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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**International Tax Agreements
Amendment Bill (No. 2) 2009**

No. , 2009

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *International Tax Agreements*
6 *Amendment Act (No. 2) 2009*.

7 **2 Commencement**

8 This Act commences on the day this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments**
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3 ***Income Tax Assessment Act 1997***

4 **1 Paragraph 125-60(4)(a)**

5 Repeal the paragraph, substitute:

- 6 (a) the appointment of common (or almost identical) boards of
7 directors, except where the effect of the relevant regulatory
8 requirements prevents this; and

9 **2 Application**

10 The amendment of the *Income Tax Assessment Act 1997* made by this
11 Schedule applies in relation to CGT events happening on or after the
12 commencement of this Schedule.

13 ***International Tax Agreements Act 1953***

14 **3 Subsection 3(1) (after paragraph (ca) of the definition of**
15 ***agreement*)**

16 Insert:

- 17 (caa) the 1995 New Zealand agreement; or
18 (cab) the 1995 New Zealand agreement as amended by the 2005
19 New Zealand protocol; or

20 **4 Subsection 3(1)**

21 Insert:

22 *the 1995 New Zealand agreement* means the Agreement between
23 the Government of Australia and the Government of New Zealand
24 for the avoidance of double taxation and the prevention of fiscal
25 evasion with respect to taxes on income, being the agreement
26 signed at Melbourne on 27 January 1995.

27 **5 Subsection 3(1)**

28 Insert:

1 *the 2005 New Zealand protocol* means the Protocol, signed at
2 Melbourne on 15 November 2005, between the Government of
3 Australia and the Government of New Zealand amending the 1995
4 New Zealand agreement.

5 **6 Subsection 3(1)**

6 Insert:

7 *the 2009 New Zealand convention* means the Convention between
8 Australia and New Zealand for the avoidance of double taxation
9 with respect to taxes on income and fringe benefits and the
10 prevention of fiscal evasion, being the convention a copy of which
11 is set out in Schedule 4.

12 **7 Subsection 3(1) (definition of *the Belgian agreement*)**

13 Omit “Belgian protocol”, substitute “first and second Belgian
14 protocols”.

15 **8 Subsection 3(1) (definition of *the Belgian protocol*)**

16 Repeal the definition.

17 **9 Subsection 3(1)**

18 Insert:

19 *the first Belgian protocol* means the Protocol, signed 20 March
20 1984, amending the Agreement between Australia and the
21 Kingdom of Belgium for the avoidance of double taxation and the
22 prevention of fiscal evasion with respect to taxes on income, being
23 the protocol a copy of which in the English version is set out in
24 Schedule 13A.

25 **10 Subsection 3(1)**

26 Insert:

27 *the Jersey agreement* means the Agreement between the
28 Government of Australia and the Government of Jersey for the
29 allocation of taxing rights with respect to certain income of
30 individuals and to establish a mutual agreement procedure in
31 respect of transfer pricing adjustments, being the agreement a copy
32 of which is set out in Schedule 50.

11 Subsection 3(1) (definition of *the New Zealand agreement*)

Repeal the definition.

12 Subsection 3(1) (definition of *the New Zealand protocol*)

Repeal the definition.

13 Subsection 3(1)

Insert:

the second Belgian protocol means the Protocol, signed 24 June 2009, amending 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, being the protocol a copy of which in the English version is set out in Schedule 13B.

14 Sections 6B and 6C

Repeal the sections, substitute:

6B The 2009 New Zealand convention

Subject to this Act, on and after the date of entry into force of a provision of the 2009 New Zealand convention, the provision has the force of law according to its tenor.

6C Previous New Zealand agreements

The provisions of each of the following agreements:

- (a) the 1960 New Zealand agreement;
- (b) the 1972 New Zealand agreement;
- (c) the 1995 New Zealand agreement;
- (d) the 1995 New Zealand agreement as amended by the 2005 New Zealand protocol;

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.

15 Subsection 11CA(1)

After “entry into force of the”, insert “first”.

1 Note: The heading to section 11CA is altered by omitting “**Protocol**” and substituting “**First**
2 **protocol**”

3 **16 After section 11CA**

4 Insert:

5 **11CB Second protocol with the Kingdom of Belgium**

6 Subject to this Act, on and after the date of entry into force of the
7 second Belgian protocol, the provisions of the protocol have the
8 force of law according to their tenor.

9 **17 Before section 16**

10 Insert:

11 **11ZO Agreement with Jersey**

12 Subject to this Act, on and after the date of entry into force of a
13 provision of the Jersey agreement, the provision has the force of
14 law according to its tenor.

15 **18 Schedules 4 and 4A**

16 Repeal the Schedules, substitute:

17 **Schedule 4—Convention between Australia**
18 **and New Zealand for the avoidance of**
19 **double taxation with respect to taxes**
20 **on income and fringe benefits and the**
21 **prevention of fiscal evasion**

22 Note: See section 3.

23
24 The Government of Australia and the Government of New Zealand,

25
26 Desiring to conclude a Convention for the avoidance of double taxation with
27 respect to taxes on income and fringe benefits and the prevention of fiscal
28 evasion,

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30 Have agreed as follows:

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CHAPTER I

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SCOPE OF THE CONVENTION

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Article 1

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PERSONS COVERED

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

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2. In the case of an item of income (including profits or gains) derived by or through a person that is fiscally transparent with respect to that item of income under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income of a resident.

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Article 2

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TAXES COVERED

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1. The taxes to which this Convention shall apply are:

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a) in the case of Australia:

1 (i) the income tax, including the resource rent tax in respect of
2 offshore projects relating to exploration for or exploitation
3 of petroleum resources; and

4 (ii) the fringe benefits tax
5 imposed under the federal law of Australia
6 (hereinafter referred to as “Australian tax”);

7 b) in the case of New Zealand:
8 the income tax, including the fringe benefit tax
9 (hereinafter referred to as “New Zealand tax”).

10 2. The Convention shall apply also to any identical or substantially similar
11 taxes that are imposed under the federal laws of Australia or the laws of New
12 Zealand after the date of signature of the Convention in addition to, or in place
13 of, the taxes listed in paragraph 1. The competent authorities of the Contracting
14 States shall notify each other of any significant changes that have been made in
15 the laws of their respective States relating to the taxes to which the Convention
16 applies within a reasonable period of time after those changes.

