1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 26 March 1981

(Treasurer)

A BILL

FOR

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

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

Short title, &c.

1. (1) This Act may be cited as the *Income Tax (International Agreements) Amendment Act* 1981.

(2) The *Income Tax (International Agreements) Act* 1953[1] is in this Act referred to as the Principal Act.

Commencement

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

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Interpretation

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of "the Japanese agreement" in sub-section (1) the following definition:

" 'the Malaysian agreement' means the Agreement between the Government of Australia and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which in the English language is set out in Schedule 16;"; and

(b) by inserting after the definition of "the Singapore agreement" in sub-section (1) the following definition:

" 'the Swedish agreement' means the Agreement between the Government of Australia and the Government of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which in the English language is set out in Schedule 17;".

Convention with Canada

4. (1) Section 6A of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

"(2A) As soon as practicable after an exchange of letters for the purpose of the making of an agreement under paragraph (3) of Article 15 of the Canadian convention to vary the amounts specified in sub-paragraph (a) of paragraph (2) of that Article, the Treasurer shall cause to be published in the *Gazette* a notice specifying particulars of the variation so agreed.".

(2) The amendment made by sub-section (1) does not apply in relation to an exchange of letters made before the commencement of this section.

Agreement with Singapore

5. (1) Section 7 of the Principal Act is amended by adding at the end thereof the following sub-section:

"(2) As soon as practicable after an exchange of Notes for the purpose of the making of an agreement under paragraph 4 of Article 18 of the Singapore agreement fixing a date, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date so fixed.".

(2) The amendment made by sub-section (1) does not apply in relation to an exchange of Notes made before the commencement of this section.

Agreement with the Republic of the Philippines

6. (1) Section 11D of the Principal Act is amended by adding at the end thereof the following sub-section:

"(3) As soon as practicable after an exchange of letters for the purpose of the making of an agreement under paragraph (2) of Article 14 of the Philippine agreement to vary the amount specified in sub-paragraph (c) of paragraph (1) of that Article, the Treasurer shall cause to be published in the *Gazette* a notice specifying particulars of the variation so agreed.".

(2) The amendment made by sub-section (1) does not apply in relation to an exchange of letters made before the commencement of this section.

7. (1) After section 11E of the Principal Act the following sections are inserted:

Agreement with Malaysia

"11F. (1) Subject to this Act, on and after the date of entry into force of the Malaysian agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have, and shall be deemed to have had, the force of law—

(a) in relation to withholding tax—in respect of dividends or interest derived on or after 1 July 1979 and in relation to which the agreement remains effective; and

(b) in relation to tax other than withholding tax—in respect of income of any year of income that commenced on or after 1 July 1979 and in relation to which the agreement remains effective.

"(2) As soon as practicable after the entry into force of the Malaysian agreement in accordance with Article 28 of the agreement, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date on which the agreement entered into force.

"(3) As soon as practicable after an exchange of Letters for the purpose of the making of an agreement under paragraph 7 of Article 23 of the Malaysian agreement fixing a date, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date so fixed.

"(4) The provisions of the Malaysian agreement shall not have the effect of subjecting to Australian tax interest or royalties paid by a resident of Australia to a resident of Malaysia that, but for that agreement, would not be subject to Australian tax.

Agreement with Sweden

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

(a) in relation to withholding tax—in respect of dividends or interest derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force and in relation to which the agreement remains effective; and

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

"(2) As soon as practicable after the entry into force of the Swedish agreement in accordance with Article 28 of the agreement, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date on which the agreement entered into force.".

(2) The Commissioner may amend an assessment made before the date of entry into force of the Malaysian agreement for the purpose of giving effect to sub-section 11F (1) of the Principal Act as amended by this Act.

Provisions relating to certain income derived from sources in certain countries

8. (1) Section 12 of the Principal Act is amended—

(a) by omitting from paragraph (1) (aj) "or" (last occurring); and

(b) by inserting after paragraph (1) (aj) the following paragraphs:

"(ak) income being interest or royalties to which paragraph 1 of Article 11 or paragraph 1 of Article 12 of the Malaysian agreement applies, where the income was derived in the year of income that commenced on 1 July 1979, or a subsequent year of income, from sources in Malaysia;

"(am) income being interest or royalties to which paragraph (1) of Article 11 or paragraph (1) of Article 12 of the Swedish agreement applies, where the income is derived, in the year of income commencing on 1 July in the calendar year immediately following that in which the agreement enters into force, or a subsequent year of income, from sources in Sweden; or".

