

HOUSE OF REPRESENTATIVES

(As read a first time)

**TAXATION LAWS AMENDMENT BILL (No. 3) 1985**

**TABLE OF PROVISIONS**

**PART I—PRELIMINARY**

Clause

1. Short title
2. Commencement

**PART II—AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY  
TAXATION (ADMINISTRATION) ACT 1969**

3. Principal Act
4. Interpretation
5. Insertion of new section—
  - 50B. Refund of duty where land transferred by way of mortgage is re-transferred
6. Heading to Division 11 of Part III
7. Transfer of marketable securities not to be registered unless duly stamped
8. Insertion of new Division—

*Division 12—Loan Securities*

- 58H. Interpretation
  - 58J. Persons liable to pay duty
  - 58K. When loan securities are to be duly stamped
  - 58L. How duty denoted
  - 58M. Duty where amount secured is increased, is not a definite sum, &c.
  - 58N. Loan securities for repayment by periodical payments, &c.
  - 58P. Collateral securities
  - 58Q. Subsequent mortgages
  - 58R. Duty on subscriptions under instruments which secure debentures
  - 58S. Debentures not liable to duty if mortgage duly stamped
  - 58T. Credits in respect of non-Territory stamp duty paid on loan securities
  - 58U. Stamping and lodgment of duplicate instruments, &c.
9. Application

**PART III—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY  
TAX (HIRE-PURCHASE BUSINESS) ACT 1969**

10. Principal Act
11. Addition of new section—
  7. Regulations

TABLE OF PROVISIONS—*continued*PART IV—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY  
TAX (INSURANCE BUSINESS) ACT 1969

## Clause

- 12. Principal Act
- 13. Addition of new section—
  - 7. Regulations

PART V—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY  
TAX (PURCHASES OF MARKETABLE SECURITIES) ACT 1969

- 14. Principal Act
- 15. Addition of new section—
  - 7. Regulations

PART VI—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY  
TAX (SALES OF MARKETABLE SECURITIES) ACT 1969

- 16. Principal Act
- 17. Addition of new section—
  - 7. Regulations

## PART VII—AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936

- 18. Principal Act
- 19. Interpretation
- 20. Officers to observe secrecy
- 21. Exemptions
- 22. Exemption of certain film income
- 23. Repeal of section 32 and substitution of new section—
  - 32. Value of live stock at end of year of income
- 24. Full-year deductions and partnership deductions
- 25. Divisible deductions
- 26. Calls paid by certain holding companies
- 27. Moneys paid on shares for the purposes of certain exploration, prospecting or mining
- 28. Gifts, pensions, &c.
- 29. Transfer of loss within company group
- 30. Interpretation
- 31. Deduction of allowable (post 19 July 1982) capital expenditure
- 32. Exploration and prospecting expenditure
- 33. Elections
- 34. Insertion of new section—
  - 124ADH. Election in relation to limit on certain deductions
- 35. Exploration and prospecting expenditure
- 36. Deductions for capital expenditure under pre 13 January 1983 contracts and certain other contracts
- 37. Deductions for capital expenditure under post 12 January 1983 contracts
- 38. Rebate for moneys paid on shares for the purposes of petroleum exploration, prospecting or mining
- 39. Interpretation
- 40. Interpretation
- 41. Deductions from certain withdrawals from film accounts
- 42. Application of amendments
- 43. Amendment of assessments

PART VIII—AMENDMENTS OF THE INCOME TAX (INTERNATIONAL  
AGREEMENTS) ACT 1953

- 44. Principal Act
- 45. Interpretation

TABLE OF PROVISIONS—*continued*

Clause

- 46. Insertion of new section—  
11P. Agreement with Finland
- 47. Provisions relating to certain income derived from sources in certain countries
- 48. Schedule

PART IX—AMENDMENT OF THE TAXATION ADMINISTRATION ACT  
1953

- 49. Principal Act
- 50. Provision of taxation information to National Crime Authority

SCHEDULE



1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

---

Presented and read a first time, 17 October 1985

*(Minister Assisting the Treasurer)*

## A BILL

FOR

### An Act to amend the law relating to taxation

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

#### PART I—PRELIMINARY

##### Short title

5       1. This Act may be cited as the *Taxation Laws Amendment Act (No. 3) 1985*.

##### Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

10       (2) Part II shall come into operation on the first day of the month next following the month in which this Act receives the Royal Assent.

(3) Parts IV, V and VI shall be deemed to have come into operation on 1 July 1969.

