# International Tax Agreements Amendment Act (No. 1) 2011

# No. 45, 2011

## An Act to amend the law relating to taxation, and for related purposes

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

# Contents

1 Short title ..... 1
2 Commencement ..... 2
3 Schedule(s) ..... 2

**Schedule 1—Existing agreements** 3

Part 1—Amendments 3

*International Tax Agreements Act 1953* 3

Part 2—Transitional provisions 28

**Schedule 2—New agreements** 29

*International Tax Agreements Act 1953* 29

# International Tax Agreements Amendment Act (No. 1) 2011

**No. 45, 2011**

## An Act to amend the law relating to taxation, and for related purposes

[*Assented to 27 June 2011*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *International Tax Agreements Amendment Act (No. 1) 2011*.

## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 27 June 2011 |
| 2. Schedule 1 | The day this Act receives the Royal Assent. | 27 June 2011 |
| 3. Schedule 2 | Immediately after the commencement of the provision(s) covered by table item 2. | |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

## Part 1—Amendments

### *International Tax Agreements Act 1953*

#### 1 Title

Omit "**Conventions and Agreements**", substitute "**Treaties and other Agreements**".

#### 2 Subsection 3(1)

Repeal the subsection, substitute:

(1) In this Act:

***agreement*** means a treaty or other agreement described in section 3AAA (about current agreements) or 3AAB (about agreements for earlier periods).

Note: Most of the conventions, protocols and other agreements described in these sections are set out in the Australian Treaty Series. In 2011, the text of an agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

***Assessment Act*** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

***Australian tax*** means:

(a) income tax imposed as such by an Act; or

(b) fringe benefits tax imposed by the *Fringe Benefits Tax Act 1986*.

Note: This includes Medicare levy (see subsection (10)).

***foreign tax*** means tax, other than Australian tax, which is the subject of an agreement.

***prescribed trust estate***, in relation to a year of income, means a trust estate that:

(a) is a corporate unit trust, within the meaning of Division 6B of Part III of the *Income Tax Assessment Act 1936*, in relation to the year of income; or

(b) is a public trading trust, within the meaning of Division 6C of Part III of that Act, in relation to the year of income.

## 3 Subsections 3(7) and (7A)

Repeal the subsections.

## 4 Subsection 3(8)

Omit "6 (1) of the Assessment Act", substitute "6(1) of the *Income Tax Assessment Act 1936*".

## 5 After section 3

Insert:

### 3AAA Definitions—current agreements

(1) In this Act:

***Argentine agreement*** means:

(a) the Agreement between the Government of Australia and the Government of the Argentine Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Buenos Aires on 27 August 1999.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 1999 No. 36 ([1999] ATS 36).

***Austrian agreement*** means the Agreement between Australia and the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Vienna on 8 July 1986.

Note 1: The text of this agreement is set out in Australian Treaty Series 1988 No. 21 ([1988] ATS 21).

Note 2: Section 11R gives this agreement the force of law.

***Belgian agreement*** means the Agreement between Australia and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 13 October 1977.

Note 1: The text of this agreement is set out in Australian Treaty Series 1979 No. 21 ([1979] ATS 21).

Note 2: Section 11C gives this agreement the force of law.

***Belgian protocol (No. 1)*** means the protocol, done at Canberra on 20 March 1984, amending the Belgian agreement.

Note: The text of this protocol is set out in Australian Treaty Series 1986 No. 25 ([1986] ATS 25).

***Belgian protocol (No. 2)*** means the protocol, done at Paris on 24 June 2009, amending the Belgian agreement (as amended by the Belgian protocol (No. 1)).

Note: In 2011, the text of this protocol was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

***British Virgin Islands agreement*** means the Agreement between the Government of Australia and the Government of the British Virgin Islands for the allocation of taxing rights with respect to certain income of individuals, done at London on 27 October 2008.

Note: The text of this agreement is set out in Australian Treaty Series 2010 No. 13 ([2010] ATS 13).

***Canadian convention*** means the Convention between Australia and Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 21 May 1980.

Note 1: The text of this convention is set out in Australian Treaty Series 1981 No. 14 ([1981] ATS 14).

Note 2: Section 6A gives this convention the force of law.

***Canadian protocol (No. 1)*** means the protocol, done at Canberra on 23 January 2002, amending the Canadian convention.

Note: The text of this protocol is set out in Australian Treaty Series 2002 No. 26 ([2002] ATS 26).

***Chinese agreement*** means the Agreement between the Government of Australia and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 17 November 1988.

