

INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT ACT 1977

No. 134 of 1977

An Act to amend the *Income Tax (International Agreements) Act 1953*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

1. (1) This Act may be cited as the *Income Tax (International Agreements) Amendment Act 1977*.¹ Short title, &c.

(2) The *Income Tax (International Agreements) Act 1953*² is in this Act referred to as the Principal Act.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commencement

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “ the Assessment Act ” in sub-section (1) the following definition:

“ ‘the Belgian agreement’ means the Agreement between the Government of Australia and the Government of the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which in the English language is set out in Schedule 13; ”; and

(b) by inserting after the definition of “ the German agreement ” in sub-section (1) the following definition:

“ ‘the Greek 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, being the agreement a copy of which in the English language is set out in Schedule 12; ”.

4. After section 11A of the Principal Act the following sections are inserted:

“11B. (1) Subject to this Act, on and after the date of entry into force of the Greek agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have, and shall be deemed to have had, the force of law in relation to tax in respect of income derived on or after 1 March 1972 and in relation to which the agreement remains effective.” Agreement with the Hellenic Republic

“(2) As soon as practicable after the entry into force of the Greek agreement in accordance with Article 4 of the agreement, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date on which the agreement entered into force, and the date so notified shall, for the purposes of this Act, be conclusively presumed to be the date of entry into force of the agreement.

Agreement
with the
Kingdom of
Belgium

“11C. (1) Subject to this Act, on and after the date of entry into force of the Belgian agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have the force of law—

- (a) in relation to withholding tax—in respect of dividends or interest derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force and in relation to which the agreement remains effective; and
- (b) in relation to tax other than withholding tax—in respect of income of any year of income commencing on or after 1 July in the calendar year immediately following that in which the agreement enters into force and in relation to which the agreement remains effective.

“(2) As soon as practicable after the entry into force of the Belgian agreement in accordance with Article 28 of the agreement, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date on which the agreement entered into force, and the date so notified shall, for the purposes of this Act, be conclusively presumed to be the date of entry into force of the agreement.”.

Provisions
relating to
certain
income
derived from
sources in
the United
Kingdom,
Singapore,
Japan, New
Zealand,
Germany,
the
Netherlands,
France and
Belgium

5. Section 12 of the Principal Act is amended—

- (a) by omitting from paragraph (af) of sub-section (1) “or” (last occurring); and
- (b) by inserting after paragraph (af) of sub-section (1) the following paragraph:

“(ag) income being—

(i) interest to which—

(A) paragraph (1) of Article 10 of the Belgian agreement applies by reason of paragraph (3) of the Article; or

(B) paragraph (1) of Article 11 of the Belgian agreement applies; or

(ii) royalties to which paragraph (1) of Article 12 of the Belgian agreement applies,

where the income is derived, in the year of income commencing on 1 July in the calendar year immediately following that in which the agreement enters into force, or a subsequent year of income, from sources in Belgium; or”.

6. The Principal Act is amended by adding at the end thereof the following Schedules: Schedules 12 and 13

“SCHEDULE 12

Section 3

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

The Government of Australia and the Government of the Hellenic Republic desiring to conclude an Agreement for the avoidance of double taxation of income derived from international air transport,

HAVE AGREED as follows:

ARTICLE 1

(1) The existing taxes to which this Agreement applies are—

- (a) the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company, (hereinafter referred to as “Australian tax”);
- (b) the Greek income tax including the income tax on legal entities as well as the contribution for Agricultural Insurance Organisation, (hereinafter referred to as “Greek tax”).

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

ARTICLE 2

(1) In this Agreement, unless the context otherwise requires—

- (a) the term “Australia” includes all Territories of or under the authority of Australia except the Territory of Papua New Guinea;
- (b) the term “Greece” means the territory of the Hellenic Republic;
- (c) the terms “Contracting State” and “other Contracting State” mean Australia or Greece, as the context requires;
- (d) the term “Australian enterprise” means an enterprise that has its place of effective management in Australia;
- (e) the term “Greek enterprise” means an enterprise that has its place of effective management in Greece;
- (f) the term “enterprise of a Contracting State” means an Australian enterprise or a Greek enterprise, as the context requires;
- (g) the term “tax” means Australian tax or Greek tax, as the context requires;
- (h) the term “operation of aircraft in international traffic” means the operation of aircraft in the carriage of persons, livestock, goods or mail between—
 - (i) Australia and Greece;
 - (ii) Australia and any other country;
 - (iii) Greece and any other country;
 - (iv) countries other than Australia or Greece; and
 - (v) places within a country other than Australia or Greece,

and, in relation to an enterprise engaged in the operation of aircraft for such carriage, includes the sale of tickets for such carriage and the provision of services in connection

SCHEDULE 12—continued

with the loading or unloading of aircraft engaged in such carriage, either for the enterprise itself or for any other enterprise engaged in the operation of aircraft for such carriage.