#### PART II—AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) ACT 1969

15

##### Principal Act

3. The *Australian Capital Territory Taxation (Administration) Act 1969*<sup>1</sup> is in this Part referred to as the Principal Act.

**Interpretation****4. Section 4 of the Principal Act is amended—**

- (a) by inserting after the definition of “Board of Review” in sub-section (1) the following definition:

“ ‘borrower’ means—

- (a) in relation to—

(i) a loan security; or

(ii) an instrument of the kind referred to in sub-section 58M (1),

the borrower or the person bound;

- (b) in relation to an instrument lodged under sub-section 58R (2) by a body corporate—the body corporate; or

(c) in relation to an instrument of trust referred to in paragraph (g) of the definition of ‘mortgage’ in section 58H—the person who issued the corporate debentures to which the instrument relates;”;

- (b) by inserting after the definition of “conveyance” in sub-section (1) the following definition:

“ ‘corporate debenture’ means a debenture of a body corporate and includes debenture stock, a bond, a note and any other security of a body corporate, whether it constitutes a charge on assets of the body corporate or not;”;

- (c) by inserting after the definition of “life insurance” in sub-section (1) the following definition:

“ ‘loan security’ means—

(a) a mortgage within the meaning of Division 12 of Part III;

(b) a corporate debenture; or

(c) a bond, or a covenant, for securing a loan made or to be made,

but does not include an instrument included in a prescribed class of instruments;”;

- (d) by omitting from sub-section (1) the definition of “marketable security” and substituting the following definition:

“ ‘marketable security’ means—

(a) a share in the capital of, or a debenture of, a company; or

(b) a unit in relation to a unit trust scheme,

and includes a right, whether existing or future and whether contingent or not, of a person to have issued to the person such a share, debenture or unit, whether on payment of money or other consideration or not;”;

- (e) by inserting after the definition of “purchase price” in sub-section (1) the following definition:

“‘Real Property Ordinance’ means the *Real Property Ordinance 1925* of the Australian Capital Territory;”;

- 5 (f) by inserting after the definition of “trustee” in sub-section (1) the following definitions:

“‘unit’, in relation to a unit trust scheme, means a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under the scheme;

10 ‘unit trust’ means a trust to which a unit trust scheme relates;

‘unit trust scheme’ means any arrangements made for the purpose, or having the effect, of providing, for a person having funds available for investment, facilities for the participation by the person, as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust;”;

15

- (g) by adding at the end the following sub-sections:

“(9) For the purposes of this Act—

20

(a) where a bill of exchange or promissory note is dated, the bill or note shall, unless the contrary is shown, be deemed to have been drawn or made on that date; and

(b) an instrument shall be deemed to have been executed on the date on which the last party to the instrument appears to have executed it.

25

“(10) The reference in paragraph (c) of the definition of ‘loan security’ in sub-section (1) to a loan includes a reference to—

(a) an advance of money;

30

(b) money paid for or on account of or on behalf of or at the request of a person;

(c) a forbearance to require payment of money owing on any account; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

35

“(11) For the purposes of this Act, a loan security shall be taken to be connected with the Territory if, and only if—

(a) in a case where the loan security subjects property to a security—the whole or a part of that property is situated in the Territory; or

40

(b) in any case—the loan security is executed in the Territory by the borrower.

“(12) For the purposes of this Act, a loan security that is not executed shall be deemed to be executed when and where it is issued.

“(13) In this Act, a reference to the amount secured by a loan security is, in relation to a mortgage within the meaning of Division 12 of Part III, being an instrument of trust referred to in paragraph (g) of the definition of ‘mortgage’ in section 58H, a reference to the amount repayable in respect of the corporate debentures to which the instrument relates.”. 5

5. After section 50A of the Principal Act the following section is inserted in Division 7 of Part III:

**Refund of duty where land transferred by way of mortgage is re-transferred**

- “50B. (1) Subject to sub-section (2), where— 10
- (a) duty has been paid on a transfer, or an agreement for a transfer, by which an estate or interest in land is or is to be transmitted under the Real Property Ordinance by way of mortgage;
  - (b) in the case of an agreement for a transfer—the estate or interest has been transferred pursuant to the agreement; 15
  - (c) the estate or interest has been—
    - (i) re-transferred to the mortgagor; or
    - (ii) transferred to a person (in this section referred to as the ‘mortgagor’s successor’) to whom the equity of redemption has been transmitted consequent on the death, bankruptcy or insolvency of the mortgagor; and 20
  - (d) the mortgagor or the mortgagor’s successor, as the case may be, becomes the registered proprietor, within the meaning of the Real Property Ordinance, of the estate or interest,

the Commissioner shall refund to the person by whom the duty was paid an amount equal to the difference between the amount of duty so paid and the amount of duty that would have been payable on that transfer, or agreement for a transfer, if it had been a loan security. 25