(2) If a taxpayer derived, on or before 20 August 1980, income to which paragraph 12 (1) (ak) of the Principal Act as amended by this Act applies, that paragraph in its application in relation to that income shall not operate to increase the Australian tax payable by the taxpayer in respect of the year

of income unless there is a decrease, by virtue of the Malaysian agreement, in the tax payable under the law of Malaysia in respect of that income and, where there is such a decrease, the amount of the increase shall not exceed the amount of the decrease expressed in Australian currency.

(3) The Commissioner may amend an assessment made before the date of entry into force of the Malaysian agreement for the purpose of giving effect to paragraph 12 (1) (ak) of the Principal Act as amended by this Act (including that paragraph as affected by sub-section (2) of this section).

Schedules 16 and 17

9. The Principal Act is amended by adding at the end thereof the Schedules set out in Schedule 1.

Formal amendments

10. The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 9

SCHEDULES TO BE ADDED AT THE END OF THE PRINCIPAL ACT

SCHEDULE 16

Section 3

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF MALAYSIA
FOR
THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of Malaysia,

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

Have agreed as follows:

ARTICLE 1
Personal Scope

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

ARTICLE 2
Taxes Covered

1. The existing taxes to which this Agreement shall apply are—
   (a) in Australia:
   the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;
   (b) in Malaysia:
   income tax and excess profit tax; supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and petroleum income tax.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any significant changes which have been made in the laws of its Contracting State relating to the taxes to which this Agreement applies.

ARTICLE 3
General Definitions

1. In this Agreement, unless the context otherwise requires—
   (a) the term "Australia" means the Commonwealth of Australia and includes—
      (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 Coral Sea Islands Territory; and

SCHEDULE 16—continued

(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia, or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;

(b) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law, has been or may hereafter be designated under the laws of Malaysia concerning the continental shelf as an area within the rights of Malaysia with respect to the sea-bed and subsoil and their natural resources may be exercised;

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Australia or Malaysia, as the context requires;

(d) the term "person" includes an individual, a company and such unincorporated bodies of persons as are treated as persons under the taxation laws of the respective Contracting States;

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

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;

(g) the term "tax" means Australian tax or Malaysian tax, as the context requires;

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

(i) the term "Malaysian tax" means tax imposed by Malaysia, being tax to which this Agreement applies by virtue of Article 2;

(j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Malaysia, the Minister of Finance or his authorized representative.

2. In this Agreement, the terms "Australian tax" and "Malaysian tax" do not include any penalty or interest imposed under the taxation laws of either Contracting State.

3. In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the taxation laws of that Contracting State.

ARTICLE 4

Residence

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States—

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

(b) in the case of Malaysia, if the person is resident in Malaysia for the purposes of Malaysian tax.

2. Where by reason of the preceding provisions an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

(b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

3. In determining for the purposes of paragraph 2 the Contracting State with which an individual's personal and economic relations are the closer, the matters to which regard may be had shall include the citizenship of the individual.

SCHEDULE 16—continued

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

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

2. The term "permanent establishment" shall include especially—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil or gas well, quarry or any other place of extraction of natural resources including timber or other forest produce;

(g) an agricultural, pastoral or forestry property;

(h) a building site or construction, installation or assembly project which exists for more than six months.

3. An enterprise shall not be deemed to have a permanent establishment merely by reason of—

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if—

(a) it carries on supervisory activities in that other State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other State; or

(b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if—

(a) he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) there is maintained in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or

(c) in so acting, he manufactures or processes in that first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

SCHEDULE 16—continued

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

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

ARTICLE 6
Income from Land

1. Income from land may be taxed in the Contracting State in which the land is situated.

2. In this Article, the word "land" shall have the meaning which it has under the law of the Contracting State in which the land in question is situated; it shall include any estate or direct interest in land whether improved or not. A right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources or for the exploitation of, or the right to exploit or to fell any standing trees, plants or forest produce shall be deemed to be an estate or direct interest in land situated in the Contracting State in which the mineral deposits, oil or gas wells, quarries, natural resources, or standing trees, plants or forest produce are situated.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of land.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from land of an enterprise and to income from land used for the performance of professional services.