Note: The text of this agreement is set out in Australian Treaty Series 1990 No. 45 ([1990] ATS 45).

***Chinese airline profits agreement*** means the Agreement between the Government of Australia and the Government of the People's Republic of China for the avoidance of double taxation of income

and revenues derived by air transport enterprises from international air transport, done at Beijing on 22 November 1985.

Note 1: The text of this agreement is set out in Australian Treaty Series 1986 No. 31 ([1986] ATS 31).

Note 2: Section 11Q gives this agreement the force of law.

***Czech agreement*** means the Agreement between Australia and the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 28 March 1995.

Note: The text of this agreement is set out in Australian Treaty Series 1995 No. 30 ([1995] ATS 30).

***Danish agreement*** means the Agreement between the Government of Australia and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 1 April 1981.

Note 1: The text of this agreement is set out in Australian Treaty Series 1981 No. 26 ([1981] ATS 26).

Note 2: Section 11H gives this agreement the force of law.

***Fijian agreement*** means the Agreement between Australia and Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 15 October 1990.

Note: The text of this agreement is set out in Australian Treaty Series 1990 No. 44 ([1990] ATS 44).

***Finnish agreement*** means:

(a) the Agreement between the Government of Australia and the Government of Finland for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion; and

(b) the protocol to that agreement;

each done at Melbourne on 20 November 2006.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 2007 No. 36 ([2007] ATS 36).

***French convention*** means:

(a) the Convention between the Government of Australia and the Government of the French Republic for the avoidance of

double taxation with respect to taxes on income and the prevention of fiscal evasion; and

(b) the protocol to that convention;

each done at Paris on 20 June 2006.

Note 1: The text of this convention and protocol is set out in Australian Treaty Series 2009 No. 13 ([2009] ATS 13).

Note 2: Subsection (2) applies to this convention and protocol.

***German agreement*** means:

(a) the Agreement between the Commonwealth of Australia and the Federal Republic of Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes; and

(b) the protocol to that agreement;

each done at Melbourne on 24 November 1972.

Note 1: The text of this agreement and protocol is set out in Australian Treaty Series 1975 No. 8 ([1975] ATS 8).

Note 2: Section 11 gives this agreement and protocol the force of law.

***Greek airline profits agreement*** means the Agreement between the Government of Australia and the Government of the Hellenic Republic for the avoidance of double taxation of income derived from international air transport, done at Canberra on 5 May 1977.

Note: The text of this agreement is set out in Australian Treaty Series 1981 No. 10 ([1981] ATS 10).

***Hungarian agreement*** means the Agreement between Australia and the Republic of Hungary for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 29 November 1990.

Note: The text of this agreement is set out in Australian Treaty Series 1992 No. 18 ([1992] ATS 18).

***Indian agreement*** means the Agreement between the Government of Australia and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 25 July 1991.

Note: The text of this agreement is set out in Australian Treaty Series 1991 No. 49 ([1991] ATS 49).

***Indonesian agreement*** means the Agreement between the Government of Australia and the Government of the Republic of

Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Jakarta on 22 April 1992.

Note: The text of this agreement is set out in Australian Treaty Series 1992 No. 40 ([1992] ATS 40).

***Irish agreement*** means the Agreement between the Government of Australia and the Government of Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, done at Canberra on 31 May 1983.

Note 1: The text of this agreement is set out in Australian Treaty Series 1983 No. 25 ([1983] ATS 25).

Note 2: Section 11K gives this agreement the force of law.

***Isle of Man agreement*** means the Agreement between the Government of Australia and the Government of the Isle of Man for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, done at London on 29 January 2009.

Note: The text of this agreement is set out in Australian Treaty Series 2010 No. 2 ([2010] ATS 2).

***Italian airline profits agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of Italy for the avoidance of double taxation of income derived from international air transport, done at Canberra on 13 April 1972.

Note: The text of this agreement is set out in Australian Treaty Series 1976 No. 7 ([1976] ATS 7).

***Italian convention*** means:

(a) the Convention between Australia and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that convention;

each done at Canberra on 14 December 1982.

Note 1: The text of this convention and protocol is set out in Australian Treaty Series 1985 No. 27 ([1985] ATS 27).

Note 2: Section 10A gives this convention and protocol the force of law.

***Japanese convention*** means:

(a) the Convention between Australia and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that convention; and

(c) the exchange of notes relating to that convention;

each done at Tokyo on 31 January 2008.

Note: The text of this convention and protocol, and these notes, is set out in Australian Treaty Series 2008 No. 21 ([2008] ATS 21).