“(2) A person is not entitled to a refund under sub-section (1) unless the person gives to the Commissioner, within 12 months after the mortgagor or the mortgagor’s successor becomes the registered proprietor as mentioned in paragraph (1) (d), an application in accordance with an approved form, together with such information as the Commissioner requires to enable the Commissioner to determine the amount of the refund. 30

“(3) Nothing in this section shall be taken as derogating from the operation of sub-section 51 (1) of the Real Property Ordinance.”. 35

**Heading to Division 11 of Part III**

6. The heading to Division 11 of Part III of the Principal Act is amended by adding at the end “*and Unit Trusts*”.



**Transfer of marketable securities not to be registered unless duly stamped**

7. Section 58G of the Principal Act is amended by omitting “A transfer of a share in the capital of, or a debenture of, a company shall not be registered, recorded or entered in the books of the company” and substituting  
5 “A transfer of a marketable security shall not be registered, recorded or entered in the books of the company or unit trust to which the marketable security relates”.

8. After Division 11 of Part III of the Principal Act the following Division is inserted:

**“Division 12—Loan Securities****Interpretation**

“58H. In this Division—

‘duly stamped’ means duly stamped in relation to duty payable by virtue of this Division;

15 ‘duty’ means duty payable by virtue of this Division;

‘mortgage’ means a security by way of mortgage or charge—

(a) for the payment of a definite and certain sum of money advanced or lent at the time or previously due or owing, or forborne to be paid, being payable; or

20 (b) for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current together with a sum already advanced or due, or without, as the case may be,

and, without limiting the generality of the foregoing, includes—

25 (c) a security by way of mortgage or charge given in consideration of the conveyance or transfer of an estate or interest in any real or personal property;

(d) a transfer or conveyance of any estate or interest in any real or personal property in trust to be sold or otherwise converted into money—

(i) intended only as a security; and

(ii) redeemable before the sale or other disposal of the estate or interest, either by express stipulation or otherwise,

35 except where the transfer or conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified, who accept the provision made for payment of their debts in full satisfaction of those debts;

40 (e) any defeasance, declaration, or other instrument for defeating or making redeemable or explaining or qualifying a conveyance, transfer, assignment or disposition of any estate or interest in real or personal property, apparently absolute but intended only as a security;

- (f) any agreement, contract or covenant (being an agreement, contract or covenant relating to documents of title or accompanied with the deposit of any documents of title or instruments creating a charge on real or personal property) for making a mortgage or any such other security, transfer or conveyance of any estate or interest in real or personal property comprised in those documents, or for pledging or charging that property as a security; and 5
- (g) any instrument of mortgage (including an instrument of mortgage referred to in paragraph (c), (d), (e) or (f) ) for the purpose of securing the repayment of corporate debentures or any instrument of trust protecting the interests of the holders of corporate debentures, 10

but does not include a conveyance by which an estate or interest in land is or is to be transmitted under the Real Property Ordinance by way of mortgage. 15

**Persons liable to pay duty**

“58J. Duty imposed on—

- (a) a loan security; or
- (b) an instrument of the kind referred to in sub-section 58M (1) or 58R (2), 20

is payable by the borrower.

**When loan securities are to be duly stamped**

“58K. Except as otherwise provided by this Division, where a loan security on which duty is imposed is executed, the borrower shall— 25

- (a) in a case where the amount payable or repayable under or secured by the loan security exceeds \$15,000 or, if that amount is not fixed, where the maximum amount that is or may become payable or repayable under or that is secured by the loan security exceeds \$15,000—lodge the instrument of loan security with the Commissioner for assessment within 30 days after the instrument is executed; or 30
- (b) in any other case—cause the instrument of loan security to be duly stamped forthwith on the execution of the loan security.

**How duty denoted** 35

“58L. (1) The payment of duty imposed on an instrument required to be lodged with the Commissioner pursuant to this Division shall be denoted by impressed stamp.

