
STATUTORY INSTRUMENTS

2003 No. 3199

INCOME TAX

**The Double Taxation Relief (Taxes
on Income) (Australia) Order 2003**

Made - - - - 10th December 2003

At the Court at Buckingham Palace, the 10th day of December 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(1), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Australia) Order 2003.
2. It is hereby declared—
 - (a) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of Australia with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Australia;
 - (b) that those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration or enforcement of the domestic laws of the United Kingdom and the laws of Australia concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
 - (c) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended: the relevant amendment is that made by section 198(1) and (2) of the Finance Act 2003 (c. 14).

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A. K. Galloway
Clerk of the Privy Council

SCHEDULE

PART I

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

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

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

Have agreed as follows:

ARTICLE 1

Persons covered

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

ARTICLE 2

Taxes covered

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

(a) in the case of the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(b) in the case of Australia:

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

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

ARTICLE 3

General definitions

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

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom

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concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

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

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory of Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the Continental Shelf;

- (c) the term “Australian tax” means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2;
- (d) the term “United Kingdom tax” means tax imposed by the United Kingdom, being tax to which this Convention applies by virtue of Article 2;
- (e) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Australia, as the context requires;
- (f) the term “person” includes an individual, a company and any other body of persons, but subject to paragraph 2 of this Article does not include a partnership;
- (g) the term “company” means any body corporate or anything that is treated as a company or body corporate for tax purposes;
- (h) the term “enterprise” applies to the carrying on of any business;
- (i) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (j) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;
- (k) the term “competent authority” means:
 - (i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;
 - (ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
- (l) the term “national” means:
 - (i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that individual has the right of abode in the United Kingdom; and any company deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Australia, an Australian citizen or an individual not possessing citizenship who has been granted permanent residency status; and any company deriving its status as such from the law in force in Australia;

- (m) the term “business” includes the performance of professional services and of other activities of an independent character;
- (n) the term “tax” means Australian tax or United Kingdom tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;
- (o) the term “recognised stock exchange” means:
 - (i) the Australian Stock Exchange and any other Australian stock exchange recognised as such under Australian law;
 - (ii) the London Stock Exchange and any other United Kingdom investment exchange recognised under United Kingdom law; or
 - (iii) any other stock exchange agreed upon by the competent authorities.

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

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

ARTICLE 4

Residence

1. For the purposes of this Convention, a person is a resident of a Contracting State:
 - (a) in the case of the United Kingdom, if the person is a resident of the United Kingdom for the purposes of United Kingdom tax; and
 - (b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

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

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

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

- (a) that individual shall be deemed to be a resident only of the Contracting State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;
- (c) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

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4. Where by reason of the preceding provisions of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

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

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

- (a) the appointment of common (or almost identical) boards of directors;
- (b) management of the operations of the two companies on a unified basis;
- (c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;
- (d) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and
- (e) cross-guarantees as to, or similar financial support for, each other’s material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

ARTICLE 5

Permanent establishment

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

2. The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
- (g) an agricultural, pastoral or forestry property.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

- (a) it has a building site or construction or installation project in that State, or it undertakes a supervisory or consultancy activity in that State connected with such a site or project, but only if that site, project or activity lasts more than 12 months;
- (b) it maintains substantial equipment for rental or other purposes within that other State (excluding equipment let under a hire-purchase agreement) for a period of more than 12 months; or

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- (c) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.
- (a) (a) The duration of activities under subparagraph (a) of paragraph 3 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.
- (b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.
- (c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:
 - (i) one is controlled directly or indirectly by the other; or
 - (ii) both are controlled directly or indirectly by a third person or persons.

5. Notwithstanding the preceding provisions of this Article, an enterprise shall not be deemed to have a permanent establishment merely by reason of:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information, for the enterprise; or
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person—other than an agent of an independent status to whom paragraph 7 of this Article applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for that enterprise unless the activities of such person are limited to those mentioned in paragraph 5 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such brokers or agents are acting in the ordinary course of their business as such.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

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ARTICLE 6

Income from real property

1. Income derived by a resident of a Contracting State from real property may be taxed in the Contracting State in which the real property is situated.
2. The term “real property” shall have the meaning which it has under the law of the Contracting State in which the property is situated. The term shall in any case include:
 - (a) a lease of land or any other interest in or over land;
 - (b) property accessory to real property;
 - (c) livestock and equipment used in agriculture and forestry;
 - (d) usufruct of real property;
 - (e) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (f) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

Ships and aircraft shall not be regarded as real property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.
4. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of real property.
5. The provisions of paragraphs 1, 3 and 4 of this Article shall also apply to the income from real property of an enterprise.