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CHAPTER II

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DEFINITIONS

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Article 3

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GENERAL DEFINITIONS

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

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a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:

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(i) the Territory of Norfolk Island;

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(ii) the Territory of Christmas Island;

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

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(iv) the Territory of Ashmore and Cartier Islands;

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

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(vi) the Coral Sea Islands Territory,

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and includes any area adjacent to the territorial limits of Australia

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(including the Territories specified in this subparagraph) in respect

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of which there is for the time being in force, consistently with

1 international law, a law of Australia dealing with the exploration
2 for or exploitation of any of the natural resources of the exclusive
3 economic zone or the seabed and subsoil of the continental shelf;

4 *b)* the term “New Zealand” means the territory of New Zealand but
5 does not include Tokelau; it also includes any area beyond the
6 territorial sea designated under New Zealand legislation and in
7 accordance with international law as an area in which New Zealand
8 may exercise sovereign rights with respect to natural resources;

9 *c)* the term “business” includes the performance of professional
10 services and of other activities of an independent character;

11 *d)* the term “company” means any body corporate or any entity that is
12 treated as a body corporate for tax purposes;

13 *e)* the term “competent authority” means, in the case of Australia, the
14 Commissioner of Taxation or an authorised representative of the
15 Commissioner and, in the case of New Zealand, the Commissioner
16 of Inland Revenue or an authorised representative of the
17 Commissioner;

18 *f)* the term “enterprise” applies to the carrying on of any business;

19 *g)* the terms “enterprise of a Contracting State” and “enterprise of the
20 other Contracting State” mean respectively an enterprise carried on
21 by a resident of a Contracting State and an enterprise carried on by
22 a resident of the other Contracting State;

23 *h)* the term “international traffic” means any transport by a ship or
24 aircraft operated by an enterprise of a Contracting State, except

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- 1 when the ship or aircraft is operated solely between places in the
2 other Contracting State;
- 3 *i)* the term “national”, in relation to a Contracting State, means:
- 4 *(i)* any individual possessing the nationality or citizenship of
5 that Contracting State; and
- 6 *(ii)* any company, partnership or association deriving its status
7 as such from the laws in force in that Contracting State;
- 8 *j)* the term “person” includes an individual, a trust, a partnership, a
9 company and any other body of persons;
- 10 *k)* the term “tax” means Australian tax or New Zealand tax as the
11 context requires, but does not include any penalty or interest
12 imposed under the law of either Contracting State relating to its
13 tax;
- 14 *l)* the term “recognised stock exchange” means:
- 15 *(i)* the Australian Securities Exchange and any other Australian
16 stock exchange recognised as such under Australian law;
- 17 *(ii)* the securities markets (other than the New Zealand Debt
18 Market) operated by the New Zealand Exchange Limited;
19 and
- 20 *(iii)* any other stock exchange agreed upon by the competent
21 authorities; and
- 22 *m)* the term “managed investment trust” means a trust that is a
23 managed investment trust for the purposes of Australian tax.
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1 2. For the purposes of Articles 5 and 6, the term “natural resources” means
2 naturally-occurring deposits or sources of materials and substances, such as
3 minerals, oils, gas and water. The term also includes naturally-occurring forests
4 and fish.

5 3. As regards the application of the Convention at any time by a
6 Contracting State, any term not defined therein shall, unless the context
7 otherwise requires, have the meaning that it has at that time under the laws of
8 that State concerning the taxes to which the Convention applies, any meaning
9 under the applicable tax laws of that State prevailing over a meaning given to
10 the term under other laws of that State.

11 4. For the purposes of Articles 10, 11 and 12, dividends, interest or
12 royalties arising in a Contracting State and derived by or through a trust shall be
13 deemed to be beneficially owned by a resident of the other Contracting State
14 where such income is subject to tax in that other State in the hands of a trustee
15 of that trust.

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Article 4

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RESIDENT

19 1. For the purposes of this Convention, the term “resident of a Contracting
20 State” means any person who, under the laws of that State, is liable to tax as a
21 resident of that State, and also includes that State and any political subdivision
22 or local authority of that State. This term however, does not include any person

1 who is liable to tax in that State in respect only of income from sources in that
2 State.

3 2. Where by reason of the provisions of paragraph 1 an individual is a
4 resident of both Contracting States, then their status shall be determined as
5 follows:

6 a) the individual shall be deemed to be a resident only of the State in
7 which a permanent home is available to that individual; but if a
8 permanent home is available in both States, or in neither of them,
9 that individual shall be deemed to be a resident only of the State
10 with which the individual's personal and economic relations are
11 closer (centre of vital interests);

12 b) if the State in which the centre of vital interests is situated cannot
13 be determined, the individual shall be deemed to be a resident only
14 of the State in which that individual has an habitual abode;

15 c) if the individual has an habitual abode in both States or in neither
16 of them, the individual shall be deemed to be a resident only of the
17 State of which that individual is a national.

18 3. Where by reason of the provisions of paragraph 1 a person other than an
19 individual is a resident of both Contracting States, then it shall be deemed to be
20 a resident only of the State in which its place of effective management is
21 situated. If the State in which the place of effective management is situated
22 cannot be determined, or the place of effective management is in neither State,
23 then the competent authorities of the Contracting States shall endeavour to
24 determine by mutual agreement in accordance with Article 25 the Contracting
25 State of which the person shall be deemed to be a resident for the purposes of

1 the Convention, having regard to its places of management, the place where it is
2 incorporated or otherwise constituted and any other relevant factors. In the
3 absence of such agreement, such person shall not be entitled to any relief or
4 exemption from tax provided by this Convention.

5 4. Where an item of income, profits or gains derived by an individual is
6 exempt from tax in New Zealand by reason only of the status of that individual
7 as a transitional resident under the laws of New Zealand, no relief or exemption
8 from tax shall be available under this Convention in Australia in respect of that
9 item of income, profits or gains.

10 5. Notwithstanding paragraph 3 of this Article, where by reason of
11 paragraph 1 of this Article a company, which is a participant in a dual listed
12 company arrangement, is a resident of both Contracting States then it shall be
13 deemed to be a resident only of the Contracting State in which it is
14 incorporated, provided it has its primary stock exchange listing in that State.

15 6. The term “dual listed company arrangement” as used in this Article
16 means an arrangement pursuant to which two companies that are listed on a
17 stock exchange specified in subsubparagraphs 11)(i) and (ii) of Article 3
18 respectively, while maintaining their separate legal entity status, shareholdings
19 and listings, align their strategic directions and the economic interests of their
20 respective shareholders through:

21 a) the appointment of common (or almost identical) boards of
22 directors, except where the effect of the relevant regulatory
23 requirements prevents this;

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

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- 1 c) equalised distributions to shareholders in accordance with an
2 equalisation ratio applying between the two companies, including
3 in the event of a winding up of one or both of the companies;
- 4 d) the shareholders of both companies voting in effect as a single
5 decision-making body on substantial issues affecting their
6 combined interests; and
- 7 e) cross-guarantees as to, or similar financial support for, each other's
8 material obligations or operations, except where the effect of the
9 relevant regulatory requirements prevents such guarantees or
10 financial support.

11 7. Notwithstanding the other provisions of this Convention, a managed
12 investment trust which receives income (including profits and gains) arising in
13 New Zealand shall be treated, for the purposes of applying the Convention to
14 such income, as an individual resident of Australia and as the beneficial owner
15 of the income it receives, but only to the extent that residents of Australia are
16 the owners of the beneficial interests in the managed investment trust.
17 However, if:

- 18 a) the managed investment trust has its principal class of units
19 listed on a stock exchange specified in subsubparagraph 1 *l*)(i)
20 of Article 3 and is regularly traded on one or more recognised
21 stock exchanges; or
- 22 b) at least 80 per cent of the value of the beneficial interests in the
23 managed investment trust is owned by residents of Australia,

24 the managed investment trust shall be treated as an individual resident of
25 Australia and as the beneficial owner of all the income it receives.

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Article 5

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PERMANENT ESTABLISHMENT

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

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2. The term “permanent establishment” includes especially:

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a) a place of management;

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b) a branch;

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c) an office;

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d) a factory;

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e) a workshop;

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f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

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g) an agricultural, pastoral or forestry property.

