International Tax Agreements Amendment Act 2003

No. 123, 2003

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

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

Contents

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

[*Assented to 5 December 2003*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Tax Agreements Amendment Act 2003*.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 2003 United Kingdom convention

International Tax Agreements Act 1953

1 Subsection 3(1) (paragraph (b) of the definition of *agreement*)

Repeal the paragraph, substitute:

(b) the 1946 United Kingdom agreement;

(ba) the 1967 United Kingdom agreement;

(bb) the 1967 United Kingdom agreement as amended by the 1980 Protocol to the 1967 United Kingdom agreement;

2 Subsection 3(1) (definition of *the previous United Kingdom agreement*)

Repeal the definition.

3 Subsection 3(1) (definition of *the United Kingdom*)

Repeal the definition.

4 Subsection 3(1) (definition of *the United Kingdom agreement*)

Repeal the definition.

5 Subsection 3(1) (definition of *the United Kingdom protocol*)

Repeal the definition.

6 Subsection 3(1) (definition of *United Kingdom tax*)

Repeal the definition.

7 Subsection 3(1)

Insert:

the 1946 United Kingdom agreement means the Agreement between the Government of Australia and the Government of the United Kingdom for the avoidance of double taxation and the

prevention of fiscal evasion with respect to taxes on income that was signed at London on 29 October 1946.

8 Subsection 3(1)

Insert:

the 1967 United Kingdom agreement means the Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains that was signed at Canberra on 7 December 1967.

9 Subsection 3(1)

Insert:

the 1980 Protocol to the 1967 United Kingdom agreement means the Protocol, signed at Canberra on 29 January 1980, between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland amending the 1967 United Kingdom agreement.

10 Subsection 3(1)

Insert:

the 2003 United Kingdom convention means the Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, as affected by the 2003 United Kingdom notes. A copy of the convention and of the notes is set out in Schedule 1.

11 Subsection 3(1)

Insert:

the 2003 United Kingdom notes means the exchange of notes between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland in connection with the 2003 United Kingdom convention that was carried out at Canberra on 21 August 2003. A copy of the notes is set out in Schedule 1.

12 Sections 5 and 5A

Repeal the sections, substitute:

5 The 2003 United Kingdom convention

Subject to this Act, on and after the date of entry into force of the 2003 United Kingdom convention, the provisions of the convention, so far as those provisions affect Australian tax, have the force of law according to their tenor.

5A Previous United Kingdom agreements etc.

The provisions of:

(a) the 1946 United Kingdom agreement; and

(b) the 1967 United Kingdom agreement; and

(c) the 1967 United Kingdom agreement as amended by the 1980 Protocol to the 1967 United Kingdom agreement;

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.

Note 1: Paragraph 3 of Article 29 of the 2003 United Kingdom convention preserves the operation of Article 16 of the 1967 United Kingdom agreement (which exempts from tax the income of visiting professors and teachers). This applies to individuals who are entitled to the exemption at the time when the 2003 United Kingdom convention enters into force. The exemption is preserved until the individual concerned would have ceased to be entitled to it under the 1967 United Kingdom agreement.

Note 2: Article 16 of the 1967 United Kingdom agreement is affected by Article I of the 1980 Protocol to the 1967 United Kingdom agreement.

13 Section 17B

Repeal the section.

14 Schedules 1 and 1A

Repeal the Schedules, substitute:

Schedule 1—2003 United Kingdom convention and notes

Note: See section 3.

CONVENTION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains,

Have agreed as follows:

ARTICLE 1

Persons covered

This Convention 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 Convention shall apply are:

(a) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(b) in the case of Australia:

the income tax, the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, and the fringe benefits tax, imposed under the federal law of Australia.

2 This Convention shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of the United Kingdom after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes that have been made in the law of their respective States relating to the taxes to which this Convention applies within a reasonable period of time after those changes.

ARTICLE 3

General definitions

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

(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

(b) 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;

(c) the term "Australian tax" means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2;

(d) the term "United Kingdom tax" means tax imposed by the United Kingdom, being tax to which this Convention applies by virtue of Article 2;

(e) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Australia, as the context requires;

(f) the term "person" includes an individual, a company and any other body of persons, but subject to paragraph 2 of this Article does not include a partnership;

(g) the term "company" means any body corporate or anything that is treated as a company or body corporate for tax purposes;

(h) the term "enterprise" applies to the carrying on of any business;

(i) 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;

(j) 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 from a place or between places in the other Contracting State;

(k) the term "competent authority" means:

(i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;

(l) the term "national" means:

(i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that individual has the right of abode in the United Kingdom; and any company deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Australia, an Australian citizen or an individual not possessing citizenship who has been granted permanent residency status; and any company deriving its status as such from the law in force in Australia;

(m) the term "business" includes the performance of professional services and of other activities of an independent character;

(n) the term "tax" means Australian tax or United Kingdom 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;

(o) 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 London Stock Exchange and any other United Kingdom investment exchange recognised under United Kingdom law; or

(iii) any other stock exchange agreed upon by the competent authorities.

2 A partnership deriving its status from Australian law as a limited partnership which is treated as a taxable unit under the law of Australia shall be treated as a person for the purposes of this Convention.

3 As regards the application of this Convention 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 laws of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Residence

1 For the purposes of this Convention, a person is a resident of a Contracting State:

(a) in the case of the United Kingdom, if the person is a resident of the United Kingdom for the purposes of United Kingdom tax; and

(b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

A Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of this Convention.