ARTICLE 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated in that other State. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a

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

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

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

7. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

ARTICLE 8

Shipping and air transport

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

2. Notwithstanding the provisions of paragraph 1 of this Article, profits of an enterprise of a Contracting State from the operation of ships or aircraft may be taxed in the other Contracting State to the extent that they are profits derived from ship or aircraft operations confined solely to places in that other State.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

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

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

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

- (a) the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at the same or another place in that State; or
- (b) the use of a ship or aircraft for haulage, survey or dredging activities, or for exploration or extraction activities in relation to natural resources, where such activities are undertaken in a Contracting State;

shall be treated as profits from ship or aircraft operations confined solely to places in that State.

ARTICLE 9

Associated enterprises

1. Where:

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

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

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise. In such cases that law shall be applied, having regard to the information that is available, consistently with the principles of this Article.

3. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of the provisions of paragraphs 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax it has charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

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

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

- (a) 5 per cent. of the gross amount of the dividends, if the beneficial owner of the dividends is a company which holds directly at least 10 per cent. of the voting power in the company paying the dividends; and
- (b) 15 per cent. of the gross amount of the dividends in all other cases.

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

- (a) has its principal class of shares listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph (o) of paragraph 1 of Article 3 and regularly traded on one or more recognised stock exchanges;

- (b) is owned directly or indirectly by one or more companies whose principal class of shares is listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph (o) of paragraph 1 of Article 3 and regularly traded on one or more recognised stock exchanges; or
- (c) does not meet the requirements of subparagraphs (a) or (b) of this paragraph but the competent authority of the first-mentioned Contracting State determines, in accordance with the law of that State, that the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

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

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, being dividends beneficially owned by a person who is not a resident of the other Contracting State, except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of the United Kingdom for the purposes of United Kingdom tax.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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

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ARTICLE 11

Interest

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

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

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

- (a) the interest is derived by a Contracting State or by a political or administrative sub-division or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or
- (b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term “financial institution” means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

4. Notwithstanding paragraph 3, interest referred to in subparagraph (b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent. of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, and income from any other form of indebtedness. The term “interest” also includes income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises. The term “interest” shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

6. The provisions of paragraphs 1 and 2, subparagraph (b) of paragraph 3 and paragraph 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated in that other State and the indebtedness in respect of which the interest is paid or credited is effectively connected with such permanent establishment. In such case, the provisions of Article 7 of this Convention shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then the interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid or credited exceeds, for whatever reason, the amount which might reasonably have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the

amount of the interest paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

Royalties

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

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

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

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- (b) the supply of scientific, technical, industrial or commercial knowledge or information;
- (c) the supply of any ancillary and subsidiary assistance that is furnished as a means of enabling the application or enjoyment of any such item as is mentioned in subparagraph (a) or (b) of this paragraph;
- (d) the use of or the right to use:
 - (i) motion picture films; or
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting; or
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated in that other State, and the right or property in respect of which the royalties are paid or credited is effectively connected with that permanent establishment. In that case the provisions of Article 7 of this Convention shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited exceeds, for whatever reason, the amount which might reasonably have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Alienation of property

1. Income or gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

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

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

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

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

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

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

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

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

ARTICLE 14

Income from employment

1. Subject to the provisions of Articles 17 and 18 of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year or year of income of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not deductible in determining taxable profits of a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

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

ARTICLE 15

Fringe benefits

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

2. For the purposes of this Article:

- (a) “fringe benefit” has the meaning it has under Australia’s Fringe Benefits Tax Assessment Act 1986 (Commonwealth), as it may be amended from time to time, and does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;
- (b) a Contracting State has a “primary taxing right” to the extent that it has a taxing right under this Convention in respect of the remuneration for the relevant employment and the other Contracting State is required under this Convention to allow relief for any taxes imposed in respect of such remuneration by the first-mentioned Contracting State.