“(2) The payment of duty imposed on an instrument of loan security to which sub-section (1) does not apply shall be denoted by adhesive stamp. 40

**Duty where amount secured is increased, is not a definite sum, &c.**

“58M. (1) Where—

- (a) the total amount secured or to be ultimately recoverable by or under a loan security connected with the Territory is expressed in the loan security to be limited to a definite and certain sum of money (whether or not that total amount may be increased pursuant to the loan security);
- (b) that total amount is increased pursuant to an instrument (whether or not the loan security); and
- (c) in a case where that total amount is increased pursuant to an instrument other than the loan security—the loan security was executed on or after the date of commencement of this section,

that instrument—

(d) is liable to duty (if any) equal to the difference between—

- (i) the duty that would be payable if the instrument were a loan security connected with the Territory executed by the borrower in respect of the sum of the amounts payable or repayable under or secured by the first-mentioned loan security and the amount of that increase and any previous increases; and

(ii) the sum of—

- (A) the duty paid on the first-mentioned loan security; and
- (B) any duty that has become payable by virtue of another application of this sub-section in relation to an instrument relating to the first-mentioned loan security and has been paid; and

(e) within 30 days after that increase is made, shall be lodged by the borrower with the Commissioner for assessment.

“(2) Where—

- (a) a loan security is for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current either with or without money previously due; and
- (b) the total amount secured or to be ultimately recoverable is expressed in the loan security to be limited to a definite and certain sum of money,

the loan security shall be deemed, for the purposes of this Act, to be a loan security for the payment or repayment of the amount so expressed.

“(3) Where the total amount secured or to be ultimately recoverable by or under a loan security connected with the Territory is not expressed in the loan security to be limited to a definite and certain sum of money, the loan security—

- (a) is liable to duty equal to the duty that would be payable on the loan security if it were a loan security for the payment or repayment of \$15,000; and

(b) within 30 days after it is executed, shall be lodged by the borrower with the Commissioner for assessment.

“(4) Where—

(a) the total amount secured or to be ultimately recoverable by or under a loan security connected with the Territory is not expressed in the loan security to be limited to a definite and certain sum of money; and

5

(b) the loan security is enforced in relation to an amount greater than \$15,000,

the loan security—

10

(c) is liable to duty (if any) equal to the difference between the duty that would be payable on the loan security if it were a loan security for the payment or repayment of that greater amount and the duty previously paid in respect of the loan security; and

(d) within 30 days after it is enforced, shall be lodged by the borrower with the Commissioner for assessment.

15

“(5) Where—

(a) the total amount secured or to be ultimately recoverable by or under a loan security connected with the Territory is not expressed in the loan security to be limited to a definite and certain sum of money; and

20

(b) an advance is made and the sum of that advance and any previous advances exceeds the amount in respect of which duty has been paid on the loan security,

the loan security—

25

(c) is liable to duty (if any) equal to the difference between—

(i) the duty that would be payable on the loan security if it were a loan security in respect of the sum of—

(A) the amount in respect of which duty has been paid on the loan security; and

30

(B) the amount of the advance; and

(ii) the duty previously paid on the loan security; and

(d) within 30 days after the advance is made, shall be lodged by the borrower with the Commissioner for assessment.

**Loan securities for repayment by periodical payments, &c.**

35

“58N. A loan security for the payment of any rent charge, annuity or periodical payments, by way of repayment or in satisfaction or discharge of any loan, advance or payment intended to be so repaid, satisfied or discharged, shall be deemed, for the purposes of this Act, to be a loan security for the payment of the sum of money so lent, advanced or paid.

40

**Collateral securities**

“58P. (1) Subject to sub-section (2), a loan security that is a collateral security for the same money as is secured by a primary loan security is not liable to duty.

“(2) A loan security connected with the Territory that is a collateral security for the same money as is secured by a primary loan security connected with the Territory—

(a) is liable to duty (if any) equal to the duty that would be payable on the collateral security if it were the primary loan security and the primary loan security had been executed when the collateral security was executed; and

(b) within 30 days after it is executed, shall be lodged by the borrower with the Commissioner for assessment,

unless the primary loan security or any other collateral security for the same money as is secured by the primary loan security has been duly stamped.

“(3) In this section, ‘collateral security’ includes any additional or substituted security and any legal mortgage executed pursuant to an agreement, contract or covenant referred to in paragraph (f) of the definition of ‘mortgage’ in section 58H.

**Subsequent mortgages**

“58Q. (1) Subject to sub-section (2), where a subsequent mortgage connected with the Territory contains a covenant that—

(a) confers upon the mortgagee a right, whether absolute or contingent, to pay to a prior mortgagee the amount owing under a prior mortgage; and

(b) provides that any payment so made will be directly secured by the subsequent mortgage,

the amount of duty payable on the subsequent mortgage shall be determined without regard to the provisions of the covenant.