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

3 The status of an individual who, by reason of the preceding provisions of this Article is a resident of both Contracting States, shall be determined as follows:

(a) that individual shall be deemed to be a resident only of the Contracting 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 Contracting 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

4 Where by reason of the preceding provisions of this Article 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 its place of effective management is situated.

5 Notwithstanding paragraph 4 of this Article, where by reason of paragraph 1 of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

6 The term "dual listed company arrangement" as used in this Article means an arrangement pursuant to which two publicly listed companies, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

(a) the appointment of common (or almost identical) boards of directors;

(b) management of the operations of the two companies on a unified basis;

(c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;

(d) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and

(e) cross-guarantees as to, or similar financial support for, each other's material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

ARTICLE 5

Permanent establishment

1 For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an 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.

3 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) it has a building site or construction or installation project in that State, or it undertakes a supervisory or consultancy activity in that State connected with such a site or project, but only if that site, project or activity lasts more than 12 months;

(b) it maintains substantial equipment for rental or other purposes within that other State (excluding equipment let under a hire-purchase agreement) for a period of more than 12 months; or

(c) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

4 (a) The duration of activities under subparagraph (a) of paragraph 3 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 a third person or persons.

5 Notwithstanding the preceding provisions of this Article, 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, 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 collecting information, for the enterprise; or

(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.

6 Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 7 of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of 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 5 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7 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 broker, general commission agent or any other agent of an independent status, provided that such brokers or agents are acting in the ordinary course of their business as such.

8 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.

ARTICLE 6

Income from real property

1 Income derived by a resident of a Contracting State from real property may be taxed in the Contracting State in which the real property is situated.

2 The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property is situated. The term shall in any case include:

(a) a lease of land or any other interest in or over land;

(b) property accessory to real property;

(c) livestock and equipment used in agriculture and forestry;

(d) usufruct of real property;

(e) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(f) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of 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 of this Article 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 of this Article shall also apply to the income from real property of an enterprise.

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 of this Article, 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 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.

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, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4 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 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. In such cases that law shall be applied, having regard to the information that is available, consistently with the principles of this Article.

5 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.

6 Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7 Nothing in this Article shall affect the operation 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 Convention 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.

ARTICLE 8

Shipping and air transport

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

2 Notwithstanding the provisions of paragraph 1 of this Article, profits of an enterprise of a Contracting State from the operation of ships or aircraft 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 For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

(a) profits from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

provided such rental or such use, maintenance or rental, as the case may be, is directly connected or ancillary to the operation of ships or aircraft in international traffic.

4 The provisions of paragraphs 1 and 2 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

5 For the purposes of this Article, profits derived from:

(a) the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at the same or another place in that State; or

(b) the use of a ship or aircraft for haulage, survey or dredging activities, or for exploration or extraction activities in relation to natural resources, where such activities are undertaken in a Contracting 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 might, but for those conditions, 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 in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise. In such cases that law shall be applied, having regard to the information that is available, 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 paragraphs 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 it has charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention 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, 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 charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends, if the beneficial owner of the dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

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

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 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 (o) of paragraph 1 of Article 3 and 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 (o) of paragraph 1 of Article 3 and regularly traded on one or more recognised stock exchanges; or

(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 this Convention. 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 this Convention 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 income

from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

5 The provisions of paragraphs 1, 2 and 3 of this Article 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 in that other State 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 of this Convention 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 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 the United Kingdom for the purposes of United Kingdom 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.

8 For the purposes of paragraph 3 of this Article, the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the voting power and value of the company, the "principal class of shares" is that class or those classes that in the aggregate represent a majority of the voting power and value of the company.

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, 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 Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned 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" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, and income from any other form of indebtedness. The term "interest" also includes 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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

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 in that other State and the indebtedness in respect of which the interest is paid or credited is effectively connected with such permanent establishment. In such case, the provisions of Article 7 of this Convention 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 a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then the 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 or credited exceeds, for whatever reason, the amount which might reasonably 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 interest paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 debt-claim 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 ancillary and subsidiary assistance that is furnished as a means of enabling the application or enjoyment of any such item as is mentioned in subparagraph (a) or (b) of this paragraph;

(d) the use of or the right to use:

(i) motion picture films; or

(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; or

(e) 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 of this Article 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 in that other State, and the right or property in respect of which the royalties are paid or credited is effectively connected with that permanent establishment. In that case the provisions of Article 7 of this Convention 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 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 the 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 exceeds, for whatever reason, the amount which might reasonably 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 paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7 The provisions of this Article shall not apply 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 to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Alienation of property

1 Income or gains 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.

2 Income or gains from the alienation of property, other than real property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3 Income or gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated 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 Contracting State.

4 Income or gains 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.

5 An individual who elects, under the taxation law of a Contracting State, to defer taxation on income or gains relating to property which would otherwise be taxed in that State upon the individual ceasing to be a resident of that State for the purposes of its tax, shall, if the individual is a resident of the other State, be taxable on income or gains from the subsequent alienation of that property only in that other State.

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

7 In this Article, the term "real property" has the same meaning as it has in Article 6.

8 The situation of interests or rights referred to in paragraph 2 of Article 6 shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

9 The provisions of this Article shall not affect the right of the United Kingdom to levy according to its laws a tax chargeable in respect of income or gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the 6 years immediately preceding that year.

ARTICLE 14

Income from employment

1 Subject to the provisions of Articles 17 and 18 of this Convention, 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 from that exercise may be taxed in that other State.

2 Notwithstanding the provisions of paragraph 1 of this Article, 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 twelve month period commencing or ending in the fiscal year or 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 deductible in determining taxable profits of 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.