(2) In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes to which this Agreement applies.

ARTICLE 3

(1) Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic or arising from the carriage by air of persons, livestock, goods or mail between places in that Contracting State, shall be exempt from tax in the other Contracting State.

(2) The exemption provided in paragraph (1) of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

ARTICLE 4

This Agreement shall enter into force on the fourteenth day after the date on which each Contracting State shall have received from the other Contracting State written notification that it has complied with all statutory and constitutional requirements for the entry into force of the Agreement, and the provisions of the Agreement shall have effect—

- (a) as regards Australian tax, in respect of income derived from the first day of March 1972 and thereafter;
- (b) as regards Greek tax, in respect of income derived from the first day of April 1972 and thereafter.

ARTICLE 5

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1978, give notice of termination to the other Contracting State and in that event this Agreement shall cease to be effective—

- (a) as regards Australian tax, in respect of income derived from the first day of March in the calendar year next following that in which the notice of termination is given and thereafter; and
- (b) as regards Greek tax, in respect of income derived from the first day of April in the calendar year next following the year in which notice of termination is given and thereafter.

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

DONE in duplicate at Canberra the fifth day of May, One thousand nine hundred and seventy-seven in the English and Greek languages, both texts being equally authoritative.

PHILLIP LYNCH
FOR THE GOVERNMENT
OF AUSTRALIA

C. TRICOUPIS
FOR THE GOVERNMENT
OF THE HELLENIC REPUBLIC

SCHEDULE 13

Section 3

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

The Government of Australia and the Government of the Kingdom of Belgium,

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

HAVE AGREED as follows:

CHAPTER I

SCOPE OF THE AGREEMENT

ARTICLE 1

Personal Scope

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 Australia:

the Commonwealth income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in Belgium:

the individual income tax (*impôt des personnes physiques*—*personenbelasting*);

the corporate income tax (*impôt des sociétés*—*vennootschapsbelasting*);

the income tax on legal entities (*impôt des personnes morales*—*rechtspersonenbelasting*);

the income tax on non-residents (*impôt des non-résidents*—*belasting der nietverblijfhouders*);

including the prepayments, the surcharges on these taxes and prepayments, and the communal supplement to the individual income tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by one of the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes. At the end of each calendar year, the competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any substantial changes which have been made in the laws of his State relating to the taxes to which this Agreement applies.

CHAPTER II

DEFINITIONS

ARTICLE 3

General Definitions

(1) In this Agreement, unless the context otherwise requires—

(a) the term “Australia” means the Commonwealth of Australia and, when used in a geographical sense, includes—

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

SCHEDULE 13—continued

- (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Coral Sea Islands Territory; and
 - (vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
- (b) the term “Belgium” means the Kingdom of Belgium and, when used in a geographical sense, means the territory of the Kingdom of Belgium and includes any territory outside the national sovereignty of Belgium which in accordance with international law has been or may hereafter be designated, under the laws of Belgium concerning the continental shelf, as an area within which the rights of Belgium with respect to the seabed and the subsoil and their natural resources may be exercised;
- (c) the terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Belgium, as the context requires;
- (d) the term “person” means an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is assimilated to a body corporate for tax purposes in the Contracting State of which it is a resident;
- (f) the term “tax” means Australian tax or Belgian tax, as the context requires;
- (g) the term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
- (h) the term “Belgian tax” means tax imposed by Belgium, being tax to which this Agreement applies by virtue of Article 2;
- (i) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Belgium, the Minister of Finance or his authorized representative;
- (j) the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Belgium, as the context requires;
- (k) words in the singular include the plural and words in the plural include the singular.
- (2) In this Agreement, the terms “Australian tax” and “Belgian tax” do not include any charge imposed as a penalty under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.
- (3) In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies.