ARTICLE 7
Business Income or Profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the income or 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 at arm's length with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

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

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

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

SCHEDULE 16—continued

6. Where income or profits include any item of income or profits which is dealt with separately in another Article of this Agreement, the provisions of that other Article, (except where otherwise provided in that Article) shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the operation of any taxation law:

(a) in the case of Australia,
relating to insurance with non-residents; and

(b) in the case of Malaysia,
relating to income or profits from an insurance business:

provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character), the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

ARTICLE 8

Shipping and Air Transport

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

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

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

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

5. Nothing in this Article shall affect the application of the law of a Contracting State relating to the determination of tax liability by the exercise of a discretion or the making of an estimate by the competent authority in determining the tax liability of a resident of the other Contracting State in respect of operations of ships or aircraft confined solely to places in the first-mentioned State.

ARTICLE 9

Associated Enterprises

1. Where—

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

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

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

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

SCHEDULE 16—continued

ARTICLE 10

Dividends

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

2. Dividends paid by a company which is a resident of Australia for the purposes of Australian tax, being dividends to which a resident of Malaysia is beneficially entitled, may be taxed in Australia according to the law of Australia, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Subject to paragraph 4, dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, being dividends to which a resident of Australia is beneficially entitled, shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income or profits of the company:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

4. If after the date of signature of this Agreement the existing system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of a tax on the income or profits of a company (for which no credit or only partial credit is given to its shareholders) and of a further tax on dividends paid by the company, the Malaysian tax on dividends, being dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, and to which a resident of Australia is beneficially entitled, shall not exceed 15 per cent of the gross amount of the dividends.

5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State:

Provided that this paragraph shall not apply in relation to dividends paid by a company which is both a resident of Australia for the purposes of Australian tax and resident in Malaysia for the purposes of Malaysian tax.

6. The provisions of paragraphs 1 to 5 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, has in the other Contracting State, in which the company paying the dividends is resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

7. Dividends paid by a company which is a resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for the purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore.

8. The term "dividends" in this Article includes any item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend of a company.

9. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the income of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the chargeable income or taxable income, as the case may be, of a company which is a resident of the first-mentioned State:

Provided that any additional tax so imposed by the first-mentioned State shall not exceed 15 per cent of the amount by which the chargeable income or taxable income for the year of assessment or year of income exceeds the tax which would have been payable on that income if the company had been a resident of the first-mentioned State.

SCHEDULE 16—continued

ARTICLE 11

Interest

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

2. Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Australia is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan as defined in section 2 (1) of the Income Tax Act, 1967 of Malaysia (as amended).

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim in respect of which the interest is paid is effectively connected. In such a case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States 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 such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where the payer is related to the person beneficially entitled to the interest and the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement. For the purposes of this paragraph, a person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

7. The term "interest" in this Article means interest from Government securities, or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt-claims of every kind as well as other income assimilated to interest from money lent by the taxation law of the Contracting State in which the income arises.

ARTICLE 12

Royalties

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

2. Such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Australia who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties are derived a permanent establishment with which the right, property, knowledge, information or assistance giving rise to the royalties is effectively connected. In such a case the provisions of Article 7 shall apply.

SCHEDULE 16—continued

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where the payer is related to the person beneficially entitled to the royalties and the amount of the royalties paid or credited, having regard to the use, to the right to use, or to the knowledge, information or assistance, for which they are paid or credited, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement. For the purposes of this paragraph, a person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

7. The term "royalties" in this Article means payments or credits of any kind to the extent to which they are made as consideration for—

(a) the use of, or the right to use, any—

(i) copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;

(ii) industrial, commercial or scientific equipment; or

(iii) motion picture film or tape for radio or television broadcasting;

(b) the supply of scientific, technical, industrial or commercial knowledge or information;

(c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such right or property as is described in paragraph (a) (i), any such equipment as is described in paragraph (a) (ii), or any such knowledge or information as is described in paragraph (b); or

(d) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

8. The term "approved industrial royalties" in this Article means royalties as defined in paragraph 7 which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes—

(a) manufacturing, assembling or processing;

(b) construction, civil engineering or ship-building; or

(c) electricity, hydraulic power, gas or water supply.

9. Royalties derived by a resident of Australia, being royalties that, as film rentals, are subject to the cinematograph film-hire duty in Malaysia, shall not be liable to Malaysian tax.

ARTICLE 13

Alienation of Land

Income or profits from the alienation of land as defined in Article 6 may be taxed in the Contracting State in which that land is situated.