4 In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if the references to an employer were references to the company.

ARTICLE 15

Fringe benefits

1 Where, except for the application of this Article, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State which would have the primary taxing right over that benefit if the value of the benefit were paid to the employee as ordinary employment income.

2. For the purposes of this Article:

(a) "fringe benefit" has the meaning it has under Australia's *Fringe Benefits Tax Assessment* Act *1986 (Commonwealth)*, as it may be amended from time to time, and does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

(b) a Contracting State has a "primary taxing right" to the extent that it has a taxing right under this Convention in respect of the remuneration for the relevant employment and the other Contracting State is required under this Convention to allow relief for any taxes imposed in respect of such remuneration by the first-mentioned Contracting State.

ARTICLE 16

Entertainers and sportspersons

1 Notwithstanding the provisions of Articles 7 and 14 of this Convention, 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 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 17

Pensions and annuities

1 Pensions (including government 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 to an individual 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 18

Government service

1 Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or 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 national of that State; or

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

2 The provisions of paragraph 1 of this Article shall not apply to salaries, wages and other similar remuneration 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 Article 14, 15 or 16, as the case may be, shall apply.

ARTICLE 19

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 20

Other income

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

2 The provisions of paragraph 1 of this Article shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 of this Convention, 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 that case the provisions of Article 7 of this Convention shall apply.

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

4 Where, by reason of a special relationship between the person referred to in paragraph 1 of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might reasonably have been expected to have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

5 A person may not rely on this Article to obtain relief from taxation 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 income is derived to take advantage of this Article by means of that creation or assignment.

ARTICLE 21

Source of income

Income or gains derived by a resident of the United Kingdom which, under any one or more of Articles 6 to 8 and 10 to 16 and 18, may be taxed in

Australia shall for the purposes of the laws of Australia relating to its tax be deemed to arise from sources in Australia.

ARTICLE 22

Elimination of double taxation

1 Subject to the provisions of the laws 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):

(a) United Kingdom tax paid under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income or gains derived by a person who is a resident of Australia from sources in the United Kingdom shall be allowed as a credit against Australian tax payable in respect of that income;

(b) Where a company which is a resident of the United Kingdom and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly at least 10 per cent of the voting power of the first-mentioned company, the credit shall include the United Kingdom tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2 Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory

outside the United Kingdom (which shall not affect the general principle hereof):

(a) Australian tax payable under the laws of Australia and in accordance with this Convention, whether directly or by deduction, on income or chargeable gains from sources within Australia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same income or chargeable gains by reference to which the Australian tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Australia to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Australian tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

3 For the purposes of paragraph 1 and 2 of this Article, income or gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

ARTICLE 23

Limitation of relief

1 Where under this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, a person in respect of that income or those gains is taxed by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income or gains as is taxed in the other State.

2 Where under this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual in respect of that income or those gains is exempt from tax by virtue of being a temporary resident of the other State within the meaning of the applicable tax laws of that other State, then the relief to be allowed under this Convention in the first-mentioned State shall not apply to the extent that that income or those gains are exempt from tax in the other State.

ARTICLE 24

Partnerships

Where a partnership is treated as a taxable unit under the law of a Contracting State and under any provision of this Convention is entitled, as a resident of that State, to relief from tax in the other Contracting State on any income or gains, that provision shall not be construed as restricting the right of that other State to tax any member of the partnership who is a resident of that other State on that member's share of such income or gains; but any such income or gains shall be treated for the purposes of Article 22 of this Convention as income or gains from sources in the first-mentioned State.

ARTICLE 25

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.

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.

3 Except where the provisions of paragraph 1 of Article 9, paragraph 8 or 9 of Article 11, paragraph 6 or 7 of Article 12, or paragraph 4 or 5 of Article 20 of this Convention 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 Nothing contained in this Article shall 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 individuals so resident.

6 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 Australian resident companies that are owned directly or indirectly by residents of the United Kingdom can access such consolidation treatment on the same terms and conditions as other Australian resident companies;

(d) provides deductions to eligible taxpayers for expenditure on research and development; or

(e) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Government of Australia and the Government of the United Kingdom.

7 The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual agreement procedure

1 Where a person who is a resident of a Contracting State 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 this Convention, that person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which this Convention applies, present a case to the competent authority of the Contracting State of which that person is a resident or, if the case comes under paragraph 1 of Article 25 of this Convention, to that of the Contracting State of which that person is a national.

2 The competent authority shall endeavour, if the case 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 this Convention.

3 The competent authorities of the Contracting States shall jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult

together for the elimination of double taxation in cases not provided for in this Convention.

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 Convention 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 27

Exchange of information

1 The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which this Convention applies insofar as the taxation under those laws is not contrary to this Convention. The exchange of information is not restricted by Article 1 of this Convention. Any information received 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, or the determination of appeals in relation to, the taxes to which this Convention 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 If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax.

3 In no case shall the provisions of paragraphs 1 or 2 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 or the administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws 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 28

Members of diplomatic missions or permanent missions and consular posts

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

ARTICLE 29

Entry into force

1 Each of the Contracting States shall notify the other in writing through the diplomatic channel of the completion of the procedures required by its law for the entry into force of this Convention. This Convention shall enter into force on the date of the later notification, and shall thereupon have effect:

(a) in the case of 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 July next following the date on which this Convention enters into force;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which this Convention enters into force;

(iii) in respect of other Australian tax, in relation to income or gains of any year of income beginning on or after 1 July next following the date on which this Convention enters into force;

(b) in the case of the United Kingdom:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 July next following the date on which this Convention enters into force;

(ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6 April next following the date on which this Convention enters into force;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April next following the date on which this Convention enters into force.