***Jersey agreement*** means the Agreement between the Government of Australia and the Government of Jersey for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, done at London on 10 June 2009.

Note: In 2011, the text of this agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

***Kiribati agreement*** means the Agreement between Australia and the Republic of Kiribati for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 25 March 1991.

Note: The text of this agreement is set out in Australian Treaty Series 1991 No. 34 ([1991] ATS 34).

***Korean convention*** means:

(a) the Convention between the Government of Australia and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that convention;

each done at Canberra on 12 July 1982.

Note 1: The text of this convention and protocol is set out in Australian Treaty Series 1984 No. 2 ([1984] ATS 2).

Note 2: Section 11L gives this convention and protocol the force of law.

***Malaysian agreement*** means the Agreement between the Government of Australia and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 20 August 1980.

Note 1: The text of this agreement is set out in Australian Treaty Series 1981 No. 15 ([1981] ATS 15).

Note 2: Section 11F gives this agreement the force of law.

Note 3: The text of letters exchanged about the tax sparing provision in Article 23 of this agreement is set out in Australian Treaty Series 1999 No. 24 ([1999] ATS 24).

***Malaysian protocol (No. 1)*** means the protocol, done at Sydney on 2 August 1999, amending the Malaysian agreement.

Note: The text of this protocol is set out in Australian Treaty Series 2000 No. 25 ([2000] ATS 25).

***Malaysian protocol (No. 2)*** means:

(a) the protocol amending the Malaysian agreement (as amended by the Malaysian protocol (No. 1)); and

(b) the exchange of letters relating to that protocol;

each done at Genting Highlands on 28 July 2002.

Note: The text of this protocol and these letters is set out in Australian Treaty Series 2004 No. 1 ([2004] ATS 1).

***Maltese agreement*** means the Agreement between Australia and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Malta on 9 May 1984.

Note 1: The text of this agreement is set out in Australian Treaty Series 1985 No. 15 ([1985] ATS 15).

Note 2: Section 11N gives this agreement the force of law.

***Mexican agreement*** means:

(a) 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; and

(b) the protocol to that agreement;

each done at Mexico City on 9 September 2002.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 2004 No. 4 ([2004] ATS 4).

***Netherlands agreement*** means:

(a) the Agreement between Australia and the Kingdom of the Netherlands for the avoidance of double taxation and the

prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 17 March 1976.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 1976 No. 24 ([1976] ATS 24).

***Netherlands protocol (No. 2)*** means the protocol, done at Canberra on 30 June 1986, amending the Netherlands agreement.

Note: The text of this protocol is set out in Australian Treaty Series 1987 No. 22 ([1987] ATS 22).

***New Zealand convention*** means the Convention between Australia and New Zealand for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion, done at Paris on 26 June 2009.

Note: The text of this convention is set out in Australian Treaty Series 2010 No. 10 ([2010] ATS 10).

***Norwegian convention*** means the Convention between Australia and the Kingdom of Norway for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion, done at Canberra on 8 August 2006.

Note: The text of this convention is set out in Australian Treaty Series 2007 No. 32 ([2007] ATS 32).

***Papua New Guinea agreement*** means the Agreement between Australia and the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 24 May 1989.

Note: The text of this agreement is set out in Australian Treaty Series 1989 No. 37 ([1989] ATS 37).

***Philippine agreement*** means the Agreement between the Government of Australia and the Government of the Republic of the Philippines for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Manila on 11 May 1979.

Note 1: The text of this agreement is set out in Australian Treaty Series 1980 No. 16 ([1980] ATS 16).

Note 2: Section 11D gives this agreement the force of law.

***Polish agreement*** means the Agreement between Australia and the Republic of Poland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 7 May 1991.

Note: The text of this agreement is set out in Australian Treaty Series 1992 No. 14 ([1992] ATS 14).

***Romanian agreement*** means:

(a) the Agreement between Australia and Romania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 2 February 2000.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 2001 No. 4 ([2001] ATS 4).

***Russian agreement*** means:

(a) the Agreement between the Government of Australia and the Government of the Russian Federation for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 7 September 2000.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 2003 No. 23 ([2003] ATS 23).

***Singaporean agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 11 February 1969.

Note 1: The text of this agreement is set out in Australian Treaty Series 1969 No. 14 ([1969] ATS 14).

Note 2: Section 7 gives this agreement the force of law.