ARTICLE 14

Personal Services

1. Subject to Articles 15, 18, 19 and 20, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services may be taxed only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.

SCHEDULE 16—continued

2. Notwithstanding the provisions of paragraph 1, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if—

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the basis year or year of income, as the case may be, of that other State;

(b) the remuneration is paid by, or on behalf of, a person who is not a resident of that other State; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment which that person has in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

ARTICLE 15
Directors' fees

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16
Entertainers

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State that are directly connected with a visit to that Contracting State that is arranged by and is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State or a political sub-division, a local authority or statutory body thereof.

ARTICLE 17
Pensions and Annuities

1. Any pension (other than a pension of the kind referred to in Article 18) or other similar payment or any annuity paid to a resident of one of the Contracting States shall be taxable only in that Contracting State.

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

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

ARTICLE 18
Government Service

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

(a) is a citizen or national of that State; or

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

SCHEDULE 16—continued

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxable in that State.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division or a local authority thereof. In such a case, the provisions of Articles 14, 15 and 17 shall apply.

ARTICLE 19

Professors and Teachers

1. An individual who, at the invitation of a university, college, school or other similar recognised educational institution in a Contracting State, visits that Contracting State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is, or upon the application of this Article will be, subject to tax in the other Contracting State.

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

ARTICLE 20

Students

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

ARTICLE 21

Income of Dual Resident

Where a person, who by reason of the provisions of paragraph 1 of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph 2 or 4 of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

ARTICLE 22

Sources of Income

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 16 and 18 may be taxed in the other Contracting State, shall for the purpose of Article 23, and of the income tax law of that other State, be deemed to be income from sources in that other State.

ARTICLE 23

Methods of Elimination of Double Taxation

1. The laws in force in each of the Contracting States shall continue to govern the taxation of income in that Contracting State except where provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs.

2. In the case of Malaysia, subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Australian tax payable under the law of Australia and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within Australia shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding the proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

SCHEDULE 16—continued

3. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Malaysian tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Malaysia shall be allowed as a credit against Australian tax payable on the income on which the Malaysian tax was paid. However, where the income consists of a dividend paid by a company which is a resident of Malaysia, the credit shall, subject to sub-paragraph (b), only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) A company which is a resident of Australia is, in accordance with the provisions of the taxation law of Australia in force at the date of signature of this Agreement, entitled to a rebate in its assessment at the average rate of tax payable by the company in respect of dividends that are included in its taxable income and are received from a company which is a resident of Malaysia. However, should the law so in force be amended so that the rebate in relation to the dividends ceases to be allowable under that law, credit shall be allowed under sub-paragraph (a) to the first-mentioned company for the Malaysian tax paid on the profits out of which the dividends are paid, as well as for the Malaysian tax paid on the dividends for which credit is to be allowed under sub-paragraph (a), but only if that company beneficially owns at least 10 per cent of the paid-up share capital of the second-mentioned company.

4. Where the income or profits on which an enterprise of one of the Contracting States has been charged to tax in that Contracting State are also included in the income or profits of an enterprise of the other Contracting State as being income or profits which, because of the conditions operative between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting State if the enterprises had been independent enterprises dealing at arm's length, the income or profits so included shall be treated for the purposes of this Article as income or profits of the enterprise of the first-mentioned Contracting State from a source in the other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such income or profits.

5. For the purposes of paragraph 6, the term "Malaysian tax forgone" means—

(a) an amount which, under the laws of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax on income had that income not been exempted either wholly or partly from Malaysian tax in accordance with—

(i) Schedule 7A of the Income Tax Act 1967 of Malaysia or sections 21, 22, 26 or 30Q of the Investment Incentives Act 1968 of Malaysia, so far as they were in force on, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provisions which may subsequently be agreed in an Exchange of Letters between the Governments of the Contracting States to be of a substantially similar character;

(b) in the case of interest derived by a resident of Australia which is exempt from Malaysian tax in accordance with paragraph 3 of Article 11, the amount which, under the law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the interest were interest to which paragraph 3 of Article 11 did not apply, and if the tax referred to in paragraph 2 of Article 11 were not to exceed 10 per cent of the gross amount of the interest; and

(c) in the case of royalties derived by a resident of Australia, being approved industrial royalties which are exempt from Malaysian tax in accordance with paragraph 3 of Article 12, the amount which, under the law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the royalties were royalties to which paragraph 3 of Article 12 did not apply and if the tax referred to in paragraph 2 of Article 12 were not to exceed 10 per cent of the gross amount of the royalties.

