

nothing in subparagraph b) of paragraph 1 of Article 3 is intended to vary the effect as between the Contracting States of paragraph 2 of Article IV of the Antarctic Treaty done at Washington on 1 December 1959.

4. With respect to Article 5:

the principles set forth in Article 5 shall be applied in determining for the purposes of paragraph 5 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.

5. With respect to Article 7:

    a) nothing in Article 7 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including 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. For the purposes of this paragraph, "competent authority" for Russia includes the Ministry of Taxes and Duties;

    b) nothing in Article 7 shall affect the application of any law of a Contracting State relating to tax imposed on profits from insurance contracts entered into with nonresidents 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 each other with a view to agreeing to any amendment of this paragraph that may be appropriate; and

c) where:

(i) 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

(ii) 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 in that other State and that share of business profits shall be attributed to that permanent establishment.

6. With respect to Article 8:

the expression "profits derived from ship or aircraft operations confined solely to places in that other State" includes 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.

7. With respect to Article 9:

a) it is understood that a Contracting State that is being asked to grant relief in respect of an adjustment made by the other Contracting State is not compelled to make an adjustment simply because the other State has increased the amount of profits subject to tax but is entitled to satisfy itself that the adjustment made by that other State really produces an outcome in conformity with internationally accepted principles for transfer pricing adjustments before granting any relief; and

b) for the purposes of paragraph 2 of this Article, "competent authority" for Russia includes the Ministry of Taxes and Duties.

8. With respect to Article 10:

without limiting any other provision of this Agreement regarding notification and consultation on changes to the taxation systems of the Contracting States, 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 paragraph 2 that may be appropriate.

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

DONE at Canberra, on 7 September 2000, in duplicate, each in the English and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION
C R KEMP	SERGEI SHATALOV