ARTICLE 4

Residence

- (1) For the purposes of this Agreement, a person is a resident of one of the Contracting States—
- (a) in the case of Australia, subject to paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and
 - (b) in the case of Belgium, if the person is a resident of Belgium for the purposes of Belgian tax.
- (2) In relation to income from sources in Belgium, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Belgium is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Belgian tax.
- (3) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

SCHEDULE 13—continued

- (b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.
- (4) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting 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 in which the business of the enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” shall include especially—
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, quarry or other place of extraction of natural resources;
 - (g) an agricultural, pastoral or forestry property;
 - (h) a building site or construction, installation or assembly project which exists for more than twelve months.
- (3) 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 for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising, scientific research or the supply of information.
- (4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if—
 - (a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or
 - (b) substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.
- (5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if—
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

SCHEDULE 13—continued

- (b) in so acting he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.

(7) The fact that a company which is a resident of one of the Contracting States 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.

(8) The principles set forth in paragraphs (1) to (7) inclusive shall be applied in determining for the purposes 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 one of the Contracting States.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

Income from Real Property

(1) Income from real property, including royalties and other payments in respect of the operation of mines or quarries or the exploitation of any natural resource, may be taxed in the Contracting State in which the real property, mines, quarries, or natural resources are situated.

(2) Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property situated in the Contracting State in which the land is situated.

(3) Ships, boats or aircraft shall not be regarded as real property.

(4) The provisions of paragraph (1) shall also apply to the income from real property of an enterprise and to the income from real property used for the performance of professional services.

ARTICLE 7

Business Profits

(1) The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

SCHEDULE 13—continued

(5) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(6) For the purposes of this Article, except as provided in the Articles referred to in this paragraph, the profits of an enterprise do not include items of income dealt with in Articles 6, 8, 10, 11, 12, 14, 16 and 17 and in paragraph (1) of Article 13.

(7) Notwithstanding the provisions of this Article, profits of an enterprise of one of the Contracting States from carrying on a business of any form of insurance, other than life insurance, may be taxed in the other Contracting State according to the law of that State, provided that if the law in force 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 Governments shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

(8) The amount of the profits attributable to a permanent establishment situated in Belgium of an enterprise carried on by a company that is a resident of Australia may be taxed in Belgium at the rate fixed by the law of Belgium, provided that such rate shall not exceed the highest rate applicable to profits of a company which is a resident of Belgium.

(9) If Australia imposes on profits attributable to a permanent establishment situated in Australia of an enterprise carried on by a company that is a resident of Belgium any tax which is in addition to the tax which would be chargeable on those profits if they were the profits of an enterprise carried on by a company that is a resident of Australia, the Contracting Governments shall consult with each other with a view to agreeing to such amendments to paragraph (8) of this Article as may be appropriate.

ARTICLE 8

Shipping and Air Transport

(1) Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organization or in an international operating agency.

(4) For the purposes of this Article, profits derived from the carriage of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

(5) The amount which shall be charged to tax in one of the Contracting States as profits from operations of ships or aircraft in respect of which a resident of the other Contracting State may be taxed in the first-mentioned State under paragraph (2) or (3) shall not exceed 5 per cent of the amount paid or payable (net of rebates) in respect of carriage in such operations.

(6) Paragraph (5) shall not apply to profits derived from the operation of ships or aircraft by a resident of one of the Contracting States whose principal place of business is in the other Contracting State, nor shall it apply to profits derived from the operation of ships or aircraft by a resident of a Contracting State if those profits are derived otherwise than from the carriage of passengers, livestock, mail, goods or merchandise.

SCHEDULE 13—continued

ARTICLE 9

Associated Enterprises

(1) Where

- (a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

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

(2) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to the 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 such adjustment as it considers appropriate to the amount of tax charged on those profits in the first-mentioned State. In determining any adjustment, due regard shall be had to the other provisions of this Agreement, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

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

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident. In the case of Belgium, the term includes income, even when paid in the form of interest, which is taxable under the head of income from capital invested by the members of a company which is a resident of Belgium for the purposes of its tax and is not a company with share capital.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State of which the company paying the dividends is a resident, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Dividends paid by a company which is a resident of Belgium, being dividends to which a person who is not a resident of Australia is beneficially entitled, shall be exempt from

SCHEDULE 13—continued

tax in Australia except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in Australia. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Belgium for the purposes of Belgian tax and which is also a resident of Australia for the purposes of Australian tax.

