

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 10 May 1989

*(Minister Assisting the 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 etc.**

5     **1.** (1) This Act may be cited as the *Income Tax (International Agreements) Amendment Act 1989*.

      (2) In this Act, "Principal Act" means the *Income Tax (International Agreements) Act 1953*.

**Commencement**

10     **2.** This Act commences on the day on which it receives the Royal Assent.

**Interpretation**

3. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘the Chinese agreement’ means the Agreement between the Government of Australia and the Government of the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which in the English language is set out in Schedule 28;”.

4. After section 11R of the Principal Act the following section is inserted:

**Agreement with the People’s Republic of China**

“11S. (1) Subject to this Act, on and after the date of entry into force of the Chinese 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 July in the calendar year next 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 next 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 Chinese agreement in accordance with Article 27 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 (5) of Article 23 of the Chinese agreement that provisions are of a substantially similar character to the provisions specified in subparagraphs (a) to (f) of that paragraph, the Treasurer shall cause to be published in the *Gazette* a notice specifying particulars of the first-mentioned provisions.

“(4) 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 Chinese agreement specifying a year of income, the Treasurer shall cause to be published in the *Gazette* a notice specifying the year of income.

“(5) For the purposes of the Assessment Act, income profits or gains derived by a person who is a resident of China for the purposes of the Chinese agreement, being income profits or gains that under Articles 6 to 8, 10 to 17 and 19 to 22 of the Agreement may be taxed in Australia, shall be deemed to be derived from sources in Australia.

“(6) The provisions of the Chinese agreement shall not have the effect of subjecting to Australian tax any interest or royalties paid by a resident of Australia to a resident of China that, but for that agreement, would not be subject to Australian tax.”.

**5 Schedule 28**

**5.** The Principal Act is amended by adding at the end the Schedule set out in the Schedule to this Act.

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**SCHEDULE**

Section 5

**SCHEDULE TO BE ADDED AT THE END OF THE INCOME TAX  
(INTERNATIONAL AGREEMENTS) ACT 1953**

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**“SCHEDULE 28**

Section 3

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF AUSTRALIA**

**AND**

**THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA**

**FOR**

**THE AVOIDANCE OF DOUBLE TAXATION**

**AND**

**THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES ON INCOME**

The Government of Australia and the Government of the People’s Republic of China,

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

**SCHEDULE—continued**

(b) in China:

the income tax imposed under the laws of the People's Republic of China.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

**ARTICLE 3**

*General Definitions*

1. In this Agreement, unless the context otherwise requires:

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

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

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this sub-paragraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

(b) the term "China" means the People's Republic of China and, when used in a geographical sense, it means all the territory of the People's Republic of China, including its territorial sea, in which the laws relating to Chinese tax apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its subsoil and superjacent water resources in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Australia or China, the Governments of which have concluded this Agreement;

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

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

**SCHEDULE—continued**

- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State, as the context requires;
- (g) the term “tax” means Australian tax or Chinese 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 “Chinese tax” means tax imposed by China, 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 an authorised representative of the Commissioner and, in the case of China, the State Taxation Administration or its authorised representative.

2. In this Agreement, the terms “Australian tax” and “Chinese 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 from time to time in force relating to the taxes to which this Agreement applies.

**ARTICLE 4**

*Resident*

1. For the purpose of this Agreement, the term “resident”, in relation to a Contracting State, means a person who is fully liable to tax therein by reason of being a resident of that State under the tax law of that State.

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

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

- (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
- (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person’s economic and personal relations are the closer.

**SCHEDULE—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 or head office is situated. However, where such a person has its place of effective management in a Contracting State and its head office in the other Contracting State, the person shall be deemed to be a resident solely of that other State.

5. If a company has become a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement, that company shall not be entitled to any of the benefits of Articles 10, 11 and 12.

6. Where by reason of the provisions of paragraph (1) a company is a resident of Australia and, under a tax agreement between China and a third country, is also a resident of that third country, the company shall not be considered to be a resident of Australia for the purposes of enjoying benefits under this Agreement.

**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” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a farm or forest.