6. (a) For the purposes of sub-paragraph (a) or (b) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (a) of paragraph 5 shall be deemed to be Malaysian tax paid.

SCHEDULE 16—continued

(b) For the purposes of sub-paragraph (a) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (b) or (c) of paragraph 5 shall be deemed to be Malaysian tax paid.

(c) For the purposes of the income tax law of Australia—

(i) In the event that the rebate in relation to dividends, referred to in sub-paragraph (b) of paragraph 3, ceases to be allowable in Australia, the amount of the income referred to in sub-paragraph (a) of paragraph 5 shall be deemed to be increased by the amount that is deemed in accordance with sub-paragraph (a) of this paragraph to be Malaysian tax paid; and

(ii) the amount of interest or royalties referred to in sub-paragraphs (b) and (c) of paragraph 5 shall be deemed to be increased by the amount that is deemed in accordance with sub-paragraph (b) of this paragraph to be Malaysian tax paid.

7. (a) Paragraphs 5 and 6 shall not apply in relation to income derived in any year of income after the year of income that ends on 30 June 1984 or any later date that may be agreed by the Governments of the Contracting States, after the consultations referred to in sub-paragraph (b), in Letters exchanged for this purpose.

(b) The Governments of the Contracting States shall consult each other in order to determine whether the period of application of paragraphs 5 and 6 shall be extended. For this purpose notice of intention to consult may be given not less than six months before the expiration of that period.

8. If in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third State Australia should agree—

(a) in relation to dividends that are derived by a company which is a resident of Australia from a company which is a resident of the third State, to give credit for tax paid on the profits out of which the dividends are paid on the basis of a test of beneficial ownership by the first-mentioned company of less than 10 per cent of the paid-up share capital of the second-mentioned company; or

(b) to give relief from Australian tax of the kind that is provided for in relation to Malaysia in paragraphs 5 and 6, on a basis that, other than in minor respects, is more favourable in relation to the third State than that so provided for,

the Government of Australia shall immediately inform the Government of Malaysia and shall enter into negotiations with the Government of Malaysia with a view to providing treatment in relation to Malaysia comparable with that provided in relation to that third State.

9. Where royalties derived by a resident of Australia are, as film rentals, subject to the cinematograph film-hire duty in Malaysia, that duty shall, for the purposes of sub-paragraph (a) of paragraph 3, be deemed to be Malaysian tax.

ARTICLE 24

Mutual Agreement Procedure

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

2. The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. If the claim is made within six years of the end of the year of assessment or year of tax, as the case may be, the solution so reached shall be implemented notwithstanding any time limits in the taxation laws of the Contracting States.

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 Agreement.

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

SCHEDULE 16—continued

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes to which this Agreement applies. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, those taxes to which this Agreement applies.

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

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

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

ARTICLE 26

Diplomatic and Consular Officials

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

ARTICLE 27

Limitation of Relief

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be relieved wholly or partly from tax in that State, and under the laws in force in the other Contracting State the said income is subject to tax 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 Agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in that other State;

Provided that where—

(a) in accordance with the foregoing provisions of this Article, relief has not been allowed in the first instance in the first-mentioned State in respect of an amount of income; and

(b) that amount of income has subsequently been remitted to or received in the other State and is thereby subject to tax in that other State,

the competent authority of the first-mentioned State shall, subject to any laws thereof for the time being in force limiting the time and setting out the method for the making of a refund of tax, allow relief in respect of that amount of income in accordance with the appropriate provisions of this Agreement.

ARTICLE 28

Entry into Force

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

(a) in Australia—

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July 1979;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July 1979;

(b) in Malaysia—

in respect of Malaysian tax, for the year of assessment beginning on 1 January 1980, and subsequent years of assessment.

SCHEDULE 16—continued

ARTICLE 29

Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Malaysia may on or before 30 June in any calendar year after the year 1982 give to the other Government through the diplomatic channel written notice of termination and, in that event this Agreement shall cease to be effective—

(a) in Australia—

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in Malaysia—

in respect of Malaysian tax, for the year of assessment beginning on 1 January in the second calendar year next following that in which the notice of termination is given, and subsequent years of assessment.

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

DONE in duplicate in the English and the Bahasa Malaysia language, both texts being equally authentic, at Canberra this twentieth day of August One thousand nine hundred and eighty.