Note 3: The text of notes exchanged about the tax sparing provisions in Article 18 of this agreement is set out in the Australian Treaty Series at [1975] ATS 18, [1981] ATS 31 and [1989] ATS 26.

***Singaporean protocol (No. 1)*** means the protocol, done at Canberra on 16 October 1989, amending the Singaporean agreement.

Note: The text of this protocol is set out in Australian Treaty Series 1990 No. 3 ([1990] ATS 3).

***Singaporean protocol (No. 2)*** means the protocol, done at Canberra on 8 September 2009, amending the Singaporean agreement (as amended by the Singaporean protocol (No. 1)).

Note: The text of this protocol is set out in Australian Treaty Series 2010 No. 26 ([2010] ATS 26).

***Slovak agreement*** means the Agreement between Australia and the Slovak Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 24 August 1999.

Note: The text of this agreement is set out in Australian Treaty Series 1999 No. 35 ([1999] ATS 35).

***South African agreement*** means:

(a) the Agreement between the Government of Australia and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 1 July 1999.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 1999 No. 34 ([1999] ATS 34).

***South African protocol (No. 2)*** means the protocol, done at Pretoria on 31 March 2008, amending the South African agreement.

Note: The text of this protocol is set out in Australian Treaty Series 2008 No. 18 ([2008] ATS 18).

***Spanish agreement*** means:

(a) the Agreement between Australia and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 24 March 1992.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 1992 No. 41 ([1992] ATS 41).

***Sri Lankan agreement*** means the Agreement between Australia and the Democratic Socialist Republic of Sri Lanka for the

avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 18 December 1989.

Note: The text of this agreement is set out in Australian Treaty Series 1991 No. 42 ([1991] ATS 42).

***Swedish agreement*** means the Agreement between the Government of Australia and the Government of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 14 January 1981.

Note 1: The text of this agreement is set out in Australian Treaty Series 1981 No. 18 ([1981] ATS 18).

Note 2: Section 11G gives this agreement the force of law.

***Swiss agreement*** means:

(a) the Agreement between Australia and Switzerland for the avoidance of double taxation with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 28 February 1980.

Note 1: The text of this agreement and protocol is set out in Australian Treaty Series 1981 No. 5 ([1981] ATS 5).

Note 2: Section 11E gives this agreement and protocol the force of law.

***Taipei agreement*** means:

(a) the Agreement between the Australian Commerce and Industry Office and the Taipei Economic and Cultural Office concerning the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the annex to that agreement;

each done at Canberra on 29 May 1996. A copy of this agreement and annex is set out in Schedule 1.

***Thai agreement*** means the Agreement between Australia and the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 31 August 1989.

Note: The text of this agreement is set out in Australian Treaty Series 1989 No. 36 ([1989] ATS 36).

***United Kingdom convention*** means:

(a) 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; and

(b) the exchange of notes relating to that convention;

each done at Canberra on 21 August 2003.

Note: The text of this convention and notes is set out in Australian Treaty Series 2003 No. 22 ([2003] ATS 22).

***United States convention*** means the Convention between the Government of Australia and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Sydney on 6 August 1982.

Note: The text of this convention is set out in Australian Treaty Series 1983 No. 16 ([1983] ATS 16).

***United States protocol (No. 1)*** means the protocol, done at Canberra on 27 September 2001, amending the United States convention.

Note: The text of this protocol is set out in Australian Treaty Series 2003 No. 14 ([2003] ATS 14).

***Vietnamese agreement*** means the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Hanoi on 13 April 1992.

Note 1: The text of this agreement is set out in Australian Treaty Series 1992 No. 44 ([1992] ATS 44).

Note 2: The text of letters exchanged about the tax sparing provision in Article 23 of this agreement is set out in Australian Treaty Series 2003 No. 9 ([2003] ATS 9).

***Vietnamese notes (No. 1)*** means the exchange of notes, done at Canberra on 22 November 1996, amending the Vietnamese agreement.

Note: The text of these notes is set out in Australian Treaty Series 1997 No. 20 ([1997] ATS 20).

(2) For the purposes of this Act, when construing the English language text of the French convention:

(a) words in the singular include the plural; and

(b) words in the plural include the singular;

unless the contrary intention appears.

## 3AAB Definitions—agreements for earlier periods

(1) In this Act:

***Canadian 1957 agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Mont Tremblant on 1 October 1957.

Note: The text of this agreement is set out in Australian Treaty Series 1958 No. 12 ([1958] ATS 12).

***Finnish 1984 agreement*** means:

(a) the Agreement between Australia and Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 12 September 1984.