3. The term “permanent establishment” likewise encompasses:

- (a) a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, but only where that site or project or those activities continue for a period of more than six months;
- (b) the furnishing of services, including consultancy services, in a Contracting State by an enterprise of the other Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only where those activities continue (for the same or a connected project) within the first-mentioned Contracting State for a period or periods aggregating more than six months within any twelve-month period; and

**SCHEDULE—continued**

- (c) a structure, installation, drilling rig, ship or other equipment used for the exploration for or exploitation of natural resources, or in activities connected with that exploration or exploitation, but only if so used continuously, or those activities continue, for a period of more than three months.

4. 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character, such as advertising or scientific research.

5. A person acting in a Contracting State 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) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, it will not be considered an agent of an independent status within the meaning of this paragraph.

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



**SCHEDULE—continued**

**ARTICLE 6**

*Income from Real Property*

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

2. In this Article, the term “real property”:

(a) in the case of Australia, shall have the meaning which it has under the laws of Australia, and shall also include:

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

(ii) a right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources;

(b) in the case of China, shall have the meaning which it has under the laws of China, and shall also include:

(i) property accessory to immovable property and livestock and equipment used in agriculture and forestry;

(ii) rights to which the provisions of the general law respecting landed property apply; and

(iii) usufruct of immovable property and rights to variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, sources and other natural resources; and

(c) shall not include ships or aircraft.

3. Any interest, right or property referred to in any of the sub-paragraphs of paragraph (2) shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources, as the case may be, are situated.

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

5. The provisions of paragraphs (1), (3) and (4) shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

**ARTICLE 7**

*Business Profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the

**SCHEDULE—continued**

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 a Contracting State 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, in accordance with the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) whether in the State in which the permanent establishment is situated or elsewhere. No such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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. For the purposes of paragraphs (1) to (4), the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to a permanent establishment in cases where the information available to the competent authority of that State is inadequate to determine those profits, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

**SCHEDULE—continued**

7. 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.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this 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.

9. Where:

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

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

**ARTICLE 8**

*Shipping and Air Transport*

1. Profits from the operation of ships derived by a resident of a Contracting State 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 confined solely to places in that other State.

3. The provisions of paragraphs (1) and (2) shall also apply to profits from participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits derived from the carriage by ships 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 confined solely to places in that State.

5. Nothing in this Agreement shall affect the operation of the Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation of Income and

**SCHEDULE—continued**

Revenues Derived by Air Transport Enterprises from International Air Transport signed at Beijing on 22 November 1985.

**ARTICLE 9**

*Associated Enterprises*

1. Where:

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

and in either case conditions apply between the two enterprises in their commercial or financial relations which differ from those which might be expected to apply between independent enterprises dealing wholly independently with each other, 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to an enterprise, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where a Contracting State includes in the profits of an enterprise of that Contracting State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions applying between the two enterprises had been those which might have been expected to apply between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other for this purpose.

**ARTICLE 10**

*Dividends*

1. Dividends which are paid by a company which is a resident of a

**SCHEDULE—continued**

Contracting State and which are beneficially owned by a resident of the other Contracting State 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 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 dividends. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights participating in profits and not relating to debt-claims, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are beneficially owned by a resident of that other State or 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, nor subject the company’s undistributed profits to tax even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

**ARTICLE 11**

*Interest*

1. Interest arising in a Contracting State, being interest of which a resident of the other Contracting State is the beneficial owner, may be taxed in that other State.

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

3. The term “interest” in this Article means interest from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying

**SCHEDULE—continued**

a right to participate in the debtor's profits, and in particular income from Government securities or from bonds or debentures, and all other income that is assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State, a political subdivision or a local authority of that State or a person who, by reason of the provisions of paragraph (1) of Article 4, is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the arrangement under 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 Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

**ARTICLE 12**

*Royalties*

1. Royalties which arise in a Contracting State and which are beneficially owned by a resident of the other Contracting State 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 Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

**SCHEDULE—continued**

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 know-how 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 sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such know-how or information as is mentioned in sub-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) giving up, wholly or partly, a right relating to the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated 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 Contracting State, a political subdivision or local authority of that State or a person who, by reason of the provisions of paragraph (1) of Article 4, is a resident of that State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by that permanent establishment or fixed base, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed based is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other

**SCHEDULE—continued**

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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

**ARTICLE 13**

*Alienation of Property*

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

2. Income or gains from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income or gains from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income or gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property in the other Contracting State of a kind referred to in Article 6, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3) and (4) apply.