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3. A building site or a construction, installation or assembly project shall constitute a permanent establishment but only if it lasts more than 6 months.

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

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- 1 a) performs services in the other Contracting State
- 2 (i) through an individual who is present in that other State for a
- 3 period or periods exceeding in the aggregate 183 days in any
- 4 twelve month period, and more than 50 per cent of the gross
- 5 revenues attributable to active business activities of the
- 6 enterprise during this period or periods are derived from the
- 7 services performed in that other State through that
- 8 individual, or
- 9 (ii) for a period or periods exceeding in the aggregate 183 days
- 10 in any twelve month period, and these services are
- 11 performed for the same project or for connected projects
- 12 through one or more individuals who are present and
- 13 performing such services in that other State;
- 14 b) carries on activities (including the operation of substantial
- 15 equipment) in the other State in the exploration for or exploitation
- 16 of natural resources or standing timber situated in that other State
- 17 for a period or periods exceeding in the aggregate 90 days in any
- 18 twelve month period; or
- 19 c) operates substantial equipment in the other State (including as
- 20 provided in subparagraph *b*)) for a period or periods exceeding in
- 21 the aggregate 183 days in any twelve month period,

22 such activities shall be deemed to be carried on through a permanent

23 establishment of the enterprise situated in that other State, unless the activities

24 are limited to those mentioned in paragraph 7 which, if exercised through a

25 fixed place of business, would not make this place of business a permanent

26 establishment under the provisions of that paragraph.

1 5. For the purposes of subparagraph *a)(ii)* of paragraph 4, services
2 performed by an individual on behalf of one enterprise shall not be considered
3 to be performed by another enterprise through that individual unless that other
4 enterprise supervises, directs or controls the manner in which these services are
5 performed by the individual. Furthermore, services performed through an
6 individual who is present and performing such services in a State for any period
7 not exceeding 5 days shall be disregarded for the purposes of subparagraph
8 *a)(ii)* of paragraph 4, unless such services are performed by that individual in
9 that State on a regular or frequent basis.

10 6. *a)* The duration of activities under paragraphs 3 and 4 will be
11 determined by aggregating the periods during which activities are
12 carried on in a Contracting State by associated enterprises provided
13 that the activities of the enterprise in that State are connected with
14 the activities carried on in that State by its associate.

15 *b)* The period during which two or more associated enterprises are
16 carrying on concurrent activities will be counted only once for the
17 purpose of determining the duration of activities.

18 *c)* Under this Article, an enterprise shall be deemed to be associated
19 with another enterprise if:

20 *(i)* one is controlled directly or indirectly by the other; or

21 *(ii)* both are controlled directly or indirectly by the same person
22 or persons.

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

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- 1 a) the use of facilities solely for the purpose of storage, display or
2 delivery of goods or merchandise belonging to the enterprise;
- 3 b) the maintenance of a stock of goods or merchandise belonging to
4 the enterprise solely for the purpose of storage, display or delivery;
- 5 c) the maintenance of a stock of goods or merchandise belonging to
6 the enterprise solely for the purpose of processing by another
7 enterprise;
- 8 d) the maintenance of a fixed place of business solely for the purpose
9 of purchasing goods or merchandise or of collecting information,
10 for the enterprise;
- 11 e) the maintenance of a fixed place of business solely for the purpose
12 of carrying on, for the enterprise, any other activity of a
13 preparatory or auxiliary character;
- 14 f) the maintenance of a fixed place of business solely for any
15 combination of activities mentioned in sub-paragraphs *a)* to *e)* of
16 this paragraph,

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

19 8. Notwithstanding the provisions of paragraphs 1 and 2, where a
20 person—other than an agent of an independent status to whom paragraph 9
21 applies—is acting on behalf of an enterprise and:

1 a) has, and habitually exercises, in a Contracting State an authority to
2 substantially negotiate or conclude contracts on behalf of the
3 enterprise; or

4 b) manufactures or processes in a Contracting State for the enterprise
5 goods or merchandise belonging to the enterprise,

6 that enterprise shall be deemed to have a permanent establishment in that State
7 in respect of any activities which that person undertakes for the enterprise,
8 unless the activities of such person are limited to those mentioned in paragraph
9 7 which, if exercised through a fixed place of business, would not make this
10 fixed place of business a permanent establishment under the provisions of that
11 paragraph.

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

17 10. The fact that a company which is a resident of a Contracting State
18 controls or is controlled by a company which is a resident of the other
19 Contracting State, or which carries on business in that other State (whether
20 through a permanent establishment or otherwise), shall not of itself constitute
21 either company a permanent establishment of the other.

22 11. The principles set forth in the preceding paragraphs of this Article shall
23 be applied in determining for the purposes of paragraph 7 of Article 11 and
24 paragraph 5 of Article 12 whether there is a permanent establishment outside

1 both Contracting States, and whether an enterprise, not being an enterprise of a
2 Contracting State, has a permanent establishment in a Contracting State.

3 **CHAPTER III**

4 **TAXATION OF INCOME AND FRINGE BENEFITS**

5 *Article 6*
6

7 **INCOME FROM REAL PROPERTY**

8 1. Income derived by a resident of a Contracting State from real property
9 (including profits of an enterprise from agriculture, forestry or fishing) may be
10 taxed in the Contracting State in which the real property is situated.

11 2. The term “real property” shall have the meaning which it has under the
12 law of the Contracting State in which the property in question is situated and
13 includes:

14 a) any natural resources, property accessory to real property, rights to
15 which the provisions of general law respecting real property apply,
16 and rights to standing timber;

17 b) a lease of land and any other interest in or over land, whether
18 improved or not, including a right to explore for natural resources,
19 and a right to exploit those resources; and

1 c) a right to receive variable or fixed payments either as consideration
2 for or in respect of the exploitation of, or for the right to explore
3 for or exploit, natural resources.

4 Ships, boats and aircraft shall not be regarded as real property.

5 3. Any interest or right referred to in paragraph 2 shall be regarded as
6 situated where the land, natural resources or standing timber, as the case may
7 be, are situated or where the exploration may take place.

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

10 5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income
11 from real property of an enterprise. The profits of the enterprise shall be
12 determined in accordance with the principles of paragraphs 2 and 3 of Article 7
13 as if such income were attributable to a permanent establishment in the
14 Contracting State in which the real property is situated.

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Article 7

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BUSINESS PROFITS

19 1. The profits of an enterprise of a Contracting State shall be taxable only
20 in that State unless the enterprise carries on business in the other Contracting
21 State through a permanent establishment situated therein. If the enterprise
22 carries on business as aforesaid, the profits of the enterprise may be taxed in the

1 other State but only so much of them as is attributable to that permanent
2 establishment.

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

11 3. In determining the profits of a permanent establishment, there shall be
12 allowed as deductions expenses of the enterprise, being expenses which are
13 incurred for the purposes of the permanent establishment, including executive
14 and general administrative expenses so incurred, whether incurred in the
15 Contracting State in which the permanent establishment is situated or
16 elsewhere.