Note: The text of this agreement and protocol is set out in Australian Treaty Series 1986 No. 6 ([1986] ATS 6).

***Finnish 1997 protocol*** means the protocol, done at Canberra on 5 November 1997, amending the Finnish 1984 agreement.

Note: The text of this protocol is set out in Australian Treaty Series 2000 No. 24 ([2000] ATS 24).

***French 1969 airline profits agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of the French Republic for the avoidance of double taxation of income derived from international air transport, done at Canberra on 27 March 1969.

Note: The text of this agreement is set out in Australian Treaty Series 1970 No. 13 ([1970] ATS 13).

***French 1976 agreement*** means the Agreement between the Government of Australia and the Government of the French

Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 13 April 1976.

Note 1: The text of this agreement is set out in Australian Treaty Series 1977 No. 21 ([1977] ATS 21).

Note 2: Subsection (2) applies to this agreement.

***French 1989 protocol*** means the protocol, done at Paris on 19 June 1989, amending the French 1976 agreement.

Note: The text of this protocol is set out in Australian Treaty Series 1990 No. 26 ([1990] ATS 26).

***Japanese 1969 agreement*** means:

(a) the Agreement between the Commonwealth of Australia and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and

(b) the protocol to that agreement;

each done at Canberra on 20 March 1969.

Note 1: The text of this agreement and protocol is set out in Australian Treaty Series 1970 No. 9 ([1970] ATS 9).

Note 2: Subsections (2) and (3) apply to this agreement and protocol.

***New Zealand 1960 agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 12 May 1960.

Note: The text of this agreement is set out in Australian Treaty Series 1960 No. 6 ([1960] ATS 6).

***New Zealand 1972 agreement*** means the Agreement between the Government of the Commonwealth of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Melbourne on 8 November 1972.

Note: The text of this agreement is set out in Australian Treaty Series 1973 No. 11 ([1973] ATS 11).

***New Zealand 1995 agreement*** means the Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal

evasion with respect to taxes on income, done at Melbourne on 27 January 1995.

Note: The text of this agreement is set out in Australian Treaty Series 1997 No. 23 ([1997] ATS 23).

***New Zealand 2005 protocol*** means the protocol, done at Melbourne on 15 November 2005, amending the New Zealand 1995 agreement.

Note: The text of this protocol is set out in Australian Treaty Series 2007 No. 5 ([2007] ATS 5).

***Norwegian 1982 convention*** means:

(a) the Convention between Australia and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital; and

(b) the protocol to that convention;

each done at Canberra on 6 May 1982.

Note: The text of this convention and protocol is set out in Australian Treaty Series 1983 No. 19 ([1983] ATS 19).

***United Kingdom 1946 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, done at London on 29 October 1946.

Note: The text of this agreement is set out in Australian Treaty Series 1947 No. 18 ([1947] ATS 18).

***United Kingdom 1967 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, done at Canberra on 7 December 1967.

Note: The text of this agreement is set out in Australian Treaty Series 1968 No. 9 ([1968] ATS 9).

***United Kingdom 1980 protocol*** means the protocol, done at Canberra on 29 January 1980, amending the United Kingdom 1967 agreement.

Note: The text of this protocol is set out in Australian Treaty Series 1980 No. 22 ([1980] ATS 22).

***United States 1953 convention*** means the Convention between the Government of the Commonwealth of Australia and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Washington on 14 May 1953.

Note: The text of this convention is set out in Australian Treaty Series 1953 No. 4 ([1953] ATS 4).

(2) For the purposes of this Act, when construing the English language texts of the French 1976 agreement and the Japanese 1969 agreement:

(a) words in the singular include the plural; and

(b) words in the plural include the singular;

unless the contrary intention appears.

(3) For the purposes of this Act, a reference in the Japanese 1969 agreement to an area adjacent to Australia as specified in the Second Schedule to the *Petroleum (Submerged Lands) Act 1967-1968* includes a reference to an area adjacent to Australia as specified in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

## 6 Paragraphs 3AA(2)(a) and (3)(a)

Omit “2003”.

## 7 Subsection 4(2)

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

## 8 Sections 5 and 5A

Repeal the sections, substitute:

### 5 Current agreements have the force of law

(1) Subject to this Act, on and after the date of entry into force of a provision of an agreement mentioned below, the provision has the force of law according to its tenor.

Note 1: The table also lists some provisions of this Act that relate to the agreement.