JOHN HOWARD
FOR THE GOVERNMENT
OF AUSTRALIA

AWANG BIN HASSAN
FOR THE GOVERNMENT
OF MALAYSIA

SCHEDULE 17

Section 3

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF SWEDEN
FOR
THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of Sweden,

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

Have agreed as follows:

ARTICLE 1
Personal Scope

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

ARTICLE 2
Taxes Covered

(1) The existing taxes to which this Agreement shall apply are:

(a) in Australia:
the Australian income tax including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in Sweden:
(i) the State income tax, including sailors' tax and coupon tax;
(ii) the tax on undistributed profits of companies and the tax on distribution in connection with reduction of share capital or the winding-up of a company;
(iii) the tax on public entertainers; and
(iv) the communal income tax.

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

ARTICLE 3
General Definitions

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

(a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes:
(i) the Territory of Norfolk Island;
(ii) the Territory of Christmas Island;
(iii) the Territory of Cocos (Keeling) Islands;
(iv) the Territory of Ashmore and Cartier Islands;
(v) the Coral Sea Islands Territory; and

SCHEDULE 17—continued

(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;

(b) the term "Sweden" means the Kingdom of Sweden and includes any area outside the territorial sea of Sweden within which under the laws of Sweden and in accordance with international law the rights of Sweden with respect to the exploration and exploitation of the natural resources on the sea-bed or in its subsoil may be exercised;

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Australia or Sweden, as the context requires;

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

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

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Sweden, as the context requires;

(g) the term "tax" means Australian tax or Swedish tax, as the context requires;

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

(i) the term "Swedish tax" means tax imposed by Sweden, being tax to which this Agreement applies by virtue of Article 2;

(j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Sweden, the Minister of the Budget or his authorized representative.

(2) In this Agreement, the terms "Australian tax" and "Swedish tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

(3) In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which this Agreement applies.

ARTICLE 4
Residence

(1) For the purposes of this Agreement, a person is a resident of one of the Contracting States:

(a) in the case of Australia, subject to paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and

(b) in the case of Sweden, if the person is subject to unlimited tax liability in Sweden.

(2) In relation to income from sources in Sweden, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Sweden is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Swedish tax.

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

(a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

(b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

(4) Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

SCHEDULE 17—continued

ARTICLE 5

Permanent Establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include 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, quarry or any other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property;

(h) a building site or construction, installation or assembly project which exists for more than twelve months.

(3) An enterprise shall not be deemed to have a permanent establishment merely by reason of:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

(4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

(a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or

(b) substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or exploitation of, natural resources, or in activities connected with such exploration or exploitation.

(5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

(a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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

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

(8) The principles set forth in paragraphs (1) to (7) inclusive shall be applied in determining for the purposes of paragraph (6) of Article 11 and paragraph (5) of Article 12 of this Agreement whether

SCHEDULE 17—continued

there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

ARTICLE 6

Income from Real Property

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

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

(3) The provisions of paragraphs (1) and (2) shall also apply to the income from real property of an enterprise and to income from real property used for the performance of professional services.

ARTICLE 7

Business Profits

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

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

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

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

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

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

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

ARTICLE 8

Shipping and Air Transport

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

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

SCHEDULE 17—continued

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

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

ARTICLE 9

Associated Enterprises

(1) Where:

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

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

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

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

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

ARTICLE 10

Dividends

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

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

(3) The term "dividends" in this Article means income from shares and other income assimilated to income from share; by the taxation law of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

SCHEDULE 17—continued

(5) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State; provided that 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 Sweden for the purposes of Swedish tax.

(6) Subject to the provisions of this Agreement, a Contracting State may impose on the income of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the taxable income of a company which is a resident of the first-mentioned State, provided that any additional tax so imposed by the first-mentioned State shall not exceed 15 per cent of the amount by which the taxable income of the year of income exceeds the tax which would have been payable on that taxable income if the company had been a resident of the first-mentioned State.

(7) In this Article a reference to a company which is a resident of one of the Contracting States for the purposes of its tax is, in the case of Sweden, a reference to a company which is subject to unlimited tax liability in Sweden.

ARTICLE 11

Interest

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

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

(3) Notwithstanding the provisions of paragraph (2), interest derived by the Government of a Contracting State, or by any other body exercising governmental functions in, or in a part of, a Contracting State, or by the central bank of a Contracting State, or, in the case of Sweden, the National Debt Office, shall be exempt from tax in the other Contracting State.