2 The Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland signed at Canberra on 7 December 1967 (as amended by the Protocol signed at Canberra on 29 January 1980) ("the Agreement") shall be terminated and shall cease to have effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph 1 of this Article. In relation to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, the Agreement shall be terminated

and shall cease to have effect in respect of dividends paid on or after 1 July next following the date on which this Convention enters into force.

3 Notwithstanding the entry into force of this Convention, an individual who is entitled to the benefits of Article 16 of the Agreement at the time of the entry into force of this Convention shall continue to be entitled to such benefits until such time as the individual would have ceased to be entitled to such benefits if the Agreement had remained in force.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State 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 written notice of termination through the diplomatic channel and, in that event, the Convention shall cease to have effect:

(a) in the case of 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 fringe benefits tax, in relation to fringe benefits provided on or after 1 April in the calendar year next following that in which the notice of termination is given;

(iii) in respect of other Australian tax, in relation to income 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 the case of the United Kingdom:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 January in the calendar year next following that in which the notice of termination is given;

(ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice of termination is given;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April 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 Convention.

DONE in duplicate at Canberra this 21st day of August 2003

FOR THE GOVERNMENT OF AUSTRALIA	FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
PETER COSTELLO	ALASTAIR GOODLAD

[Signatures omitted]

2003 UNITED KINGDOM NOTES

No LGB 03/170

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission to Australia and has the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today (the "Convention"). The Department has the honour to make the following proposals on behalf of the Government of Australia:

1. With reference generally to the application of the Convention (including these Notes),

the Contracting States agree that:

(a) the term "income or gains" includes "profits";

(b) the term "laws" includes the full body of law, and is not limited to statutory law;

(c) the terms "paid or credited" and "payments or credits" shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;

(d) the expression "any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes" includes:

(i) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

(ii) controlled foreign company, transferor trust and foreign investment fund rules;

(iii) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and

(e) nothing in the Convention 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.

2. With reference to Article 5 (Permanent establishment),

the Contracting States agree that the term "permanent establishment" fully encompasses the concept of a "fixed base" used in other double tax treaties in the context of independent personal services.

3. With reference to Article 7 (Business profits),

the Contracting States agree that:

(a) nothing in paragraph 3 of the Article shall permit the deduction of an expense which would not be deductible if the permanent establishment were an independent enterprise which incurred the expense; and

(b) 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.

4. With reference to Article 9 (Associated enterprises),

the Contracting States note that the expression "dealing wholly independently with one another" is included in paragraph 1 of the Article to conform to Australia's consistent treaty practice and to address Australia's concerns that the appropriate benchmark for determining the conditions operating between the associated enterprises should have regard to whether those dealings between the enterprises occurred on a truly independent basis.

5. With reference to Article 10 (Dividends),

the Contracting States agree that if the relevant law in either Contracting State at the date of signature of the Convention 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 and 3 of the Article as may be appropriate.

6. With reference to Article 11 (Interest),

the Contracting States agree that:

(a) the term "financial institution" shall not include a corporate treasury or a member of a corporate group performing financing services for the group; and

(b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any interest paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment.

7. With reference to Article 12 (Royalties),

the Contracting States agree that:

(a) the term "royalties" shall not include payments for the use of spectrum licences. The provisions of Article 7 of the Convention shall apply to such payments; and

(b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any royalties paid by a resident of that State to a resident of the other State where the payer has 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.

8. With reference to Article 14 (Income from employment),

the Contracting States agree that:

(a) income or gains derived by employees in relation to share option schemes shall be treated as "other similar remuneration" for the purposes of Article 14;

(b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and

(c) where a resident of a Contracting State derives such income or gains, and

(i) the period of employment to which the share option relates is the period between grant and vesting of the option;

(ii) the employee remains in that employment at the date of alienation or exercise of the option; and

(iii) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

the proportion of the income or gain which shall be attributable to employment exercised in the other Contracting State shall be determined in accordance with the ratio of the number of days of employment exercised in that State between grant and vesting of the option to the total number of days of employment exercised between grant and vesting of the option.

9. With reference to Article 25 (Non-discrimination),

the Contracting States agree that:

(a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled "directly or indirectly" includes cases where the capital is held through a chain of companies or other entities; and

(b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

10. With reference to Article 26 (Mutual agreement procedure) and Article 27 (Exchange of information),

the Contracting States agree that the provisions of the Articles shall have effect from the date of entry into force of the Convention, without regard to the date of the relevant transactions or the taxable or chargeable period to which the matter relates.

11. With reference to Article 26 (Mutual agreement procedure),

the Contracting States agree that in relation to paragraph 1 of the Article, the applicable time limits in the domestic laws bearing on the time available for presenting a case to the relevant competent authority shall apply, whether or not those applicable time limits specifically refer to the competent authority process.

12. Miscellaneous

The Contracting States agree that the two Governments shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Department has the honour to propose that the present Note and the High Commission's confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the British High Commission to Australia the assurances of its highest consideration.