17 4. Nothing in this Article shall affect the application of any law of a
18 Contracting State relating to the determination of the tax liability of a person,
19 including determinations in cases where the information available to the
20 competent authority of that State is inadequate to determine the profits to be
21 attributed to a permanent establishment, provided that that law shall be applied,
22 so far as it is practicable to do so, consistently with the principles of this Article.

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

1 6. Nothing in this Article shall affect the application of any law of a
2 Contracting State relating to tax imposed on income from insurance with
3 non-resident insurers.

4 7. Where:

5 a) a resident of a Contracting State beneficially owns (whether as a
6 direct beneficiary of a trust or through one or more interposed
7 trusts) a share of the profits of a business of an enterprise carried
8 on in the other Contracting State by the trustee of a trust other than
9 a trust which is treated as a company for tax purposes; and

10 b) in relation to that enterprise, that trustee has or would have, if it
11 were a resident of the first-mentioned State, a permanent
12 establishment in the other State,

13 then the business of the enterprise carried on by the trustee through such
14 permanent establishment shall be deemed to be a business carried on in the
15 other State by that resident through a permanent establishment situated in that
16 other State and the resident's share of profits may be taxed in the other State but
17 only so much of them as is attributable to that permanent establishment.

18 8. No adjustments to the profits attributable to a permanent establishment
19 of an enterprise for a year of income shall be made by a Contracting State after
20 the expiration of 7 years from the date on which the enterprise has completed
21 the tax filing requirements of that State for that year of income. The provisions
22 of this paragraph shall not apply in the case of fraud, gross negligence or wilful
23 default or where, within that period of 7 years, an audit into the profits of the
24 enterprise has been initiated by either State.

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Article 8

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SHIPPING AND AIR TRANSPORT

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

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2. Notwithstanding the provisions of paragraph 1, amounts paid or payable to an enterprise of a Contracting State for carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.

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

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4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

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Article 9

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ASSOCIATED ENTERPRISES

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1. Where

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a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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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.

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

1 2. However, such dividends may also be taxed in the Contracting State of
2 which the company paying the dividends is a resident, and according to the laws
3 of that State, but the tax so charged shall not exceed:

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

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

9 This paragraph shall not affect the taxation of the company in respect of the
10 profits out of which the dividends are paid.

11 3. Notwithstanding the provisions of paragraph 2 of this Article, dividends
12 shall not be taxed in the Contracting State of which the company paying the
13 dividends is a resident if the beneficial owner of the dividends is a company that
14 is a resident of the other Contracting State that has owned, directly or indirectly
15 through one or more residents of either Contracting State, shares representing
16 80 per cent or more of the voting power of the company paying the dividends
17 for a 12 month period ending on the date the dividend is declared and the
18 company that is the beneficial owner of the dividends:

19 a) has its principal class of shares listed on a recognised stock
20 exchange specified in subparagraph 1 *l*(i) or (ii) of Article 3
21 and is regularly traded on one or more recognised stock exchanges;

22 b) is owned directly or indirectly by one or more companies:

23 (i) whose principal class of shares is listed on a recognised
24 stock exchange specified in subparagraph 1 *l*(i) or (ii) of

1 Article 3 and is regularly traded on one or more recognised
2 stock exchanges; or

3 (ii) which, if that company or each of those companies owned
4 directly the holding in respect of which the dividends are
5 paid, would be entitled to equivalent benefits in respect of
6 such dividends under a tax treaty between the State of which
7 that company is a resident and the Contracting State of
8 which the company paying the dividends is a resident; or

9 c) does not meet the requirements of subparagraphs *a)* or *b)* of this
10 paragraph but the competent authority of the first-mentioned
11 Contracting State determines that the first sentence of paragraph 9
12 of this Article does not apply. The competent authority of the
13 first-mentioned Contracting State shall consult the competent
14 authority of the other Contracting State before refusing to grant
15 benefits of this Convention under this subparagraph.

16 4. Notwithstanding the provisions of paragraph 2, dividends shall not be
17 taxed in the Contracting State of which the company paying the dividends is a
18 resident if the beneficial owner of the dividends holds directly no more than 10
19 per cent of the voting power of the company paying the dividends, and the
20 beneficial owner is a Contracting State, or political subdivision or a local
21 authority thereof (including a government investment fund).

22 5. The term “dividends” as used in this Article means income from shares
23 or other rights participating in profits, as well as other amounts which are
24 subjected to the same taxation treatment as income from shares by the laws of
25 the State of which the company making the distribution is a resident for the
26 purposes of its tax.

1 6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the
2 beneficial owner of the dividends, being a resident of a Contracting State,
3 carries on business in the other Contracting State of which the company paying
4 the dividends is a resident through a permanent establishment situated therein
5 and the holding in respect of which the dividends are paid is effectively
6 connected with such permanent establishment. In such case the provisions of
7 Article 7 shall apply.

8 7. Where a company which is a resident of a Contracting State derives
9 profits or income from the other Contracting State, that other State may not
10 impose any tax on the dividends paid by the company—being dividends
11 beneficially owned by a person who is not a resident of the other Contracting
12 State—except insofar as the holding in respect of which such dividends are paid
13 is effectively connected with a permanent establishment situated in that other
14 State, nor subject the company’s undistributed profits to a tax on the company’s
15 undistributed profits, even if the dividends paid or the undistributed profits
16 consist wholly or partly of profits or income arising in such other State.

17 8. Notwithstanding paragraph 7, dividends paid by a company which is a
18 resident of Australia for the purposes of Australian tax and which is also a
19 resident of New Zealand for the purposes of New Zealand tax may be taxed in a
20 Contracting State to the extent that the dividends are paid out of profits or
21 income arising in that State. Where such dividends are beneficially owned by a
22 resident of the other Contracting State, paragraphs 2 and 3 of this Article shall
23 apply as if the company paying the dividends were a resident only of the
24 first-mentioned State.

25 9. No relief shall be available under this Article if it is the main purpose or
26 one of the main purposes of any person concerned with an assignment of the

1 dividends, or with the creation or assignment of the shares or other rights in
2 respect of which the dividend is paid, or the establishment, acquisition or
3 maintenance of the company that is the beneficial owner of the dividends and
4 the conduct of its operations, to take advantage of this Article. In any case
5 where a Contracting State intends to apply this paragraph, the competent
6 authority of that State shall consult with the competent authority of the other
7 Contracting State.

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10 *Article 11*

11 **INTEREST**

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

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

17 3. Notwithstanding paragraph 2, interest arising in a Contracting State and
18 beneficially owned by a resident of the other Contracting State may not be taxed
19 in the first-mentioned State if:

- 20 a) the interest is derived by a Contracting State or by a political
21 sub-division or a local authority thereof (including a government
22 investment fund), or by a bank performing central banking
23 functions in a Contracting State; or

1 **b)** the interest is derived by a financial institution which is unrelated
2 to and dealing wholly independently with the payer. For the
3 purposes of this Article, the term “financial institution” means a
4 bank or other enterprise substantially deriving its profits by raising
5 debt finance in the financial markets or by taking deposits at
6 interest and using those funds in carrying on a business of
7 providing finance.