**ARTICLE 14**

*Independent Personal Services*

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a



**SCHEDULE—continued**

similar character shall be taxable only in that State except in one of the following circumstances, when the income may also be taxed in the other Contracting State:

- (a) if the individual has a fixed base regularly available to him or her in the other Contracting State for the purpose of performing his or her activities; in such a case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if the individual's stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in any consecutive period of 12 months; in such a case, only so much of the income as is derived from his or her activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially those performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as 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, 20 and 21, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting 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 a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any consecutive period of 12 months;
- (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 borne by a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the provisions of paragraphs (1) and (2), remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic, shall be taxable only in the Contracting State of which the enterprise is a resident.

**SCHEDULE—continued**

**ARTICLE 16**

*Directors' Fees*

Directors' fees and similar payments derived by a person who is a resident of a Contracting State in the person's 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**

*Artistes and Athletes*

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

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. Notwithstanding the provisions of paragraphs (1) and (2), income derived by entertainers who are residents of a Contracting State from their activities as such exercised in the other Contracting State under a plan of cultural exchange between the Governments of the Contracting States shall be exempt from tax in that other Contracting State.

**ARTICLE 18**

*Pensions*

Subject to the provisions of paragraph (2) of Article 19, pensions paid to a resident of a Contracting State in consideration of past employment, and payments made to a resident of that State under the social security system of the other Contracting State, shall be taxable only in the first-mentioned State.

**ARTICLE 19**

*Government Service*

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority of that State to an individual in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

**SCHEDULE—continued**

- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:
  - (i) is a citizen or national of that other State; or
  - (ii) did not become a resident of that other State solely for the purpose of rendering the services.
- 2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority of that State to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen or national of, that other 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 a Contracting State or a political subdivision or local authority of that State. In such a case, the provisions of Articles 15, 16, 17 or 18, as the case may be, shall apply.

**ARTICLE 20**

*Professors and Teachers*

1. Where a professor or teacher who is a resident of a Contracting State visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution in that other State, any remuneration the person receives for such teaching, advanced study or research shall be exempt from tax in that other State to the extent to which that remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.

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

**ARTICLE 21**

*Students and Trainees*

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

**SCHEDULE—continued**

2. In respect of grants, scholarships and remuneration not covered by paragraph (1), a student or trainee described in paragraph (1) shall, in addition, be entitled during his or her education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he or she is visiting.

**ARTICLE 22**

*Other Income*

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

2. The provisions of paragraph (1) shall not apply to income other than income from real property as defined in paragraph (2) of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

**ARTICLE 23**

*Methods of Elimination of Double Taxation*

1. In China, double taxation shall be eliminated as follows:

- (a) Where a resident of China derives income from Australia, the amount of tax on that income payable in Australia in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
- (b) Where the income derived from Australia is a dividend paid by a company which is a resident of Australia to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Australia by the company paying the dividend in respect of its income.

**SCHEDULE—continued**

2. 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), Chinese tax paid under the law of China 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 China shall be allowed as a credit against Australian tax payable in respect of that income.

3. Where a company which is a resident of China and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in paragraph (2) shall include the Chinese tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

4. For the purpose of paragraphs (2) and (3), Chinese tax paid shall include an amount equivalent to the amount of any Chinese tax forgone.