[Seal omitted]

CANBERRA
21 August 2003

41/03

The British High Commission to Australia presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No LGB 03/170 of 21 August 2003 which reads as follows:

"The Department of Foreign Affairs and Trade presents its compliments to the British High Commission to Australia and has the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today (the "Convention"). The Department has the honour to make the following proposals on behalf of the Government of Australia:

1. With reference generally to the application of the Convention (including these Notes),

the Contracting States agree that:

(a) the term "income or gains" includes "profits";

(b) the term "laws" includes the full body of law, and is not limited to statutory law;

(c) the terms "paid or credited" and "payments or credits" shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;

(d) the expression "any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes" includes:

(i) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

(ii) controlled foreign company, transferor trust and foreign investment fund rules;

(iii) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and

(e) nothing in the Convention 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.

2. With reference to Article 5 (Permanent establishment),

the Contracting States agree that the term "permanent establishment" fully encompasses the concept of a "fixed base" used in other double tax treaties in the context of independent personal services.

3. With reference to Article 7 (Business profits),

the Contracting States agree that:

(a) nothing in paragraph 3 of the Article shall permit the deduction of an expense which would not be deductible if the permanent establishment were an independent enterprise which incurred the expense; and

(b) 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.

4. With reference to Article 9 (Associated enterprises),

the Contracting States note that the expression "dealing wholly independently with one another" is included in paragraph 1 of the Article to conform to Australia's consistent treaty practice and to address Australia's concerns that the appropriate benchmark for determining the conditions operating between the

associated enterprises should have regard to whether those dealings between the enterprises occurred on a truly independent basis.

5. With reference to Article 10 (Dividends),

the Contracting States agree that if the relevant law in either Contracting State at the date of signature of the Convention 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 and 3 of the Article as may be appropriate.

6. With reference to Article 11 (Interest),

the Contracting States agree that:

(a) the term "financial institution" shall not include a corporate treasury or a member of a corporate group performing financing services for the group; and

(b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any interest paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment.

7. With reference to Article 12 (Royalties),

the Contracting States agree that:

(a) the term "royalties" shall not include payments for the use of spectrum licences. The provisions of Article 7 of the Convention shall apply to such payments; and

(b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any royalties paid by a resident of that State to a resident of the other State where the payer has 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.

8. With reference to Article 14 (Income from employment),

the Contracting States agree that:

(a) income or gains derived by employees in relation to share option schemes shall be treated as "other similar remuneration" for the purposes of Article 14;

(b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and

(c) where a resident of a Contracting State derives such income or gains, and

(i) the period of employment to which the share option relates is the period between grant and vesting of the option;

(ii) the employee remains in that employment at the date of alienation or exercise of the option; and

(iii) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

the proportion of the income or gain which shall be attributable to employment exercised in the other Contracting State shall be determined in accordance with the ratio of the number of days of employment exercised in that State between grant and vesting of the option to the total number of days of employment exercised between grant and vesting of the option.

9. With reference to Article 25 (Non-discrimination),

the Contracting States agree that:

(a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled "directly or indirectly" includes cases where the capital is held through a chain of companies or other entities; and

(b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

10. With reference to Article 26 (Mutual agreement procedure) and Article 27 (Exchange of information),

the Contracting States agree that the provisions of the Articles shall have effect from the date of entry into force of the Convention, without regard to the date of the relevant transactions or the taxable or chargeable period to which the matter relates.

11. With reference to Article 26 (Mutual agreement procedure),

the Contracting States agree that in relation to paragraph 1 of the Article, the applicable time limits in the domestic laws bearing on the time available for presenting a case to the relevant competent authority shall apply, whether or not those applicable time limits specifically refer to the competent authority process.

12. Miscellaneous

The Contracting States agree that the two Governments shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Department has the honour to propose that the present Note and the High Commission's confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the British High Commission to Australia the assurances of its highest consideration."

The High Commission has the honour to advise that the Department's proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that the Department's Note and this confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

The British High Commission to Australia avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

[Seal omitted]

CANBERRA

21 August 2003

Schedule 2—The Mexican agreement

International Tax Agreements Act 1953

1 Subsection 3(1)

Insert:

> ***the Mexican agreement*** means the Agreement between the Government of Australia and the Government of the United Mexican States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as affected by the protocol to that agreement. A copy of the agreement, and of the protocol, in the English language is set out in Schedule 47.

2 After section 11ZK

Insert:

11ZL Agreement with Mexico

> Subject to this Act, on and after the date of entry into force of the Mexican agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have the force of law according to their tenor.

3 At the end of the Act

Add:

Schedule 47—Mexican agreement and protocol

Note: See section 3.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES 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 United Mexican States, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which shall hereafter be referred to as the "Agreement",

Have agreed as follows:

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 Mexico:

the federal income tax (el impuesto sobre la renta federal);

(b) 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.

2 This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal laws of Mexico and Australia after the date of signature of this 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 which have been made in the laws of their respective States relating to the taxes to which this Agreement applies, and to its application, within a reasonable period of time after those changes.

Article 3

GENERAL DEFINITIONS

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

(a) the term "Mexico" means the United Mexican States; when used in a geographical sense, it includes the territory of the United Mexican States: being the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the seabed and submarine shelves of the islands, cays and reefs, where Mexico may exercise sovereign rights in accordance with international law; the waters of the territorial seas to the extent and limits established by international law and the inland waters; and the airspace of the national territory to the extent and upon the conditions established by international law; and the exclusive economic zone outside the territorial sea within which Mexico may exercise sovereign rights in accordance with its domestic law and international law;

(b) 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;

(c) the term "Mexican tax" means the tax imposed by Mexico, being the tax to which this Agreement applies by virtue of Article 2;

(d) the term "Australian tax" means the taxes imposed by Australia, being the taxes to which this Agreement applies by virtue of Article 2;

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

(f) the term "competent authority" means:

(i) in the case of Mexico, the Ministry of Finance and Public Credit;

(ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;

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

(h) 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;

(i) 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 from a place or between places in the other Contracting State;

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

(k) the term "tax" means Mexican tax or Australian 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 herein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1 For the purposes of this Agreement, a person is a resident of a Contracting State if the person is a resident of that Contracting State for the purposes of 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 A person, who in relation to any income, is a partnership, an estate of a deceased individual, or a trust (other than a partnership, an estate of a deceased individual, or a trust the income of which is exempt from taxation under the law of a Contracting State relating to its tax) shall not be treated as a resident of a Contracting State except to the extent that the income is subject to tax in that State as the income of a resident of that State, either in the hands of that person or in the hands of a partner or beneficiary, or, if that income is exempt from tax in that State, it is so exempt solely because it is subject to tax in the other State.

4 Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:

(a) the person shall be deemed to be a resident only of the Contracting State in which a permanent home is available to the person;

(b) 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 only of the Contracting State with which the person's

economic and personal relations are closer. For the purpose of this subparagraph, an individual's citizenship or nationality 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.

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 its place of effective management is situated.

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 an enterprise is wholly or partly carried on.

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 of extraction of natural resources; and

(g) an agricultural, pastoral or forestry property.

3 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it has a building site or construction or installation project in that State, or a supervisory or consultancy activity connected therewith, which

lasts more than 6 months.

4 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) heavy equipment is being used in that State by, for or under contract with the enterprise; or

(b) a person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

5 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, display or delivery 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, display or delivery; 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 advertising, supplying information, or scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise; or

(f) the maintenance in Mexico of a representative office of a bank where the activities of the representative office are limited by the law of Mexico to activities which are of a preparatory or auxiliary nature.

6 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 7 applies—shall be deemed to be a permanent establishment of that enterprise in the firstmentioned State if the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7 An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise, conditions are not made or imposed that differ from those generally agreed to by independent agents.

8 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.

9 The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 6 of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in a Contracting State.

Article 6

INCOME FROM IMMOVABLE (REAL) PROPERTY

1 Income from immovable (real) property may be taxed in the Contracting State in which the immovable (real) property is situated.

2 In this Article, the term “immovable (real) property”:

(a) in the case of Mexico, means immovable property and has the meaning which it has under the law of Mexico, and shall also include:

(i) property accessory to immovable property;

(ii) livestock and equipment used in agriculture and forestry;

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

(iv) usufruct of immovable property; and

(v) 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) in the case of Australia, means real property according to the law of Australia, and shall also include:

(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.

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 immovable (real) property.

5 The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable (real) property of an enterprise and to income from immovable (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:

(a) that permanent establishment; or

(b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment. However, the profits derived from the sales described in this subparagraph (b) shall not be taxable in the other State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Agreement.

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. No such deductions shall be

allowed in respect of such amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, by way of commission, for specific services performed or for management, or, except in the case of a bank, by way of interest on money lent to the permanent establishment.

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 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.

6 Nothing in this Article shall affect the operation 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. For the purposes of the application of this paragraph, an insurance enterprise of Australia shall, except in regard to reinsurance, be deemed to have a permanent establishment in Mexico if it collects premiums in Mexico or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 of Article 5 applies.

Article 8

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 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 would operate or which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, have accrued or 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 Where, by virtue of the provisions of paragraph 1 of this Article or Item (4) of the Protocol, a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued or which might be expected to have accrued to the enterprise of the firstmentioned State if the conditions made between the two enterprises had been those which would have operated or

which might be expected to have operated between independent enterprises dealing wholly independently with one another, then that other State shall, in accordance with the provisions of Article 24, make an appropriate adjustment to the amount of tax charged in that State on those profits if it agrees with the adjustment made by the firstmentioned Contracting State. 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.

3 The provisions of paragraph 2 shall not apply in the case of fraud.

Article 10

DIVIDENDS

1 Dividends paid by a company which is a resident of a Contracting State, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed only 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, and according to the law of that State, but the tax so charged shall not exceed:

(a) nil per cent of the gross amount of so much of the dividends as are paid out of profits that have borne the normal rate of company tax, if the person beneficially entitled to those dividends is a company (other than a partnership) which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

(b) 15 per cent of the gross amount of the dividends to the extent to which those dividends are not within paragraph (a),

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 For the purposes of paragraph 2, profits have borne the normal rate of company tax:

(a) in Mexico, to the extent to which the dividends have been paid from the net profit account; and

(b) in Australia, to the extent to which the dividends have been "franked" in accordance with its law relating to tax.

4 The provisions of paragraph 1 and paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5 The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident.

6 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.

7 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, 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.

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:

(a) 10 per cent of the gross amount of the interest:

(i) if the person beneficially entitled is a bank or an insurance company; or

(ii) if derived from bonds and securities that are regularly and substantially traded on a recognized securities market; or

(iii) paid by banks except where subparagraphs (i) or (ii) apply; or

(iv) paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit; and

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

3 Notwithstanding the provisions of paragraph 2, interest derived from the investment of official foreign exchange reserve assets by the Government of one of the Contracting States, its monetary institutions or a bank performing central banking functions in that State shall be exempt from tax in the other Contracting State.

4 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 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.

5 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.

6 Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. 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.

7 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 exceeds, for whatever reason, the amount which would or might 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8 The provisions of this Article shall not apply if the indebtedness in respect of which the interest is paid was created or assigned with the main purpose of taking advantage of this Article and not for bona fide commercial reasons. In that case the provisions of the domestic law of the Contracting State in which the interest arises shall apply.