8 4. Notwithstanding paragraph 3, interest referred to in subparagraph *b)* of
9 that paragraph may be taxed in the State in which it arises at a rate not
10 exceeding 10 per cent of the gross amount of the interest if:

11 **a)** in the case of interest arising in New Zealand, it is paid by a person
12 that has not paid approved issuer levy in respect of the interest.
13 This subparagraph *a)* shall not apply if New Zealand does not have
14 an approved issuer levy, or the payer of the interest is not eligible
15 to elect to pay the approved issuer levy, or if the rate of the
16 approved issuer levy payable in respect of such interest exceeds
17 two percent of the gross amount of the interest. For the purposes
18 of this Article, “approved issuer levy” includes any identical or
19 substantially similar charge payable by the payer of interest arising
20 in New Zealand enacted after the date of this Convention in place
21 of approved issuer levy; or

22 **b)** it is paid as part of an arrangement involving back-to-back loans or
23 other arrangement that is economically equivalent and intended to
24 have a similar effect to back-to-back loans.

25 5. The term “interest” as used in this Article means income from
26 debt-claims of every kind, whether or not secured by mortgage and whether or

1 not carrying a right to participate in the debtor's profits, and in particular,
2 income from government securities and income from bonds or debentures, as
3 well as all other income treated as income from money lent by the laws, relating
4 to tax, of the Contracting State in which the income arises, but does not include
5 any income which is treated as a dividend under Article 10.

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

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

22 8. Where, by reason of a special relationship between the payer and the
23 beneficial owner, or between both of them and some other person, the amount
24 of the interest, having regard to the debt-claim for which it is paid, exceeds the
25 amount which might have been expected to have been agreed upon by the payer
26 and the beneficial owner in the absence of such relationship, the provisions of

1 this Article shall apply only to the last-mentioned amount. In such case, the
2 excess part of the payments shall remain taxable according to the laws of each
3 Contracting State, due regard being had to the other provisions of this
4 Convention.

5 9. No relief shall be available under this Article if it was the main purpose
6 or one of the main purposes of any person concerned with the assignment of the
7 interest, the creation or assignment of the debt-claim or other rights in respect of
8 which the interest is paid, or the establishment, acquisition or maintenance of
9 the person which is the beneficial owner of the interest or the conduct of its
10 operations, to take advantage of this Article. In any case where a Contracting
11 State intends to apply this paragraph, the competent authority of that State shall
12 consult with the competent authority of the other Contracting State.

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Article 12

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ROYALTIES

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

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

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

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- 1 a) the use of, or the right to use, any copyright, patent, design or
2 model, plan, secret formula or process, trademark or other like
3 property or right;
- 4 b) the supply of information concerning technical, industrial,
5 commercial or scientific experience;
- 6 c) the supply of any assistance that is ancillary and subsidiary to, and
7 is furnished as a means of enabling the application or enjoyment
8 of, any such property or right as is mentioned in subparagraph *a)* or
9 any such information as is mentioned in subparagraph *b)*;
- 10 d) the use of, or the right to use:
- 11 *(i)* motion picture films;
- 12 *(ii)* films or audio or video tapes or disks, or any other means of
13 image or sound reproduction or transmission for use in
14 connection with television, radio or other broadcasting;
- 15 e) the use of, or the right to use, some or all of the part of the
16 radiofrequency spectrum as specified in a spectrum licence of a
17 Contracting State, where the payment or credit arises in that State;
18 or
- 19 f) total or partial forbearance in respect of the use or supply of any
20 property or right referred to in this paragraph.

21 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial
22 owner of the royalties, being a resident of a Contracting State, carries on
23 business in the other Contracting State in which the royalties arise through a
24 permanent establishment situated therein and the right or property in respect of

1 which the royalties are paid or credited is effectively connected with such
2 permanent establishment. In such case the provisions of Article 7 shall apply.

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

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

21 7. No relief shall be available under this Article if it was the main purpose
22 or one of the main purposes of any person concerned with an assignment of the
23 royalties, or with the creation or assignment of the rights in respect of which the
24 royalties are paid or credited, to take advantage of this Article by means of that
25 creation or assignment. In any case where a Contracting State intends to apply

1 this paragraph, the competent authority of that State shall consult with the
2 competent authority of the other Contracting State.

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Article 13

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ALIENATION OF PROPERTY

7 1. Income, profits or gains derived by a resident of a Contracting State
8 from the alienation of real property referred to in Article 6 and situated in the
9 other Contracting State may be taxed in that other State.

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

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

20 4. Income, profits or gains derived by a resident of a Contracting State
21 from the alienation of any shares or comparable interests deriving more than 50
22 per cent of their value directly or indirectly from real property situated in the
23 other Contracting State may be taxed in that other State.

1 5. Gains of a capital nature from the alienation of any property, other than
2 that referred to in the preceding paragraphs, shall be taxable only in the
3 Contracting State of which the alienator is a resident.

4 6. Where an individual who upon ceasing to be a resident of a Contracting
5 State, is treated under the taxation law of that State as having alienated any
6 property and is taxed in that State by reason thereof, the individual may elect to
7 be treated for the purposes of taxation in the other Contracting State as if the
8 individual had, immediately before ceasing to be a resident of the
9 first-mentioned State, alienated and reacquired the property for an amount equal
10 to its fair market value at that time.

11 7. The provisions of this Article shall not affect the right of Australia to
12 tax, in accordance with its laws, income, profits or gains from the alienation of
13 any property derived by a person who is a resident of Australia at any time
14 during the year of income in which the property is alienated, or has been so
15 resident at any time during the 6 years immediately preceding that year.

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Article 14

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INCOME FROM EMPLOYMENT

20 1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and
21 other similar remuneration derived by a resident of a Contracting State in
22 respect of an employment shall be taxable only in that State unless the
23 employment is exercised in the other Contracting State. If the employment is so
24 exercised, such remuneration as is derived therefrom may be taxed in that other
25 State.

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

4 a) the recipient is present in the other State for a period or periods not
5 exceeding in the aggregate 183 days in any twelve month period
6 commencing or ending in the year of income of that other State,
7 and

8 b) the remuneration is paid by, or on behalf of, an employer who is
9 not a resident of the other State, or is borne by or deductible in
10 determining the profits attributable to a permanent establishment
11 which the employer has in the first-mentioned State, and

12 c) the remuneration is neither borne by nor deductible in determining
13 the profits attributable to a permanent establishment which the
14 employer has in the other State.

15 3. Notwithstanding the preceding provisions of this Article, remuneration
16 derived by a resident of a Contracting State in respect of an employment
17 exercised aboard a ship or aircraft operated in international traffic shall be
18 taxable only in that State.

19 4. Notwithstanding the preceding provisions of this Article, remuneration
20 derived by an individual who is a resident of a Contracting State in respect of a
21 secondment to the other Contracting State shall be taxable only in the
22 first-mentioned State where the individual is present in the other State for a
23 period or periods not exceeding in the aggregate 90 days in any twelve month
24 period.

1 5. For the purposes of paragraph 4, “secondment to the other Contracting
2 State” means an arrangement pursuant to which an employee of an enterprise of
3 a Contracting State, being the enterprise with which the employee has a formal
4 contract of employment, temporarily performs employment services in the other
5 State for a permanent establishment of the enterprise situated in that other State,
6 or for an associated enterprise (as referred to in subparagraph *c*) of paragraph 6
7 of Article 5), where such employment services are of a similar nature to those
8 ordinarily performed by that employee for the first-mentioned enterprise.
9 However, it does not include an arrangement that has as one of its main
10 purposes the obtaining of benefits under paragraph 4.