Note 2: Some current agreements are given the force of law by other provisions of this Act.

| **Current agreements** | |
|---|---|
| **Agreement** | **Related provisions** |
| Argentine agreement | section 11ZI |
| Belgian protocol (No. 1) | section 11C |
| Belgian protocol (No. 2) | section 11C |
| British Virgin Islands agreement | nil |
| Canadian protocol (No. 1) | section 6A |
| Chinese agreement | section 11S |
| Czech agreement | nil |
| Fijian agreement | nil |
| Finnish agreement | nil |
| French convention | nil |
| Greek airline profits agreement | nil |
| Hungarian agreement | nil |
| Indian agreement | nil |
| Indonesian agreement | nil |
| Isle of Man agreement | nil |
| Italian airline profits agreement | nil |
| Japanese convention | nil |
| Jersey agreement | nil |
| Kiribati agreement | nil |
| Malaysian protocol (No. 1) | sections 11F and 11FA |
| Malaysian protocol (No. 2) | sections 11F and 11FB |
| Mexican agreement | nil |
| Netherlands agreement | section 11A |
| Netherlands protocol (No. 2) | section 11A |
| New Zealand convention | nil |
| Norwegian convention | nil |
| Papua New Guinea agreement | nil |
| Polish agreement | section 11ZA |
| Romanian agreement | nil |
| Russian agreement | nil |
| Singaporean protocol (No. 1) | section 7 |
| Singaporean protocol (No. 2) | section 7 |

| **Current agreements** | |
|---|---|
| **Agreement** | **Related provisions** |
| Slovak agreement | nil |
| South African agreement | nil |
| South African protocol (No. 2) | nil |
| Spanish agreement | nil |
| Sri Lankan agreement | nil |
| Taipei agreement | section 11ZF |
| Thai agreement | nil |
| United Kingdom convention | nil |
| United States convention | sections 6 and 20 |
| United States protocol (No. 1) | sections 6 and 20 |
| Vietnamese agreement | nil |
| Vietnamese notes (No. 1) | section 11ZCA |

(2) Subsection (1) does not apply to Article 23 of the United States convention (as amended by the United States protocol (No. 1)).

## 5A Earlier agreements continue to have the force of law

The provisions of each of the agreements mentioned below, so far as those provisions affect Australian tax, continue to have the force of law for tax in respect of income or fringe benefits in relation to which the agreement remains effective.

| **Agreement** |
|---|
| Canadian 1957 agreement |
| Finnish 1984 agreement |
| Finnish 1997 protocol |
| French 1969 airline profits agreement |
| French 1976 agreement |
| French 1989 protocol |
| Japanese 1969 agreement |
| New Zealand 1960 agreement |
| New Zealand 1972 agreement |
| New Zealand 1995 agreement |

| Agreement |
|---|
| New Zealand 2005 protocol |
| Norwegian 1982 convention |
| United Kingdom 1946 agreement |
| United Kingdom 1967 agreement |
| United Kingdom 1980 protocol |
| United States 1953 convention |

## 9 Subsections 6(1) and (3)

Repeal the subsections.

## 10 Subsection 6(4)

Omit "(4)".

## 11 Subsection 6(4)

Omit "provisions of the convention with the United States of America do not have the effect of subjecting", substitute "United States convention (as amended by the United States protocol (No. 1)) does not subject".

## 12 Section 6AA

Repeal the section.

## 13 Subsection 6A(1)

Omit "(1)".

## 14 Subsection 6A(3)

Repeal the subsection.

## 15 Sections 6AB to 6C

Repeal the sections.

## 16 Subsection 7(1)

Omit "(1)".

## 17 Subsection 7(1)

Omit "Singapore agreement", substitute "Singaporean agreement".

## 18 Sections 7A to 10

Repeal the sections.

## 19 Subsection 10A(1)

Omit "(1)".

Note 1: The heading to section 11 is altered by omitting "**the Federal Republic of**".

Note 2: The heading to section 11A is altered by omitting "**the Kingdom of**".

## 20 Subsection 11A(1)

Repeal the subsection.

## 21 Subsection 11A(3)

Omit "(3)".

## 22 Subsection 11A(3)

After "Netherlands agreement", insert "(as amended by the Netherlands protocol (No. 2))".

## 23 Sections 11AA and 11B

Repeal the sections.

Note: The heading to section 11C is altered by omitting "**the Kingdom of**".

## 24 Subsection 11C(1)

Omit "(1)".

## 25 Sections 11CA and 11CB

Repeal the sections.

Note: The heading to section 11D is altered by omitting "**the Republic of**".