ARTICLE 16

Entertainers and sportspersons

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

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

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ARTICLE 17

Pensions and annuities

1. Pensions (including government pensions) and annuities paid to a resident of a Contracting State shall be taxable only in that State.
2. The term “annuity” means a stated sum payable periodically to an individual at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

ARTICLE 18

Government service

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

- (a) is a national of that State; or
- (b) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 of this Article shall not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or local authority of that State. In that case, the provisions of Article 14, 15 or 16, as the case may be, shall apply.

ARTICLE 19

Students

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

ARTICLE 20

Other income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 of this Convention, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In that case the provisions of Article 7 of this Convention shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

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

5. A person may not rely on this Article to obtain relief from taxation if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is derived to take advantage of this Article by means of that creation or assignment.

ARTICLE 21

Source of income

Income or gains derived by a resident of the United Kingdom which, under any one or more of Articles 6 to 8 and 10 to 16 and 18, may be taxed in Australia shall for the purposes of the laws of Australia relating to its tax be deemed to arise from sources in Australia.

ARTICLE 22

Elimination of double taxation

1. Subject to the provisions of the laws of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article):

- (a) United Kingdom tax paid under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income or gains derived by a person who is a resident of Australia from sources in the United Kingdom shall be allowed as a credit against Australian tax payable in respect of that income;
- (b) Where a company which is a resident of the United Kingdom and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly at least 10 per cent. of the voting power of the first-mentioned company, the credit shall include the United Kingdom tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Australian tax payable under the laws of Australia and in accordance with this Convention, whether directly or by deduction, on income or chargeable gains from sources within Australia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same income or chargeable gains by reference to which the Australian tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Australia to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent. of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Australian tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

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

ARTICLE 23

Limitation of relief

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

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

ARTICLE 24

Partnerships

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

ARTICLE 25

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 or 9 of Article 11, paragraph 6 or 7 of Article 12, or paragraph 4 or 5 of Article 20 of this Convention apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected

in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.

5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

6. This Article shall not apply to any provision of the laws of a Contracting State which:
- (a) is designed to prevent the avoidance or evasion of taxes;
 - (b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;
 - (c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that Australian resident companies that are owned directly or indirectly by residents of the United Kingdom can access such consolidation treatment on the same terms and conditions as other Australian resident companies;
 - (d) provides deductions to eligible taxpayers for expenditure on research and development; or
 - (e) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Government of Australia and the Government of the United Kingdom.
7. The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual agreement procedure

1. Where a person who is a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with this Convention, that person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which this Convention applies, present a case to the competent authority of the Contracting State of which that person is a resident or, if the case comes under paragraph 1 of Article 25 of this Convention, to that of the Contracting State of which that person is a national.

2. The competent authority shall endeavour, if the case appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention.

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

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

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

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ARTICLE 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which this Convention applies insofar as the taxation under those laws is not contrary to this Convention. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax.

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

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

ARTICLE 28

Members of diplomatic missions or permanent missions and consular posts

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

ARTICLE 29

Entry into force

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

- (a) in the case of Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1st July next following the date on which this Convention enters into force;
 - (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1st April next following the date on which this Convention enters into force;

- (iii) in respect of other Australian tax, in relation to income or gains of any year of income beginning on or after 1st July next following the date on which this Convention enters into force;
- (b) in the case of the United Kingdom:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1st July next following the date on which this Convention enters into force;
 - (ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which this Convention enters into force;
 - (iii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Convention enters into force.

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

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

ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may, on or before 30th June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give written notice of termination through the diplomatic channel and, in that event, the Convention shall cease to have effect:

- (a) in the case of Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1st January in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1st April in the calendar year next following that in which the notice of termination is given;
 - (iii) in respect of other Australian tax, in relation to income or gains of any year of income beginning on or after 1st July in the calendar year next following that in which the notice of termination is given;
- (b) in the case of the United Kingdom:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January in the calendar year next following that in which the notice of termination is given;

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- (ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice of termination is given;
- (iii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice of termination is given.