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13 *Article 15*

14 **FRINGE BENEFITS**

15 1. Where, except for the application of this Article, a fringe benefit is
16 taxable in both Contracting States the benefit will be taxable only in the
17 Contracting State that has the sole or primary taxing right in accordance with
18 the Convention in respect of salary or wages from the employment to which the
19 benefit relates.

20 2. For the purposes of this Article:

21 *a)* “fringe benefit” includes a benefit provided to an employee or to
22 an associate of an employee by:

23 *(i)* an employer;

24 *(ii)* an associate of an employer; or

1 (iii) a person under an arrangement between that person and the
2 employer, associate of an employer or another person in
3 respect of the employment of that employee,

4 and includes an accommodation allowance or housing benefit so
5 provided but does not include a benefit arising from the acquisition
6 of an option over shares under an employee share scheme;

7 b) a Contracting State has a “primary taxing right” to the extent that a
8 taxing right in respect of salary or wages from the relevant
9 employment is allocated to that State in accordance with this
10 Convention and the other Contracting State is required to provide
11 relief for the tax imposed in respect of such remuneration by the
12 first-mentioned State.

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Article 16

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DIRECTORS' FEES

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

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Article 17

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ENTERTAINERS AND SPORTSPERSONS

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

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

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3. The provisions of paragraphs 1 and 2 shall not apply to the income derived in respect of personal activities exercised by a sportsperson as a member of a recognised team regularly playing in a league competition organised and conducted in both Contracting States, except in respect of performance as a member of a national representative team of either Contracting State. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

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Article 18

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PENSIONS

5 1. Pensions (including government pensions) and other similar periodic
6 remuneration paid to a resident of a Contracting State shall be taxable only in
7 that State. However, such income arising in the other Contracting State (other
8 than payments of portable New Zealand superannuation or portable veteran's
9 pension or equivalent portable payments arising in New Zealand) shall not be
10 taxed in the first-mentioned State to the extent that such income would not be
11 subject to tax in the other State if the recipient were a resident of that other
12 State.

13 2. Lump sums arising in a Contracting State and paid to a resident of the
14 other Contracting State under a retirement benefit scheme, or in consequence of
15 retirement, invalidity, disability or death, or by way of compensation for
16 injuries, shall be taxable only in the first-mentioned State.

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

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Article 19

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GOVERNMENT SERVICE

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1. *a)* Salaries, wages and other similar remuneration (other than a pension) paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

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(i) is a national of that State; or

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

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2. The provisions of Articles 14, 16 and 17 shall apply to salaries, wages and other similar remuneration paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

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Article 20

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STUDENTS

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

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Article 21

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OTHER INCOME

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

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2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

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Article 22

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SOURCE OF INCOME

9 Income, profits or gains derived by a resident of a Contracting State
10 which, under any one or more of Articles 6 to 8 and 10 to 19 may be taxed in
11 the other Contracting State shall for the purposes of the law of that other
12 Contracting State relating to its tax be deemed to arise from sources in that other
13 Contracting State.

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CHAPTER IV

15

ELIMINATION OF DOUBLE TAXATION

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Article 23

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ELIMINATION OF DOUBLE TAXATION

18 1. Subject to the provisions of the laws of Australia which relate to the
19 allowance of a credit against Australian tax of tax paid in a country outside

1 Australia (which shall not affect the general principle of this Article), New
2 Zealand tax paid under the laws of New Zealand and in accordance with this
3 Convention, in respect of income derived by a resident of Australia shall be
4 allowed as a credit against Australian tax payable in respect of that income.

5 2. Subject to the provisions of the laws of New Zealand which relate to the
6 allowance of a credit against New Zealand income tax of tax paid in a country
7 outside New Zealand (which shall not affect the general principle of this
8 Article), Australian tax paid under the laws of Australia and in accordance with
9 this Convention, in respect of income derived by a resident of New Zealand
10 (excluding, in the case of a dividend, tax paid in respect of the profits out of
11 which the dividend is paid) shall be allowed as a credit against New Zealand tax
12 payable in respect of that income.

13 3. Where, in accordance with paragraph 2 of Article 1, an item of income
14 is taxed in a Contracting State in the hands of a person that is fiscally
15 transparent under the laws of the other State, and is also taxed in the hands of a
16 resident of that other State as a participant in such person, that other State shall
17 provide relief in respect of taxes imposed in the first-mentioned State on that
18 item of income in accordance with the provisions of this Article.

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CHAPTER V

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SPECIAL PROVISIONS

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Article 24

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NON-DISCRIMINATION

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

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

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3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the

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1 other Contracting State shall, for the purpose of determining the taxable profits
2 of such enterprise, be deductible under the same conditions as if they had been
3 paid to a resident of the first-mentioned State.

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

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

12 a) is designed to prevent the avoidance or evasion of taxes;

13 b) does not permit the deferral of tax arising on the transfer of an
14 asset where the subsequent transfer of the asset by the transferee
15 would be beyond the taxing jurisdiction of the Contracting State
16 under its laws;

17 c) provides for consolidation of group entities for treatment as a
18 single entity for tax purposes provided that a company, being a
19 resident of that State, the capital of which is wholly or partly
20 owned or controlled, directly or indirectly, by one or more
21 residents of the other Contracting State, may access such
22 consolidation treatment on the same terms and conditions as other
23 companies that are residents of the first-mentioned State;

24 d) provides for the transfer of losses within a group of companies;

- 1 e) does not allow tax rebates, credits or an exemption in relation to
2 dividends paid by a company that is a resident of that State for
3 purposes of its tax;
- 4 f) provides deductions to eligible taxpayers for expenditure on
5 research and development; or
- 6 g) is otherwise agreed to be unaffected by this Article in an Exchange
7 of Notes between the Contracting States.

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

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

16 7. The provisions of this Article shall, notwithstanding the provisions of
17 Article 2, apply to taxes of every kind and description imposed on behalf of the
18 Contracting States, or their political subdivisions.

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3*Article 25*

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MUTUAL AGREEMENT PROCEDURE

5 1. Where a person considers that the actions of one or both of the
6 Contracting States result or will result for the person in taxation not in
7 accordance with the provisions of this Convention, the person may, irrespective
8 of the remedies provided by the domestic law of those States, present a case to
9 the competent authority of the Contracting State of which the person is a
10 resident or, if the case comes under paragraph 1 of Article 24, to that of the
11 Contracting State of which the person is a national. The case must be presented
12 within three years from the first notification of the action resulting in taxation
13 not in accordance with the provisions of the Convention.

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

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

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

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

13 6. Where,

14 a) under paragraph 1, a person has presented a case to the competent
15 authority of a Contracting State on the basis that the actions of one
16 or both of the Contracting States have resulted for that person in
17 taxation not in accordance with the provisions of this Convention,
18 and

19 b) the competent authorities are unable to reach an agreement to
20 resolve that case pursuant to paragraph 2 within two years from the
21 presentation of the case to the competent authority of the other
22 Contracting State,

23 any unresolved issues arising from the case shall be submitted to arbitration if
24 the person so requests. These unresolved issues shall not, however, be submitted
25 to arbitration if a decision on these issues has already been reserved or rendered

1 by a court or administrative tribunal of either State. Unless a person directly
2 affected by the case does not accept the mutual agreement that implements the
3 arbitration decision, that decision shall be binding on both Contracting States
4 and shall be implemented notwithstanding any time limits in the domestic laws
5 of these States. The competent authorities of the Contracting States shall by
6 mutual agreement settle the mode of application of this paragraph.