(4) The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

(5) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. In this paragraph, a reference to a person who is a resident of a Contracting State is, in relation to a company, a reference to a company which, in the case of Australia, is a resident of Australia for the purposes of its tax, or, in the case of Sweden, is subject to unlimited tax liability in Sweden.

(7) Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

SCHEDULE 17—continued

ARTICLE 12

Royalties

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

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

(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 use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);

(e) the use of, or the right to use:

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. In this paragraph, a reference to a person who is a resident of a Contracting State is, in relation to a company, a reference to a company which, in the case of Australia, is a resident of Australia for the purposes of its tax, or, in the case of Sweden is subject to unlimited tax liability in Sweden.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 13

Alienation of Property

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

(2) For the purposes of this Article:

(a) the term "real property" shall include:

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

SCHEDULE 17—continued

(ii) rights to exploit, or to explore for, natural resources; and

(iii) shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States;

(b) real property shall be deemed to be situated:

(i) where it consists of direct interests in or over land—in the Contracting State in which the land is situated;

(ii) where it consists of rights to exploit, or to explore for, natural resources—in the Contracting State in which the natural resources are situated or the exploration may take place; and

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

(3) Subject to the provisions of paragraph (1), income from the alienation of capital assets of an enterprise of one of the Contracting States or available to a resident of one of the Contracting States for the purpose of performing professional services or other independent activities shall be taxable only in that State, but, where those assets form part of the business property of a permanent establishment or fixed base situated in the other Contracting State, such income may be taxed in that other State.

ARTICLE 14

Independent Personal Services

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

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

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the year of income of that other State; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State; and

(d) the remuneration is, or upon application of this Article will be, subject to tax in the first-mentioned State.

SCHEDULE 17—continued

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated. Where a resident of Sweden derives remuneration in respect of employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Entertainers

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

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

(3) Where the services of an entertainer referred to in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing those services by such an enterprise may, notwithstanding anything contained in this Agreement, be taxed in the first-mentioned State.

ARTICLE 18

Pensions and Annuities

(1) Subject to the provisions of paragraph (3), any pension or annuity paid to a resident of one of the Contracting States shall be taxable only in that State.

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

(3) Pensions paid by one of the Contracting States or a political sub-division or local authority of that State to any individual in respect of services rendered to that State, political sub-division or local authority, as the case may be, and pensions paid under the social security scheme of one of the Contracting States may be taxed in that State. The provisions of this paragraph shall apply only to individuals who are citizens of the Contracting State from which the payments are made.

(4) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 19

Government Service

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

(a) is a citizen of that State; or

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

SCHEDULE 17—continued

(2) The provisions of paragraph (1) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of Article 15 or Article 16 as the case may be, shall apply.

ARTICLE 20

Professors and Teachers

(1) A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution in that State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on any remuneration for such teaching, advanced study or research in respect of which he is, or upon the application of this Article will be, subject to tax in the other State.

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

ARTICLE 21

Students

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

ARTICLE 22

Income Not Expressly Mentioned

(1) Items of income, not expressly mentioned in the foregoing Articles, derived from sources in one of the Contracting States by a resident of the other Contracting State may be taxed in the first-mentioned State.

(2) Subject to the provisions of paragraph (3), income derived by a person who is a resident of one of the Contracting States from sources in that Contracting State or from sources outside both Contracting States shall be taxable only in the Contracting State of which that person is a resident.

(3) The provisions of paragraph (2) shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23

Source of Income

(1) Income derived by a resident of Sweden which, under any one or more of Articles 6 to 8, Articles 10 to 18 and Article 22 may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

(2) Income derived by a resident of Australia which, under any one or more of Articles 6 to 8, Articles 10 to 18 and Article 22 may be taxed in Sweden, shall for the purposes of paragraph (1) of Article 24 and of the income tax law of Australia be deemed to be income from sources in Sweden.

ARTICLE 24

Methods of Elimination of Double Taxation

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Swedish tax paid under the law of Sweden and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Sweden (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

SCHEDULE 17—continued

(2) A company which is a resident of Australia is, in accordance with the provisions of the taxation law of Australia in force at the date of signature of this Agreement, entitled to a rebate in its assessment at the average rate of tax payable by the company in respect of dividends that are included in its taxable income and are received from a company which is a resident of Sweden. However, should the law so in force be amended so that the rebate in relation to the dividends ceases to be allowable under that law, credit shall be allowed under paragraph (1) to the first-mentioned company for the Swedish tax paid on the profits out of which the dividends are paid, as well as for the Swedish tax paid on the dividends for which credit is to be allowed under paragraph (1), but only if that company beneficially owns at least 10 per cent of the paid-up share capital of the second-mentioned company.