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

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

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Alastair Goodlad

Peter Costello

PART II

EXCHANGE OF NOTES

No LGB 03/170

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

The Department has the honour to make the following proposals on behalf of the Government of Australia:

- (1) *With reference generally to the application of the Convention (including these Notes),*
the Contracting States agree that:
- (a) the term "income or gains" includes "profits";
 - (b) the term "laws" includes the full body of law, and is not limited to statutory law;
 - (c) the terms "paid or credited" and "payments or credits" shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;
 - (d) the expression "any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes" includes:
 - (i) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
 - (ii) controlled foreign company, transferor trust and foreign investment fund rules;
 - (iii) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and
 - (e) nothing in the Convention shall be construed as restricting, in any manner, the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes.
- (2) *With reference to Article 5 (Permanent establishment),*

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

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

the Contracting States agree that:

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

- (b) where:

- (i) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

- (ii) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

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

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

(5) *With reference to Article 10 (Dividends),*

the Contracting States agree that if the relevant law in either Contracting State at the date of signature of the Convention is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of paragraph 2 and 3 of the Article as may be appropriate.

(6) *With reference to Article 11 (Interest),*

the Contracting States agree that:

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

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

(7) *With reference to Article 12 (Royalties),*

the Contracting States agree that:

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

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

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

the Contracting States agree that:

- (a) income or gains derived by employees in relation to share option schemes shall be treated as “other similar remuneration” for the purposes of Article 14;
- (b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and
- (c) where a resident of a Contracting State derives such income or gains, and
 - (i) the period of employment to which the share option relates is the period between grant and vesting of the option;
 - (ii) the employee remains in that employment at the date of alienation or exercise of the option; and
 - (iii) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

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

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

the Contracting States agree that:

- (a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled “directly or indirectly” includes cases where the capital is held through a chain of companies or other entities; and
- (b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

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

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

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

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

(12) *Miscellaneous*

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

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Department has the honour to propose that the present Note and the High Commission’s confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government

of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

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

CANBERRA

21st August 2003

No 41/03

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

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

The Department has the honour to make the following proposals on behalf of the Government of Australia:

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

the Contracting States agree that:

- (a) the term “income or gains” includes “profits”;
- (b) the term “laws” includes the full body of law, and is not limited to statutory law;
- (c) the terms “paid or credited” and “payments or credits” shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;
- (d) the expression “any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes” includes:
 - (i) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
 - (ii) controlled foreign company, transferor trust and foreign investment fund rules;
 - (iii) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and
- (e) nothing in the Convention shall be construed as restricting, in any manner, the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes.

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

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

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

the Contracting States agree that:

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

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- (i) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- (ii) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

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

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

(5) *With reference to Article 10 (Dividends),*

the Contracting States agree that if the relevant law in either Contracting State at the date of signature of the Convention is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of paragraph 2 and 3 of the Article as may be appropriate.

(6) *With reference to Article 11 (Interest),*

the Contracting States agree that:

- (a) the term “financial institution” shall not include a corporate treasury or a member of a corporate group performing financing services for the group; and
- (b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any interest paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment.

(7) *With reference to Article 12 (Royalties),*

the Contracting States agree that:

- (a) the term “royalties” shall not include payments for the use of spectrum licences. The provisions of Article 7 of the Convention shall apply to such payments; and
- (b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any royalties paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment.

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

the Contracting States agree that:

- (a) income or gains derived by employees in relation to share option schemes shall be treated as “other similar remuneration” for the purposes of Article 14;
- (b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and

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- (c) where a resident of a Contracting State derives such income or gains, and
 - (i) the period of employment to which the share option relates is the period between grant and vesting of the option;
 - (ii) the employee remains in that employment at the date of alienation or exercise of the option; and
 - (iii) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

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

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

the Contracting States agree that:

- (a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled “directly or indirectly” includes cases where the capital is held through a chain of companies or other entities; and
- (b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

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

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

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

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

(12) *Miscellaneous*

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

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

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

The High Commission has the honour to advise that the Department’s proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that the Department’s

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Note and this confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

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

CANBERRA

21st August 2003

EXPLANATORY NOTE

(This note is not part of the Order)

A Convention dealing with the avoidance of double taxation and fiscal evasion between the United Kingdom and Australia (“the Convention”) is set out in Part I of the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Convention contained in Part I of the Schedule to the Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule, and that it is expedient that those arrangements should have effect.