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 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; 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 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) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4 The term "royalties" also includes income, profits or gains derived from the sale, exchange or other disposition of any property or right described in this paragraph to the extent to which the amounts realised on such sale, exchange or other disposition are contingent on the productivity, use or further disposition of such property or right.

5 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.

6 Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. 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.

7 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 exceeds, for whatever reason, the amount which would or might 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.

8 The provisions of this Article shall not apply if the rights or property in respect of which the royalties are paid or credited were created or assigned with the main purpose of taking advantage of this Article and not for bona fide commercial reasons. In that case the provisions of the domestic law of the Contracting State in which the royalties arise shall apply.

Article 13

ALIENATION OF PROPERTY

1 Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable (real) property situated in the other Contracting

State may be taxed in that other State.

2 Income, profits or gains 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.

3 Income, profits or gains from the alienation of property, other than immovable (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, profits or gains 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.

4 Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or property other than immovable (real) property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the enterprise alienating those ships, aircraft or property is a resident.

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

6 In this Article, the term "immovable (real) property" has the same meaning as it has in paragraph 2 of Article 6.

7 The situation of immovable (real) property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

8 An individual who elects, under the taxation law of a Contracting State, to defer taxation on income, profits or gains relating to property which would otherwise be taxed in that State upon the individual ceasing to be a resident of that State for the purposes of its tax, shall, if the individual is a resident of the

other Contracting State, be taxable on income, profits or gains from the subsequent alienation of that property only in that other Contracting State.

Article 14

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. However, if that individual:

(a) has a fixed base regularly available in the other Contracting State for the purpose of performing those activities; or

(b) is present in the other State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year or in the year of income concerned, as the case may be of that other State,

the income may be taxed in that other State, but only so much of the income as is attributable to services performed from that fixed base or in that other State during such period or periods.

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

DEPENDENT PERSONAL SERVICES

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 fiscal year or in the year of income concerned, as the case may be; and

(b) the remuneration is paid by, or on behalf of, an employer who is a resident of the firstmentioned State; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that 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 by an enterprise of a Contracting State 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 and, in the case of Mexico, in that person's capacity as an ''administrador'' or a ''comisario'', of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ENTERTAINERS AND SPORTSPERSONS

1 Notwithstanding the provisions of Articles 7, 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. Income referred to in this paragraph shall include income derived from any personal activities performed in the other Contracting State by such persons relating to their reputation as entertainers or sportspersons.

2 Where income in respect of the personal activities of an entertainer or a sportsperson as such accrues not to that entertainer or sportsperson 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 Pensions (including government 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.

3 Any alimony or other like maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

Article 19

GOVERNMENT SERVICE

1 Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or 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 or national of that State; or

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

2 The provisions of paragraph 1 shall not 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 or a local authority thereof. In that case the provisions of Articles 15 or 16, as the case may be, shall apply.

Article 20

STUDENTS

Payments received by a student who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the firstmentioned State solely for the purpose of the student's education, shall be exempt from tax in the firstmentioned State, provided that such payments were made to the student by persons residing outside that firstmentioned State for the purposes of the student's maintenance or education.

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 immovable (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 from sources in the other Contracting State may also be taxed in the other Contracting State.

Article 22

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 and 10 to 19, 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 be income 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 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the firstmentioned State relating to its tax be deemed to be income from sources in the other Contracting State.

Article 23

METHODS OF ELIMINATION OF DOUBLE TAXATION

1 In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against Mexican tax:

(a) Australian tax paid on income arising in Australia, in an amount not exceeding the tax payable in Mexico on such income; and

(b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Australia and from which the firstmentioned company receives dividends, Australian tax paid by the distributing company with respect to the profits out of which the dividends are paid.

2 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):

(a) Mexican tax paid under the law of Mexico 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 Mexico shall be allowed as a credit against Australian tax payable in respect of that income; and

(b) where a company which is a resident of Mexico and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in subparagraph (a) shall include the Mexican tax paid by that firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

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 the provisions of 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.

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, provided that in the case of Mexico the competent authority is notified of the case within four and a half years from the due date or the date of filing the return in Mexico, whichever is later. The solution so reached shall be implemented:

(a) in the case of Mexico, within ten years from the due date or the date of filing of the return in Mexico, whichever is later, or a longer period if permitted under the domestic law of Mexico;

(b) in the case of Australia, notwithstanding any time limits in the law relating to its tax.

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 regarding 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.

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 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 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, 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 to:

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

(b) 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) 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 posts under the general rules of international law or under the provisions of special international agreements.

Article 27

ENTRY INTO FORCE

Both Contracting States shall notify each other in writing through the diplomatic channel of the completion of their respective statutory and constitutional 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 this Agreement shall have effect:

(a) in respect of taxes imposed in accordance with Articles 10

(Dividends), 11 (Interest), and 12 (Royalties), for amounts paid or credited on or after the first day of the second month next following the date on which this Agreement enters into force if the Agreement enters into force prior to 1 July of that year; otherwise, on 1 January of the year following the year this Agreement enters into force.

(b) in respect of other taxes:

(i) in Mexico, on or after 1 July in the calendar year next following that in which this Agreement enters into force;

(ii) in Australia, 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 this 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, this Agreement shall cease to be effective:

(a) in Mexico:

on or after 1 July in the calendar year next following that in which the notice is given;

(b) 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 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,

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.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Mexico City this ninth day of September 2002, in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:
PETER COSTELLO Treasurer [Signatures omitted]	FRANCISCO GIL DIAZ Minister for Finance and Public Credit

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES 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 United Mexican States,

Having regard to the Agreement between the Government of Australia and the Government of the United Mexican States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today at Mexico City (in this Protocol called "the Agreement"),

Have agreed as follows:

(1) With reference to paragraph 1 of Article 4,

The term "resident" also includes a Contracting State or a political subdivision or local authority thereof.