ARTICLE 11

Interest

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

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

(3) The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and interest from any other form of indebtedness as well as all other income assimilated to interest by the taxation law of the Contracting State in which the income arises. The term does not include income which is paid in the form of interest but which is, in accordance with paragraph (3) of Article 10, to be treated as dividends.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State in which the interest arises, and the indebtedness giving rise to the interest is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however—

- (a) the person paying the interest is a resident of one of the Contracting States and has in the other State or outside both States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by the permanent establishment, then the interest shall be deemed to arise in the State where the permanent establishment is situated;
- (b) the person paying the interest is not a resident of either of the Contracting States but has in one of the States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by the permanent establishment, then the interest shall be deemed to arise in the State where the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the interest or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might 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 last-mentioned amount. In that case, the excess part of the amount of the interest paid may be taxed in the Contracting State in which the interest arises according to the law of that State.

ARTICLE 12

Royalties

(1) Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may 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.

SCHEDULE 13—continued

(3) The term “royalties” in this Article means payments, whether periodical or not, and however described or computed, to the extent to which they are paid as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance of an ancillary or subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies, and includes any payments to the extent to which they are paid as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State in which the royalties arise, and the asset giving rise to the royalties is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however—

- (a) the person paying the royalties is a resident of one of the Contracting States and has in the other State or outside both States a permanent establishment in connection with which the liability to pay the royalties was incurred and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State where the permanent establishment is situated;
- (b) the person paying the royalties is not a resident of either of the Contracting States but has in one of the States a permanent establishment in connection with which the liability to pay the royalties was incurred and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State where the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which 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 last-mentioned amount. In that case, the excess part of the amount of the royalties paid may be taxed in the Contracting State in which the royalties arise according to the law of that State.

ARTICLE 13

Alienation of Property

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

(2) For the purposes of this Article—

- (a) the term “real property” shall include—
 - (i) a lease of land or any other direct interest in or over land;
 - (ii) rights to exploit, or to explore for, natural resources; and
 - (iii) shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States;
- (b) real property shall be deemed to be situated—
 - (i) where it consists of direct interests in or over land—in the Contracting State in which the land is situated;
 - (ii) where it consists of rights to exploit, or to explore for, natural resources—in the Contracting State in which the natural resources are situated or the exploration may take place; and

SCHEDULE 13—continued

- (iii) where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States—in the Contracting State in which the assets or the principal assets of the company are situated.

(3) Subject to the provisions of paragraph (1), income from the alienation of capital assets of an enterprise of a Contracting State shall be taxable only in that Contracting State, but, where those assets form part of the business property of a permanent establishment situated in the other Contracting State, such income may be taxed in that other State.

ARTICLE 14

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base.

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

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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, the remuneration 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 one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or in the taxable period, as the case may be, of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State. In relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 15 shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to “employer” were references to the company.

SCHEDULE 13—continued

ARTICLE 17

Entertainers

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

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

ARTICLE 18

Pensions and Annuities

(1) Pensions, other than pensions to which Article 19 applies, and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

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

ARTICLE 19

Government Service

(1) Remuneration, other than a pension, paid to an individual in respect of services rendered in the discharge of governmental functions to one of the Contracting States or to a political sub-division of one of the Contracting States or to a local authority of one of the Contracting States shall be taxable only in that State. Such remuneration shall, however, be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that 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 performing the services.

(2) Any pension paid to an individual in respect of services rendered in the discharge of governmental functions to one of the Contracting States or to a political sub-division of one of the Contracting States or to a local authority of one of the Contracting States shall be taxable only in that State. Such pension shall, however, be taxable only in the other Contracting State if the recipient is a citizen or national of that State and a resident of that State.

(3) The provisions of Articles 15, 16 and 18 shall apply to remuneration, including pensions, paid in respect of services rendered in connection with any business carried on by one of the Contracting States or by a political sub-division of one of the Contracting States or by a local authority of one of the Contracting States.

ARTICLE 20

Professors and Teachers

(1) Salaries, wages and other similar remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other recognized educational institution, receives for those activities shall be taxable only in the first-mentioned State.

(2) This Article shall not apply to remuneration which a professor or teacher receives for conducting research, if the research is undertaken primarily for the private benefit of a specific person or persons.

SCHEDULE 13—continued

ARTICLE 21

Students

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

ARTICLE 22

Income of Dual Resident

Where a person, who by reason of the provisions of paragraph (1) of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph (3) or (4) of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

ARTICLE 23

Source of Income

(1) Income derived by a resident of Belgium which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

(2) Income derived by a resident of Australia which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in Belgium, shall for the purposes of paragraph (1) of Article 24 and of the income tax law of Australia be deemed to be income from sources in Belgium.