5. In paragraph (4), the term “Chinese tax forgone” means, subject to paragraph (6), an amount which, under the law of China relating to Chinese tax and in accordance with this Agreement, would have been payable as Chinese tax on income but for an exemption from, or reduction of, Chinese tax on that income in accordance with:

- (a) Articles 5 and 6 of the Income Tax Law of the People’s Republic of China concerning Joint Ventures with Chinese and Foreign Investment and Article 3 of the Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People’s Republic of China concerning Joint Ventures with Chinese and Foreign Investment;
- (b) Articles 4 and 5 of the Income Tax Law of the People’s Republic of China concerning Foreign Enterprises;
- (c) Articles I, II, III, IV and X of Part I, Articles I, II, III and IV of Part II and Articles I, II and III of Part III of the interim provisions of the State Council of the People’s Republic of China on reduction in or exemption from enterprise income tax and the consolidated industrial and commercial tax for special economic zones and fourteen coastal cities;
- (d) Articles 12 and 19 of the State Council Regulations for the Encouragement of Investment in the Development of Hainan Island;
- (e) Articles 8, 9 and 10 of the State Council Regulations concerning the Encouragement of Foreign Investment; and
- (f) Articles 1, 2 and 3 of the interim provisions of the Ministry of Finance of the People’s Republic of China regarding (reduction in or exemption from) enterprise income tax and industrial and

**SCHEDULE—continued**

commercial consolidated tax for encouraging foreign investment in the coastal open economic areas;

insofar 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 and any other provision which may subsequently be made granting an exemption from or reduction of tax which the Treasurer of Australia and the Commissioner of the State Taxation Administration of China agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

6. In the application of paragraph (5) in relation to dividend, interest and royalty income to which Articles 10, 11 and 12 respectively apply, the amount of Chinese tax shall be deemed to be the amount equal to:

- (a) in the case of dividends, 15 per cent of the gross amount of those dividends;
- (b) in the case of interest, 10 per cent of the gross amount of that interest; and
- (c) in the case of royalties, 15 per cent of the gross amount of those royalties, but only where the rate of tax levied under the law of China, other than a provision specified in paragraph (5), is not less than 15 per cent.

7. Paragraphs (4), (5) and (6) shall apply only in relation to income derived in any of the first ten years of income in relation to which this Agreement has effect by virtue of sub-paragraph (a) (ii) of Article 27 and in any later year of income that may be agreed by the Treasurer of Australia and the Commissioner of the State Taxation Administration of China in letters exchanged for this purpose.

8. For the purposes of this Article, profits, income or gains derived by a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to be income arising from sources in that other State.

**ARTICLE 24**

*Mutual Agreement Procedure*

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Agreement, the person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

**SCHEDULE—continued**

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 a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by agreement 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 25**

*Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of avoidance or evasion of such taxes. 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) involved in the assessment or collection of, the enforcement of prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement and shall be used only for such purposes.

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

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

**SCHEDULE—continued**

**ARTICLE 26**

*Diplomatic Agents and Consular Officers*

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

**ARTICLE 27**

*Entry into Force*

This Agreement shall enter into force on the date on which the Contracting States 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 China, 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 July in the calendar year next 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 next following that in which the Agreement enters into force;

(b) in China:

in respect of income derived during any taxable year beginning on or after 1 January next following that in which this Agreement enters into force.

**ARTICLE 28**

*Termination*

This Agreement shall continue in effect indefinitely, but either of the Contracting States 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 Contracting State 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 July in the calendar year next following that in which the notice of termination is given;



**SCHEDULE—continued**

- (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 China:  
in relation to income of any taxable year beginning on or after 1 January next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this 17th day of November One thousand nine hundred and eighty-eight in the English and Chinese languages, both texts being equally authentic.

P. J. KEATING  
FOR THE GOVERNMENT OF  
AUSTRALIA

QIAN QICHEN  
FOR THE GOVERNMENT OF  
THE PEOPLE'S REPUBLIC  
OF CHINA".

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**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; Nos. 11 and 216, 1973; No. 129, 1974; No. 119, 1975; Nos. 52, 55 and 143, 1976; No. 134, 1977; No. 87, 1978; Nos. 23 and 127, 1980; Nos. 28, 110, 143 and 154, 1981; Nos. 51 and 57, 1983; Nos. 123 and 125, 1984; Nos. 168 and 173, 1985; and Nos. 49, 51 and 112, 1986.