(2) With reference to Article 7,

It is understood that income or profits attributable to a permanent establishment during its existence will be taxed in the Contracting State in which the permanent establishment is situated even if the payments are deferred until the permanent establishment has ceased to exist.

It is further understood that 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 in that other State and that share of business profits shall be attributed to that permanent establishment.

It is further understood that 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 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.

(3) With reference to paragraph 1 of Article 8,

Profits referred to in paragraph 1 shall not include profits from the provision of accommodation or transportation other than from the operation of ships or aircraft in international traffic.

(4) With reference to Article 9,

It is understood that nothing in Article 9 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 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.

(5) With reference to paragraph 2 of Article 10,

It is understood that nothing in this paragraph affects the rate of tax that applies to the company paying the dividends in the Contracting State of which the company is a resident by reason of distribution of such dividends.

(6) With reference to paragraph 5 of Article 10,

It is understood that an issue of bonus shares is included in the term "dividends".

(7) With reference to paragraph 2 of Article 11,

(a) The term "recognized securities market" means:

(i) in the case of Mexico, stock exchanges duly authorized under the terms of the Stock Market Law (Ley del Mercado de Valores) of 2 January, 1975;

(ii) in the case of Australia, a stock exchange authorized under the laws of Australia; and

(iii) any other stock exchange agreed upon by the competent authorities of the Contracting States.

(b) The provisions of this paragraph shall not apply to interest derived from back-to-back loans. In such case, the interest shall be taxable in accordance with the domestic law of the State in which it arises.

(8) With reference to paragraph 6 of Article 11 and paragraph 6 of Article 12,

It is understood that where a loan has been contracted by an enterprise of a Contracting State and a part only of that loan is attributed to a permanent establishment or fixed base of that enterprise in the other Contracting State, or where a contract under which royalties are paid has been concluded by the enterprise and a part only of such contract is attributed to such permanent establishment or fixed base, then only that part of the loan or contract is to be considered as an indebtedness or a contract connected with that permanent establishment or fixed base.

(9) With reference to Article 12,

It is understood that the definition of "royalties" includes 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 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; and

(b) 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; and

(c) the use of, or the right to use, some or all of the part of the spectrum specified in a spectrum licence.

(10) With reference to Article 14,

Article 14 shall also apply to income derived by a company which is a resident of Australia from the furnishing of personal services through a fixed base in Mexico in accordance with subparagraph (a) of paragraph 1. In that case, the company may compute the tax on the income from such services on a net basis as if that income were attributable to a permanent establishment in Mexico.

(11) In general,

(a) It is understood that the asset tax imposed by Mexico shall not be applied to residents of Australia that are not subject to tax under Articles 5 and 7 of the Agreement, except for assets referred to in paragraphs 3 and 4 of Article 12 that are furnished by such residents to a resident of Mexico. In the case of assets referred to in paragraphs 3 and 4 of Article 12, Mexico shall grant a credit against the tax on such assets in an amount equal to the income tax that would have been imposed under the Mexican Income Tax Law on the royalties paid instead of the rate provided in Article 12.

(b) If, in an Agreement for the avoidance of double taxation that may subsequently be made between Australia and a third State, there is included a Non-discrimination Article, Australia shall immediately inform Mexico in writing through the diplomatic channel and shall

enter into negotiations with Mexico in order to provide the same treatment for Mexico as may be provided for the third State.

(c) If, an Agreement for the avoidance of double taxation that may subsequently be made between Australia and a third State, establishes that the Exchange of Information Article may be used for purposes of value added taxes imposed by the Contracting States, such clause automatically shall apply for the purposes of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments have signed this Protocol.

DONE in duplicate at Mexico City this ninth day of September 2002, in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:
PETER COSTELLO Treasurer [Signatures omitted]	FRANCISCO GIL DIAZ Minister for Finance and Public Credit

Schedule 3—Miscellaneous

Income Tax Assessment Act 1936

1 Subsection 170(14) (paragraph (a) of the definition of *relevant provision*)

Repeal the paragraph, substitute:

(a) a provision of a double taxation agreement that attributes to a permanent establishment or to an enterprise the profits it might be expected to derive if it were independent and dealing at arm's length; or

2 Subsection 170(14) (definition of *the United Kingdom agreement*)

Repeal the definition.

International Tax Agreements Act 1953

3 After subsection 3(2)

Insert:

(2A) After the commencement of this subsection, a reference in an agreement to income from shares, or to income from other rights participating in profits, does not include a reference to a return on a debt interest (as defined in Subdivision 974-B of the *Income Tax Assessment Act 1997*).

Taxation (Interest on Overpayments and Early Payments) Act 1983

4 Subsection 3(1) (definition of *double tax agreement*)

Omit "*Income Tax (International Agreements) Act 1953*", substitute "*International Tax Agreements Act 1953*".

5 Subsection 3(1) (definition of *income tax crediting amount*)

Omit "*Income Tax (International Agreements) Act 1953*" (wherever occurring), substitute "*International Tax Agreements Act 1953*".

[*Minister's second reading speech made in—*
House of Representatives on 11 September 2003
Senate on 17 September 2003]

(144/03)