CHAPTER IV

METHODS OF ELIMINATION OF DOUBLE TAXATION

ARTICLE 24

(1) In the case of Australia, double taxation shall be avoided as follows:

- (a) 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 hereof), Belgian tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Belgium (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.
- (b) In the event that Australia should cease to allow a company which is a resident of Australia a rebate in its assessment at the average rate of tax payable by the company in respect of dividends derived from sources in Belgium and included in the taxable income of the company, the Contracting Governments will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

(2) In the case of Belgium, double taxation shall be avoided as follows:

- (a) Where a resident of Belgium derives income which may be taxed in Australia in accordance with this Agreement and which is not subject to the provisions of subparagraph (b) or (c) below, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.
- (b) In the case of—
 - (i) dividends taxable in accordance with paragraph (2) of Article 10, and not exempt from Belgian tax according to subparagraph (c) below;
 - (ii) interest taxable in accordance with paragraph (2) or (6) of Article 11; and
 - (iii) royalties taxable in accordance with paragraph (2) or (6) of Article 12, there shall be allowed as a credit against Belgian tax relating to such income the

SCHEDULE 13—continued

fixed proportion in respect of foreign tax for which provision is made under Belgian law, under the conditions and at the rate fixed by such law, provided that this rate shall not be less than the rate of tax which may be levied in Australia in accordance with paragraph (2) of Article 10, paragraph (2) of Article 11 or paragraph (2) of Article 12.

- (c) Where a company which is a resident of Belgium owns shares in a company with share capital which is a resident of Australia and which is subject to Australian tax on its profits, the dividends which are paid to it by the latter company and which may be taxed in Australia in accordance with paragraph (2) of Article 10 shall be exempt from the corporate income tax in Belgium to the extent that exemption would have been accorded if the two companies had been residents of Belgium.
- (d) Where, in accordance with Belgian law, losses of an enterprise carried on by a resident of Belgium which are attributable to a permanent establishment situated in Australia have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided in subparagraph (a) of this paragraph shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been freed from tax in Australia by reason of a deduction for the said losses.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 25

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

(2) The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

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

ARTICLE 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used by that competent authority only for such purposes.

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

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

SCHEDULE 13—continued

- (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 27

Miscellaneous

(1) With respect to a company which is a resident of Belgium for the purposes of Belgian tax, the provisions of this Agreement shall not limit the taxation of that company in accordance with the Belgian law in the event of the repurchase by the company of its own shares or in the event of the distribution of its assets.

(2) Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international Agreements.

CHAPTER VI

FINAL PROVISIONS

ARTICLE 28

Entry into Force

This Agreement shall come into force on the fifteenth day after the date on which the Government of Australia and the Government of the Kingdom of Belgium exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Belgium respectively, and thereupon this Agreement shall have effect—

(a) in Australia—

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

(b) in Belgium—

- (i) with respect to all tax due at source, on income credited or payable on or after 1 January in the calendar year immediately following that in which the Agreement enters into force;
- (ii) with respect to all tax other than tax due at source, on income of any accounting period beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of the Kingdom of Belgium 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 Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective—

(a) in Australia—

- (i) with respect to 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 immediately following that in which the notice of termination is given;
- (ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given;

SCHEDULE 13—continued

(b) in Belgium—

- (i) with respect to all tax due at source, on income credited or payable on or after 1 January in the calendar year immediately following that in which the notice of termination is given;
- (ii) with respect to all tax other than tax due at source, on income of any accounting period beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Canberra this thirteenth day of October, One thousand nine hundred and seventy-seven in the English, French and Dutch languages, the three texts being equally authentic.

PHILLIP R. LYNCH
FOR THE GOVERNMENT
OF AUSTRALIA

GEORGES BARTHELEMY
FOR THE GOVERNMENT OF THE
KINGDOM OF BELGIUM”.

NOTES

1. Act No. 134, 1977; assented to 10 November 1977.
2. Act No. 82, 1953, as amended. For previous amendments *see* Acts No. 25, 1958; No. 88, 1959; Nos. 19 and 29, 1960; No. 71, 1963; No. 112, 1964; No. 105, 1965; No. 17, 1966; Nos. 39 and 86, 1967; No. 3, 1968; No. 24, 1969; No. 48, 1972; No. 11, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 129, 1974; No. 119, 1975; and Nos. 52, 55 and 143, 1976.