## 26 Subsection 11D(1)

Omit "(1)".

Note: The heading to section 11E is altered by omitting "**the Swiss Federal Council**" and substituting "**Switzerland**".

## 27 Subsection 11E(1)

Omit "(1)".

## 28 After subsection 11F(1)

Insert:

(2) The Malaysian agreement, as amended by:
(a) the Malaysian protocol (No. 1); and
(b) the Malaysian protocol (No. 2);
does not subject to Australian tax any interest, or royalties, paid by a resident of Australia to a resident of Malaysia that, apart from that agreement, would not be subject to Australian tax.

## 29 Subsection 11F(4)

Repeal the subsection.

## 30 Subsection 11FA(1)

Repeal the subsection.

## 31 Subsections 11FA(2) and (3)

Omit "first Malaysian protocol", substitute "Malaysian protocol (No. 1)".

## 32 Subsection 11FB(1)

Repeal the subsection.

## 33 Subsections 11FB(2) and (3)

Omit "second Malaysian protocol", substitute "Malaysian protocol (No. 2)".

## 34 Subsection 11G(1)

Omit "(1)".

Note: The heading to section 11H is altered by omitting "**the Kingdom of**".

## 35 Subsection 11K(1)

Omit "(1)".

Note: The heading to section 11L is altered by omitting "**the Republic of**".

## 36 Subsection 11L(1)

Omit "(1)".

## 37 Sections 11M and 11MA

Repeal the sections.

## 38 Subsection 11N(1)

Omit "(1)".

## 39 Sections 11P and 11PA

Repeal the sections.

Note: The heading to section 11Q is altered by omitting "**the People's Republic of**".

## 40 Subsection 11Q(1)

Omit "(1)".

Note: The heading to section 11R is altered by omitting "**the Republic of**".

## 41 Subsection 11R(1)

Omit "(1)".

Note: The heading to section 11S is altered by omitting "**the People's Republic of**".

## 42 Subsection 11S(1)

Repeal the subsection.

## 43 Sections 11T to 11Z

Repeal the sections.

## 44 Subsection 11ZA(1)

Repeal the subsection.

Note: The heading to section 11ZA is altered by omitting "**the Republic of**".

## 45 Subsection 11ZA(2)

Omit "(2)".

## 46 Sections 11ZB and 11ZC

Repeal the sections.

## 47 Subsection 11ZCA(1)

Repeal the subsection.

Note: The heading to section 11ZCA is altered by omitting "**the Socialist Republic of**".

## 48 Subsection 11ZCA(2)

Omit "(2)".

## 49 Subsection 11ZCA(2)

Omit "Vietnamese notes for the purpose of giving effect to subsection (1)", substitute "Vietnamese notes (No. 1) for the purpose of giving effect to those notes".

## 50 Sections 11ZD and 11ZE

Repeal the sections.

## 51 Subsection 11ZF(1)

Repeal the subsection.

## 52 Subsection 11ZF(5)

Omit "Assessment Act", substitute "*Income Tax Assessment Act 1936*".

## 53 Paragraph 11ZF(6)(a)

Omit "subsection 3(1)", substitute "subsection 3AAA(1)".

## 54 Subsection 11ZF(6)

Omit "Assessment Act", substitute "*Income Tax Assessment Act 1936*".

## 55 Sections 11ZG to 11ZH

Repeal the sections.

## 56 Subsection 11ZI(1)

Repeal the subsection.

## 57 Subsection 11ZI(2)

Omit "(2)".

## 58 Sections 11ZJ to 11ZO

Repeal the sections.

## 59 Subsection 17A(3) (definition of *unit trust dividend*)

Omit "Assessment Act", substitute "*Income Tax Assessment Act 1936*".

## 60 Subsections 17A(4) and (5)

Omit "Assessment Act", substitute "*Income Tax Assessment Act 1936*".

## 61 Subsection 20(1)

Omit "United States convention", substitute "United States convention (as amended)".

## 62 Subsection 20(6)

Insert:

> ***United States convention (as amended)*** means the United States convention as amended by the United States protocol (No. 1).

## 63 Subsection 20(6) (definition of *United States tax*)

Omit "United States convention", substitute "United States convention (as amended)".

## 64 Section 21

Omit "Assessment Act", substitute "*Income Tax Assessment Act 1936*".

## 65 Subparagraph 24(1)(b)(i)

Omit "2003".

## 66 Subsection 24(1) (note)

Omit "2003".

## 67 Schedules 1 to 40

Repeal the Schedules.