“(2) Where a payment is made under a covenant referred to in sub-section (1), the subsequent mortgage—

(a) is liable to duty equal to the duty (if any) that would be payable on the subsequent mortgage if it were a loan security for the repayment of the amount of the payment; and

(b) within 30 days after the payment is made, shall be lodged by the borrower with the Commissioner for assessment.

**Duty on subscriptions under instruments which secure debentures**

“58R. (1) Where—

(a) a body corporate is or will be under a liability to repay any money received or to be received by it in respect of corporate debentures of the body corporate; and

(b) there is an instrument of trust relating to the debentures to which the body corporate is a party,

the body corporate may, by notice in accordance with an approved form given to the Commissioner, elect that this section apply in relation to those corporate debentures and, where such an election is made, the instrument of trust, any mortgage executed by the body corporate protecting the

interests of the holders of the debentures and any such debentures shall be deemed to be duly stamped.

“(2) Where an election relating to corporate debentures of a body corporate has been made by the body corporate under sub-section (1), the body corporate shall, within 21 days after the end of each month of each year, lodge with the Commissioner for assessment an instrument, in accordance with an approved form, setting out— 5

- (a) 5% of the total of amounts subscribed in respect of such of the corporate debentures as were issued during that month and are connected with the Territory, being amounts repayable at or after the expiration of a period of not less than 30 days and not more than 3 months; 10
- (b) 50% of the total of amounts subscribed in respect of such of the corporate debentures as were issued during that month and are connected with the Territory, being amounts repayable at or after the expiration of a period of more than 3 months but not more than 6 months; and 15
- (c) the total of all other amounts subscribed in respect of such of the corporate debentures as were issued during that month and are connected with the Territory, not being amounts repayable at call or in less than 30 days. 20

“(3) An instrument lodged under sub-section (2) is liable to duty (if any) equal to the duty that would be payable if the instrument were a loan security connected with the Territory for the repayment of the sum of the amounts specified in the instrument. 25

“(4) For the purposes of this section, amounts repayable at call after a specified period shall be deemed to be amounts repayable at the end of that period.

“(5) A reference in this section to an amount subscribed in respect of corporate debentures includes a reference to an amount represented by corporate debentures issued upon the conversion or renewal of an existing holding of corporate debentures or other marketable securities. 30

### **Debentures not liable to duty if mortgage duly stamped**

“58S. Where—

- (a) the repayment of any corporate debentures is secured on a mortgage referred to in paragraph (g) of the definition of ‘mortgage’ in section 58H, not being an instrument of trust, and the amount secured is not less than the amount repayable in respect of those debentures; or 35
- (b) the interests of the holders of any corporate debentures to which a mortgage so referred to, being an instrument of trust, relates are protected by the mortgage to an extent not less than the amount repayable in respect of the debentures, 40

and the mortgage is duly stamped, the debentures shall be deemed to be duly stamped.

**Credits in respect of non-Territory stamp duty paid on loan securities**

“58T. (1) Subject to this section, where—

- (a) a loan security subjects property to a security;
- (b) the whole or a part of the property is situated in a State, in the Northern Territory or in an external Territory; and
- (c) duty is, or but for this sub-section, would be, payable in respect of the loan security,

the person liable to pay the duty is entitled to a credit of duty in respect of the duty payable on the loan security of an amount equal to the amount of stamp duty paid or payable on the loan security under a law of the State, the Northern Territory or the external Territory, as the case may be.

“(2) Where a credit of duty is allowable in respect of the duty payable on a loan security, that credit shall not exceed the amount of duty that, before the allowance of that credit, is payable on the loan security.

“(3) A credit under this section is not allowable to a person in respect of a loan security unless the person gives to the Commissioner, within 12 months after the time when the duty in respect of which the credit is claimed became due and payable, an application in accordance with an approved form, together with such information as the Commissioner requires to enable the Commissioner to determine the amount of the credit.

“(4) Where a credit is allowable to a person under this section in respect of a loan security—

- (a) if the whole or any part of the duty payable on the loan security is unpaid—the Commissioner shall apply the credit against that duty;
- (b) if the person is subject to any other liability to the Commonwealth, being a liability arising under, or by virtue of, an Act of which the Commissioner has the general administration—the Commissioner may apply so much of the credit as has not been applied under paragraph (a) against that liability; and
- (c) the Commissioner shall refund so much (if any) of the credit as has not been applied under paragraph (a) or (b).