7 7. The issues to which the provisions of paragraph 6 apply are:

8 a) issues of fact; and

9 b) issues which the Government of Australia and the Government of
10 New Zealand agree, in an Exchange of Notes, shall be covered by
11 the provisions of paragraph 6.

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Article 26

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EXCHANGE OF INFORMATION

16 1. The competent authorities of the Contracting States shall exchange such
17 information as is foreseeably relevant for carrying out the provisions of this
18 Convention or to the administration or enforcement of the domestic laws
19 concerning taxes of every kind and description imposed, in the case of
20 Australia, under the federal tax laws administered by the Commissioner of
21 Taxation, and in the case of New Zealand, under its tax laws, insofar as the
22 taxation thereunder is not contrary to the Convention. The exchange of
23 information is not restricted by Articles 1 and 2.

1 2. Any information received under paragraph 1 by a Contracting State
2 shall be treated as secret in the same manner as information obtained under the
3 domestic laws of that State and shall be disclosed only to persons or authorities
4 (including courts and administrative bodies) concerned with the assessment or
5 collection of, the enforcement or prosecution in respect of, the determination of
6 appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the
7 above. Such persons or authorities shall use the information only for such
8 purposes. They may disclose the information in public court proceedings or in
9 judicial decisions. Notwithstanding the foregoing, information received by a
10 Contracting State may be used for other purposes when such information may
11 be used for such other purposes under the laws of both States and the competent
12 authority of the supplying State authorises such use.

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

15 a) to carry out administrative measures at variance with the laws and
16 administrative practice of that or of the other Contracting State;

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

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

24 4. If information is requested by a Contracting State in accordance with
25 this Article, the other Contracting State shall use its information gathering

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

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

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Article 27

15 ASSISTANCE IN THE COLLECTION OF TAXES

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

20 2. The term “revenue claim” as used in this Article means an amount
21 owed in respect of taxes of every kind and description imposed, in the case of
22 Australia, under the federal tax laws administered by the Commissioner of
23 Taxation, and in the case of New Zealand, under its tax laws, insofar as the
24 taxation thereunder is not contrary to this Convention or any other instrument to

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

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

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

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

1 paragraph 3 or 4 shall not, in that State, have any priority applicable to that
2 revenue claim under the laws of the other Contracting State.

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

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

10 a) in the case of a request under paragraph 3, a revenue claim of the
11 first-mentioned State that is enforceable under the laws of that
12 State and is owed by a person who, at that time, cannot, under the
13 laws of that State, prevent its collection, or

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

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

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

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

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Article 28

17 **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

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CHAPTER VI

2

FINAL PROVISIONS

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Article 29

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MISCELLANEOUS

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

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2. With reference to Article 11, if in any future tax treaty with any other State, New Zealand should provide for more favourable treatment of interest derived by financial institutions, New Zealand shall without undue delay inform Australia and shall enter into negotiations with Australia with a view to providing the same treatment.

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Article 30

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ENTRY INTO FORCE

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1. The Contracting States shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the Convention shall have effect:

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a) in the case of Australia:

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(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Convention enters into force;

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

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

21

b) in the case of New Zealand:

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(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on

1 months before the end of any calendar year beginning after the expiration of
2 five years from the date of its entry into force and, in that event, the Convention
3 shall cease to be effective:

4 a) in the case of Australia:

5 (i) in respect of withholding tax on income that is derived by a
6 non-resident, in relation to income derived on or after the
7 first day of the second month next following the date on
8 which the notice of termination is given;

9 (ii) in respect of fringe benefits tax, in relation to fringe benefits
10 provided on or after 1 April next following the date on
11 which the notice of termination is given;

12 (iii) in respect of other Australian tax, in relation to income,
13 profits or gains of any year of income beginning on or after
14 1 July next following the date on which the notice of
15 termination is given;

16 b) in the case of New Zealand:

17 (i) in respect of withholding tax on income, profits or gains
18 derived by a non-resident, for amounts paid or credited on or
19 after the first day of the second month next following the
20 date on which the notice of termination is given;

21 (ii) in respect of other New Zealand tax, for any income year
22 beginning on or after 1 April next following the date on
23 which the notice of termination is given.

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

DONE at Paris this 26th day of June 2009, in duplicate in the English language.

FOR AUSTRALIA:

FOR NEW ZEALAND:

Hon. Simon Crean
Minister for Trade

Hon. Tim Groser
Minister for Trade

[Signatures omitted]

19 After Schedule 13A

Insert:

Schedule 13B—The second Belgian protocol

Note: See section 3.

SECOND PROTOCOL AMENDING 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 SIGNED AT CANBERRA ON 13 OCTOBER 1977 AS AMENDED BY THE PROTOCOL SIGNED AT CANBERRA ON 20 MARCH 1984

1 *the above. Such persons or authorities shall use the information only for such*
2 *purposes. They may disclose the information in public court proceedings or in*
3 *judicial decisions. Notwithstanding the foregoing, information received by a*
4 *Contracting State may be used for other purposes when such information may*
5 *be used for such other purposes under the laws of both States and the competent*
6 *authority of the supplying State authorises such use.*

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

9 (a) *to carry out administrative measures at variance with the laws and*
10 *administrative practice of that or of the other Contracting State;*

11 (b) *to supply information which is not obtainable under the laws or in*
12 *the normal course of the administration of that or of the other*
13 *Contracting State;*

14 (c) *to supply information which would disclose any trade, business,*
15 *industrial, commercial or professional secret or trade process, or*
16 *information, the disclosure of which would be contrary to public*
17 *policy (ordre public).*

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

1 5. *In no case shall the provisions of paragraph 3 of this Article be*
2 *construed to permit a Contracting State to decline to supply information solely*
3 *because the information is held by a bank, other financial institution, trust,*
4 *foundation, nominee or person acting in an agency or a fiduciary capacity or*
5 *because it relates to ownership interests in a person. To the extent necessary to*
6 *obtain such information, the tax administration of the requested Contracting*
7 *State shall have the power to-require the disclosure of information and to*
8 *conduct investigations and hearings notwithstanding any contrary provisions in*
9 *its domestic tax laws.”*

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ARTICLE II

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1. Each of the Contracting States shall notify the other Contracting State, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

18

19

a) with respect to taxes due at source on income credited or payable on or after 1 January 2010;

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b) with respect to other taxes charged on income of taxable periods beginning on or after 1 January 2010;

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c) with respect to any other taxes imposed by or on behalf of the Contracting States, on any other tax due in respect of taxable events taking place on or after 1 January 2010.

25

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2. Notwithstanding paragraph 1, the provisions of Article 26 (Exchange of Information) shall have effect with respect to criminal tax matters from the

1 date of entry into force of the Protocol, without regard to the taxable period to
2 which the matter relates.

3 The term “criminal tax matters” means tax matters involving intentional
4 conduct which is liable to prosecution under the criminal laws of the requesting
5 State.