## 68 Schedule 41

Renumber as Schedule 1.

## 69 Schedules 42 to 50

Repeal the Schedules.

# Part 2—Transitional provisions

## 70 Definitions

In this Part:

***commencement day*** means the day this Schedule commences.

***new Act*** means the *International Tax Agreements Act 1953* as amended by this Schedule.

***old Act*** means the *International Tax Agreements Act 1953* as in force before the commencement day.

## 71 Transitional—amendments operate prospectively

(1) This item applies to a provision of an agreement that has the force of law on the commencement day because of section 5 of the new Act.

(2) Despite section 5 of the new Act, for each day before the commencement day, the provision of the agreement continues to have the force of law in accordance with the old Act.

## 72 Transitional—new description of agreements do not affect their legal operation

(1) This item applies to a provision of an agreement that:

(a) had the force of law under the old Act immediately before the commencement day; and

(b) is not covered by section 5 or 5A of the new Act.

(2) To avoid doubt, the provision continues to have the force of law, on and after the commencement day, under the new Act.

Note: This means the changes made by this Schedule have no effect on the provision's legal operation.

# Schedule 2—New agreements

## *International Tax Agreements Act 1953*

### 1 Subsection 3AAA(1)

Insert:

***Aruban agreement*** means the Agreement between the Government of Australia and the Kingdom of the Netherlands, in respect of Aruba, for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, done at Canberra on 16 December 2009.

Note: In 2011, the text of this agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

### 2 Subsection 3AAA(1)

Insert:

***Chilean convention*** means:

(a) the Convention between Australia and the Republic of Chile for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion; and

(b) the protocol to that convention;

each done at Santiago on 10 March 2010.

Note: In 2011, the text of this convention and protocol was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

### 3 Subsection 3AAA(1)

Insert:

***Cook Islands agreement*** means the Agreement between the Government of Australia and the Government of the Cook Islands on the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in

respect of transfer pricing adjustments, done at Rarotonga on 27 October 2009.

Note: In 2011, the text of this agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

## 4 Subsection 3AAA(1)

Insert:

***Guernsey agreement*** means the Agreement between the Government of Australia and the States of Guernsey for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, done at London on 7 October 2009.

Note: In 2011, the text of this agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

## 5 Subsection 3AAA(1)

Insert:

***Malaysian protocol (No. 3)*** means the protocol amending the Malaysian agreement (as amended by the Malaysian protocol (No. 1) and the Malaysian protocol (No. 2)), done at Canberra on 24 February 2010.

Note: In 2011, the text of this protocol was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

## 6 Subsection 3AAA(1)

Insert:

***Samoan agreement*** means the Agreement between the Government of Australia and the Government of Samoa for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments, done at Canberra on 16 December 2009.

Note: In 2011, the text of this agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

## 7 Subsection 3AAA(1)

Insert:

***Turkish convention*** means:

(a) the Convention between the Government of Australia and the Government of the Republic of Turkey for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion; and

(b) the protocol to that convention;

each done at Ankara on 28 April 2010.

Note: In 2011, the text of this convention and protocol was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

## 8 Subsection 5(1) (after table item dealing with Argentine agreement)

Insert:

| | |
|---|---|
| Aruban agreement | nil |

## 9 Subsection 5(1) (after table item dealing with Canadian protocol (No. 1))

Insert:

| | |
|---|---|
| Chilean convention | nil |

## 10 Subsection 5(1) (after table item dealing with Chinese agreement)

Insert:

| | |
|---|---|
| Cook Islands agreement | nil |

## 11 Subsection 5(1) (after table item dealing with Greek airline profits agreement)

Insert:

| | |
|---|---|
| Guernsey agreement | nil |

## 12 Subsection 5(1) (after table item dealing with Malaysian protocol (No. 2))

Insert:

| | |
|---|---|
| Malaysian protocol (No. 3) | section 11F |

## 13 Subsection 5(1) (after table item dealing with Russian agreement)

Insert:

| | |
|---|---|
| Samoan agreement | nil |

## 14 Subsection 5(1) (after table item dealing with Thai agreement)

Insert:

| | |
|---|---|
| Turkish convention | nil |

## 15 At the end of paragraph 11F(2)(b)

Add “and”.

## 16 After paragraph 11F(2)(b)

Insert:

(c) the Malaysian protocol (No. 3);

[*Minister’s second reading speech made in—*
*House of Representatives on 23 March 2011*
*Senate on 14 June 2011*]