(3) Subject to the provisions of paragraphs (4) and (5) of this Article, where a resident of Sweden derives income which, in accordance with the provisions of this Agreement may be taxed in Australia, Sweden shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Australia. The deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Australia.

(4) Where a resident of Sweden derives income which, in accordance with the provisions of this Agreement, shall be taxable only in Australia, Sweden may include this income in the tax base but shall allow as a deduction from the income tax that part of the income tax which is appropriate to the income derived from Australia.

(5) Notwithstanding the provisions of paragraph (1) of Article 10, dividends paid by a company which is a resident of Australia and to which a company which is a resident of Sweden is beneficially entitled shall be exempt from Swedish tax to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies. This exemption shall not be granted unless the principal part of the profits or income of the company paying the dividends arises, directly or indirectly, from business activities other than the management of securities and other similar movable property and such activities are carried on within Australia by the company paying the dividends or by a company in which it owns at least 25 per cent of the paid-up share capital.

ARTICLE 25

Mutual Agreement Procedure

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

(2) The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

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

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

ARTICLE 26

Exchange of Information

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

SCHEDULE 17—continued

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

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

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

ARTICLE 27

Diplomatic and Consular Officials

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

ARTICLE 28

Entry into Force

This Agreement shall come into force on the date on which the Government of Australia and the Government of Sweden exchange notes at Stockholm through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Sweden, as the case may be, and thereupon this Agreement shall have effect:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force;

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

(b) In Sweden, in respect of income derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Sweden may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;

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

(b) in Sweden, in respect of income derived on or after 1 January in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this fourteenth day of January One thousand nine hundred and eighty-one in the English language.

JOHN HOWARD
FOR THE GOVERNMENT
OF AUSTRALIA

L. HEDSTRÖM
FOR THE GOVERNMENT
OF SWEDEN

SCHEDULE 2

Section 10

FORMAL AMENDMENTS

Provision amended	Omit—	Substitute—
Paragraph 3 (6) (c)	sub-section (4) of section 14	sub-section 14 (4)
Sub-section 3 (8)	sub-section (1) of section 6	sub-section 6 (1)
Sub-section 4 (1)	the next succeeding sub-section	sub-section (2)
Paragraph 5 (1) (c)	neither of the last two preceding paragraphs	neither paragraph (a) nor (b)
Sub-section 6B (2)	(a) paragraph (q) of section 23 (b) three	paragraph 23 (q) 3
Sub-section 9A (4)	paragraph (c) of sub-section (3)	paragraph (3) (c)
Sub-section 12 (1)	paragraph (q) of section 23	paragraph 23 (q)
Paragraph 12 (2) (a)	paragraph (b) of the last preceding sub-section	paragraph (1) (b)
Sub-section 13 (3)	paragraph (a) of sub-section (1) of the last preceding section	paragraph 12 (1) (a)
Sub-section 15 (1) (paragraph (a) of the definition of "the average rate of Australian tax")	sub-section (7) of section 23AB	sub-section 23AB (7)
Sub-section 15 (4)	the next succeeding sub-section	sub-section (5)
Paragraph 15 (5) (c)	sub-section (3) of section 46 or sub-section (6) of section 46A	sub-section 46 (3) or 46A (6)
Sub-section 16 (4)	the last preceding sub-section	sub-section (3)
Paragraph 17B (1) (b)	sub-section (2) of section 125	sub-section 125 (2)
Sub-section 17B (2)	the last preceding sub-section	sub-section (1)
Sub-section 18 (2)	The last preceding sub-section	Sub-section (1)

NOTE

1. No. 82, 1953 as amended. For previous amendments, see No. 25, 1958; No. 88, 1959; Nos. 19 and 29, 1960; No. 71, 1963; No. 112, 1964; No. 105, 1965; No. 17, 1966; Nos. 39 and 86, 1967; No. 3, 1968; No. 24, 1969; No. 48, 1972; No. 11, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 129, 1974; No. 119, 1975; Nos. 52, 55 and 143, 1976; No. 134, 1977; No. 87, 1978; and Nos. 23 and 127, 1980.

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