The Convention provides for business profits not arising through a permanent establishment to be taxed only in the country of the taxpayer’s residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Articles 5 and 7).

Income from real property and income or gains from the alienation of real property may be taxed in the country in which the property is situated (Articles 6 and 13).

Profits from international shipping and air transport and income or gains from the alienation of ships or aircraft operated internationally are generally to be taxed only in the residence state of the enterprise (Articles 8 and 13).

The Convention includes rules for determining taxable profits when a company in one country is associated with a company in the other (Article 9).

Subject to certain conditions, dividends are exempted from tax in the country of source if they are beneficially owned by a company resident in the other country that has owned shares representing 80 per cent. or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared. Otherwise, the rate of tax imposed in the country of source on dividends beneficially owned by a resident of the other country is not to exceed 5 per cent. of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent. of the voting power in the company paying the dividends, and 15 per cent. of the gross amount of the dividends in all other cases (Article 10).

Subject to certain conditions, interest is exempted from tax in the country of source if it is beneficially owned by the government or central bank of the other country, or by a financial institution of the other country which is unrelated to, and dealing wholly independently with, the payer of the interest.

In all other cases, the rate of tax imposed in the country of source on interest beneficially owned by a resident of the other country is not to exceed 10 per cent. of the gross amount (Article 11).

The rate of tax imposed in the country of source on royalties beneficially owned by a resident of the other country is not to exceed 5 per cent. of the gross amount (Article 12).

Subject to certain specified exceptions, each country may tax capital gains in accordance with its domestic law (Article 13).

The earnings of individuals resident in one country but working temporarily in the other country are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Article 14). Fringe benefits are to be taxed only in the country which would have the primary taxing right under the Convention if the value of the benefit was paid as ordinary employment income (Article 15). Income derived from the activities of entertainers and sportspersons may be taxed in the country in which those activities are performed (Article 16).

Pensions (including government pensions) and annuities are to be taxed only in the country of residence of the recipient (Article 17).

Government service remuneration is normally to be taxed only by the paying Government (Article 18). There are separate provisions for diplomatic or consular officials (Article 28). Certain payments made to visiting students are generally exempt from tax in the country visited (Article 19).

Other income not specified in the Convention will generally be taxed only by the country of which the beneficial owner is a resident. However, if such income arises in the other country, it may also be taxed in that country (Article 20).

Income or gains derived by a resident of the United Kingdom and taxable in Australia under one or more of Articles 6 to 8 and 10 to 16 and 18 of the Convention, are deemed for the purposes of Australian tax law to arise from sources in Australia (Article 21).

In general, where income continues to be taxable in both countries, credit is to be given by the country of the taxpayer's residence for tax imposed by the other country (Article 22).

Provision is made to limit the relief to be allowed under the Convention in circumstances where this might otherwise interact with certain provisions of the domestic law in either country to produce an unintended measure of relief (Article 23).

Members of a partnership may be taxed in their country of residence on their individual shares of the income or gains of the partnership, even if the partnership is treated as a taxable unit under the law of the other country (Article 24).

Provision is made to safeguard nationals and enterprises of one country against discriminatory taxation in the other country (Article 25).

Provisions are also made for consultation to resolve difficulties in the application or interpretation of the Convention (Article 26) and for exchanges of information between the taxation authorities of the two countries (Article 27).

The Exchange of Notes comprising Part II of the Schedule clarifies the intended interpretation of certain parts of the Convention.

The Convention will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect in the United Kingdom in respect of tax withheld at source on 1st July next following the date of entry into force, in respect of corporation tax on 1st April next following that date, and in respect of capital gains tax and income tax generally from 6th April next following that date. It will take effect in Australia in respect of tax withheld at source on 1st July next following the date of entry into force, in respect of fringe benefits tax on 1st April next following that date and in respect of other Australian tax on 1st July next following that date (Article 29). The date of entry into force will, in due course, be published in the London, Edinburgh and Belfast Gazettes.

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