

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 27 August 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.

5 **1.** (1) This Act may be cited as the *Income Tax (International Agreements) Amendment Act (No. 2) 1981*.

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

Commencement

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

Interpretation

3. Section 3 of the Principal Act is amended by inserting after the definition of "the Canadian convention" in sub-section (1) the following definition:

15 " 'the Danish agreement' means the Agreement between the Government of Australia and the Government of the Kingdom of Denmark 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 is set out in Schedule 18;".

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

Agreement with the Kingdom of Denmark

“11H. (1) Subject to this Act, on and after the date of entry into force of the Danish 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 Danish 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) Where an amount of tax credit is to be treated as assessable income of a taxpayer in accordance with paragraph (7) of Article 10 of the Danish agreement—

(a) the amount of the tax credit shall be included in the assessable income of the taxpayer of the year of income in which the dividend to which the tax credit relates is paid; and

(b) the amount of the tax credit shall be added to the amount of the dividend to which the tax credit relates and the sum of the two amounts shall be deemed to be one dividend for the purposes of this Act and the Assessment Act.”.

Provisions relating to certain income derived from sources in certain countries

5. Section 12 of the Principal Act is amended—

(a) by omitting from paragraph (1) (am) “or” (last occurring); and

(b) by inserting after paragraph (1) (am) the following paragraph:

“(an) income being interest or royalties to which paragraph (1) of Article 11 or paragraph (1) of Article 12 of the Danish 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 Denmark; or”.

Schedule 18

6. The Principal Act is amended by adding at the end thereof the following Schedule:

SCHEDULE 18

Section 3

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE KINGDOM OF DENMARK

FOR

THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

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 Denmark:

the income taxes to the State and to the municipalities (indkomstskatterne til staten og til kommunerne).

(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

(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;

SCHEDULE 18—continued

- (b) the term “Denmark” means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil; the term does not comprise the Faroe Islands and Greenland;
- (c) the terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Denmark, as the context requires;
- (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 body corporate or company 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 Denmark, as the context requires;
- (g) the term “tax” means Australian tax or Danish 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 “Danish tax” means tax imposed by Denmark, 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 Denmark, the Minister for Inland Revenue, Customs and Excise or his authorized representative.

(2) In this Agreement, the terms “Australian tax” and “Danish 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 the provisions of paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and
 - (b) in the case of Denmark, if the person is liable to tax therein by reason of his domicile, residence, place of incorporation or any other criterion of a similar nature but not if he is liable to tax in Denmark in respect only of income from sources therein.

(2) In relation to income from sources in Denmark, 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 Denmark is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Danish tax.

(3) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

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

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

SCHEDULE 18—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, a 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 lasts 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.

SCHEDULE 18—continued

(8) The principles set forth in paragraphs (1) to (7) inclusive shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

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

(4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

(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 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

SCHEDULE 18—continued

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.

(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 organization 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.

(5) With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), the provisions of paragraphs (1) and (2) shall only apply to such part of the profits as corresponds to the shareholding in the consortium held by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

ARTICLE 9

Associated Enterprises

(1) Where—

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

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

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

(3) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to 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.

SCHEDULE 18—continued

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 shares by the taxation law of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

(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.

(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 Denmark for the purposes of Danish 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) Where an individual who is a resident of Australia receives from a company which is a resident of Denmark a dividend to which he is beneficially entitled and which, if received by a resident of Denmark, would entitle the resident to the Danish tax credit (skattegodtgørelse)—

- (a) the individual shall be entitled to the credit subject to the deduction of tax that would apply if that credit were a dividend;
- (b) the amount of the credit shall be treated for purposes of Australian tax as assessable income from sources in Denmark.

ARTICLE 11

Interest

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

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

(3) The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in 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.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business 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

SCHEDULE 18—continued

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 State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. 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 that State in which the permanent establishment or fixed base is situated.

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

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 for the purposes of its tax. 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.

SCHEDULE 18—continued

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

(2) For the purposes of this Article—

(a) the term “real property” shall include—

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

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

- (i) where it consists of direct interests in or over land—in the Contracting State in which the land is situated;
- (ii) where it consists of rights to exploit, or to explore for, natural resources—in the Contracting State in which the natural resources are situated or the exploration may take place; and
- (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 and 19, 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.

SCHEDULE 18—continued

(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 the application of this Article will be, subject to tax in the first-mentioned 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated. Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark.

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.

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.

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

SCHEDULE 18—continued

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

(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 sub-division 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

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 21

Income Not Expressly Mentioned

(1) Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

(2) However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.

(3) The provisions of paragraph (1) 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 22

Source of Income

(1) Income derived by a resident of Denmark which, under any one or more of Articles 6 to 8 and Articles 10 to 18 and Article 21 may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

(2) Income derived by a resident of Australia which, under any one or more of Articles 6 to 8 and Articles 10 to 18 and Article 21 may be taxed in Denmark, shall for the purposes of paragraph (1) of Article 23 and of the income tax law of Australia be deemed to be income from sources in Denmark.

ARTICLE 23

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), Danish tax paid under the law of Denmark 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 Denmark (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.

(2) Double taxation shall be avoided as follows in Denmark:

(a) Subject to the provisions of sub-paragraph (c), where a resident of Denmark derives income which, in accordance with the provisions of this Agreement may be taxed in Australia, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Australia;

(b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia;

(c) Where a resident of Denmark derives income which, in accordance with the provisions of this Agreement, shall be taxable only in Australia, Denmark 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 attributable to the income derived from Australia.

SCHEDULE 18—continued

(3) In the event that one of the Contracting States should cease to allow a company which is a resident of that State relief from its tax in respect of dividends paid to it by a company which is a resident of the other Contracting State, being relief available under the taxation law of the first-mentioned State as in force at the date of signature of this Agreement, that State will immediately advise the other State of the change and enter into negotiations with it to establish new provisions concerning the relief to be allowed in the first-mentioned State under this Article in respect of that State's tax on the dividends.

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 national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

(2) The competent authority shall endeavour, if the 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 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 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. It shall be used only for such purposes and may be disclosed in public court proceedings or in judicial decisions.

(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 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 international agreements.

SCHEDULE 18—continued

ARTICLE 27

Entry into Force

This Agreement shall enter into force on the date on which the Government of Australia and the Government of Denmark 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 Denmark, 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 Denmark—
 - in relation to income derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 28

Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Denmark 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 immediately 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 immediately following that in which the notice of termination is given;
- (b) in Denmark—
 - in relation to income derived on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

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

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

JOHN HOWARD
FOR THE GOVERNMENT
OF AUSTRALIA

MOGENS WARBERG
FOR THE GOVERNMENT
OF THE KINGDOM OF DENMARK

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; Nos. 23 and 127, 1980; and No. 28, 1981.