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ARTICLE III

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11 This Protocol, which shall form an integral part of the Agreement, shall remain
12 in force as long as the Agreement remains in force and shall apply as long as the
13 Agreement itself is applicable.

14

15

16 IN WITNESS WHEREOF, the undersigned duly authorized thereto by their
17 respective governments, have signed this Protocol.

18

19 DONE in duplicate at Paris, on this 24th day of June 2009 in the English
20 language.

21

22 FOR THE GOVERNMENT OF

FOR THE GOVERNMENT OF

23 AUSTRALIA:

THE KINGDOM OF BELGIUM:

24 The Hon. Simon Crean

H.E. Didier Reynders

25 Minister for Trade

Minister for Finance

1

2 **20 At the end of the Act**

3 Add:

4 **Schedule 50—The Jersey agreement**

5 Note: See section 3.
6

7 AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
8 AND THE GOVERNMENT OF JERSEY FOR THE ALLOCATION
9 OF TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF
10 INDIVIDUALS AND TO ESTABLISH A MUTUAL AGREEMENT
11 PROCEDURE IN RESPECT OF TRANSFER PRICING
12 ADJUSTMENTS

13

14 The Government of Australia and the Government of Jersey (“the Parties”),

15

16 Recognising that the Parties have concluded an Agreement for the Exchange of
17 Information with Respect to Taxes, and

18

19 Desiring to conclude an Agreement for the allocation of taxing rights with
20 respect to certain income of individuals and to establish a mutual agreement
21 procedure in respect of transfer pricing adjustments,

22

23 Have agreed as follows:

24

25

ARTICLE 1
PERSONS COVERED

- 1 (iii) the Territory of Cocos (Keeling) Islands;
- 2 (iv) the Territory of Ashmore and Cartier Islands;
- 3 (v) the Territory of Heard Island and McDonald Islands; and
- 4 (vi) the Coral Sea Islands Territory,
- 5 and includes any area adjacent to the territorial limits of Australia
- 6 (including the Territories specified in this subparagraph) in respect
- 7 of which there is for the time being in force, consistently with
- 8 international law, a law of Australia dealing with the exploration
- 9 for or exploitation of any of the natural resources of the seabed and
- 10 subsoil of the continental shelf;
- 11 (b) “Jersey” means the Bailiwick of Jersey, including its territorial sea;
- 12 (c) “competent authority” means, in the case of Australia, the
- 13 Commissioner of Taxation or an authorised representative of the
- 14 Commissioner and, in the case of Jersey, the Treasury and
- 15 Resources Minister or an authorised representative of the Minister;
- 16 (d) “Party” means Australia or Jersey, as the context requires;
- 17 (e) “national”, in relation to a Party, means any individual possessing
- 18 the nationality or citizenship of that Party;
- 19 (f) “person” includes an individual, a company and any other body of
- 20 persons;
- 21 (g) “tax” means Australian tax or Jersey tax, as the context requires;
- 22 and
- 23 (h) “transfer pricing adjustment” means an adjustment made by the
- 24 competent authority of a Party to the profits of an enterprise as a
- 25 result of applying the domestic law concerning taxes referred to in
- 26 Article 2 of that Party regarding transfer pricing.
- 27

28 2 As regards the application of this Agreement at any time by a Party, any

29 term not defined therein shall, unless the context otherwise requires, have the

1 meaning that it has at that time under the law of that Party, for the purposes of
2 the taxes to which this Agreement applies, with any meaning under the
3 applicable tax laws of that Party prevailing over a meaning given to the term
4 under other laws of that Party.

5 **ARTICLE 4**
6 **RESIDENT**

7 1 For the purposes of this Agreement, the term “resident of a Party”
8 means:

- 9 (a) in the case of Australia, a person who is a resident of Australia for
10 the purposes of Australian tax; and
11 (b) in the case of Jersey, a person who is a resident of Jersey for the
12 purposes of Jersey tax.
13

14 2 A person is not a resident of a Party for the purposes of this Agreement
15 if the person is liable to tax in that Party in respect only of income from sources
16 in that Party.
17

18 3 Where by reason of the preceding provisions of this Article a person,
19 being an individual, is a resident of both Parties, then the person’s status shall
20 be determined as follows:

- 21 (a) the individual shall be deemed to be a resident only of the Party in
22 which a permanent home is available to that individual; if a
23 permanent home is available in both Parties, or in neither of them,
24 that individual shall be deemed to be a resident only of the Party
25 with which the individual’s personal and economic relations are
26 closer (centre of vital interests);
27 (b) if the Party in which the individual has their centre of vital interests
28 cannot be determined, the individual shall be deemed to be a
29 resident only of the Party of which the individual is a national;

- 1 (c) if the individual is a national of both Parties or of neither of them,
2 the competent authorities of the Parties shall endeavour to resolve
3 the question by mutual agreement.
4

5 4 Where by reason of paragraph 1 a person other than an individual is a
6 resident of both Parties, then it shall be deemed to be a resident only of the
7 Party in which its place of effective management is situated.
8

9
10 ARTICLE 5
11 PENSIONS AND RETIREMENT ANNUITIES

12 1 Pensions (including government pensions) and retirement annuities paid
13 to an individual who is a resident of a Party shall be taxable only in that Party.
14 However, pensions and retirement annuities arising in a Party may be taxed in
15 that Party where such income is not subject to tax in the other Party.
16

17 2 The term “retirement annuity” means:

- 18 (a) in the case of Australia, a superannuation annuity payment within
19 the meaning of the taxation laws of Australia;
20 (b) in the case of Jersey, a retirement annuity contract approved by the
21 Comptroller of Income Tax in accordance with the provisions of
22 the taxation laws of Jersey; and
23 (c) any other similar periodic payment agreed upon by the competent
24 authorities.

25
26 ARTICLE 6
27 GOVERNMENT SERVICE

28 1 (a) Salaries, wages and other similar remuneration, other than a
29 pension or retirement annuity, paid by a Party or a political
30 subdivision or a local authority thereof to an individual in respect
31 of services rendered to that Party or subdivision or authority shall
be taxable only in that Party.

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2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9
EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement for the Exchange of Information with Respect to Taxes concluded by the Parties. (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 10
ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of Jersey tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

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ARTICLE 11
TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the
2 Parties may give to the other Party written notice of termination.

3 2 Such termination shall become effective:

4 (a) in respect of Australian tax, in the year of income beginning on or
5 after 1 July in the calendar year next following that in which the
6 notice of termination is given;

7 (b) in respect of Jersey tax, in the year of income beginning on or after
8 1 January in the calendar year next following that in which the
9 notice of termination is given.

10 3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement
11 shall, on receipt through appropriate channels of written notice of termination of
12 the Agreement for the Exchange of Information with Respect to Taxes between
13 the Parties, terminate and cease to be effective on the first day of the month
14 following the expiration of a period of 3 months after the date of receipt of such
15 notice.

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

18 DONE at London ,this tenth day of June, 2009, in duplicate in the
19 English language.

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FOR THE GOVERNMENT OF
AUSTRALIA:

H E John Dauth LVO
High Commissioner

FOR THE GOVERNMENT OF
JERSEY:

Senator Philip Ozouf
Deputy Chief Minister
for Treasury and Resources

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