“(5) Where—

- (a) but for this sub-section, an instrument of the kind referred to in sub-section 58M (1) would not be a loan security; and
- (b) the instrument relates to a loan security that subjects property to a security,

the instrument shall be deemed, for the purposes of this section, to be a loan security and to subject that property to a security.

**Stamping and lodgment of duplicate instruments, &c.**

“58U. (1) Where an original instrument on which duty is payable is lodged with a public office at which registration is effected, the original instrument shall be taken to have been duly stamped or to have been lodged with the Commissioner for assessment, as the case may be, if a duplicate or copy of the original instrument is duly stamped or is lodged with the Commissioner for assessment.

5

“(2) If, at the time when a requirement arises under this Division for a person, within a specified period, to lodge an instrument with the Commissioner for assessment—

10

(a) the instrument is in the possession of the Commissioner, or of a court, pursuant to section 67; or

(b) the instrument is the subject of a previous such requirement,

the first-mentioned requirement to lodge the instrument may be satisfied only by lodging with the Commissioner, within the specified period, a duplicate or copy of the instrument.

15

“(3) Where an instrument is required pursuant to this Division to be lodged with the Commissioner for assessment, the instrument shall not be taken to have been so lodged unless it is accompanied by such information (if any) as the Commissioner requires to enable the Commissioner to assess the amount of duty payable on the instrument.”

20

**Application**

9. The amendments made by paragraphs 4 (d) and (f) apply—

(a) to purchases or sales of marketable securities made on or after the date of commencement of this section; and

25

(b) to transfers of marketable securities executed on or after that date.

**PART III—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY TAX (HIRE-PURCHASE BUSINESS) ACT 1969****Principal Act**

10. The *Australian Capital Territory Tax (Hire-purchase Business) Act 1969*<sup>2</sup> is in this Part referred to as the Principal Act.

30

11. The Principal Act is amended by adding at the end the following section:

**Regulations**

“7. The Governor-General may make regulations for the purposes of paragraph 6 (b).”

35



**PART IV—AMENDMENT OF THE AUSTRALIAN CAPITAL  
TERRITORY TAX (INSURANCE BUSINESS) ACT 1969**

**Principal Act**

5 **12.** The *Australian Capital Territory Tax (Insurance Business) Act 1969*<sup>3</sup> is in this Part referred to as the Principal Act.

**13.** The Principal Act is amended by adding at the end the following section:

**Regulations**

10 “7. The Governor-General may make regulations for the purposes of paragraph 6 (g).”.

**PART V—AMENDMENT OF THE AUSTRALIAN CAPITAL  
TERRITORY TAX (PURCHASES OF MARKETABLE SECURITIES)  
ACT 1969**

**Principal Act**

15 **14.** The *Australian Capital Territory Tax (Purchases of Marketable Securities) Act 1969*<sup>4</sup> is in this Part referred to as the Principal Act.

**15.** The Principal Act is amended by adding at the end the following section:

**Regulations**

20 “7. The Governor-General may make regulations for the purposes of section 4 and paragraph 6 (c).”.

**PART VI—AMENDMENT OF THE AUSTRALIAN CAPITAL  
TERRITORY TAX (SALES OF MARKETABLE SECURITIES) ACT  
1969**

25 **Principal Act**

**16.** The *Australian Capital Territory Tax (Sales of Marketable Securities) Act 1969*<sup>5</sup> is in this Part referred to as the Principal Act.

**17.** The Principal Act is amended by adding at the end the following section:

30 **Regulations**

“7. The Governor-General may make regulations for the purposes of section 4 and paragraph 6 (c).”.

**PART VII—AMENDMENTS OF THE INCOME TAX ASSESSMENT  
ACT 1936**

**Principal Act**

**18.** The *Income Tax Assessment Act 1936*<sup>6</sup> is in this Part referred to as the Principal Act. 5

**Interpretation**

**19.** Section 6 of the Principal Act is amended by omitting “or (b)” from paragraph (a) of the definition of “apportionable deductions” in sub-section (1).

**Officers to observe secrecy** 10

**20.** Section 16 of the Principal Act is amended—

(a) by inserting before the definition of “officer” in sub-section (1) the following definition:

“‘Director of Public Prosecutions’ means a person holding office as, or acting as, the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983*;” 15

(b) by adding at the end of sub-section (1) the following definitions:

“‘Special Prosecutor’ means a person holding office as, or acting as, a Special Prosecutor under the *Special Prosecutors Act 1982*;

‘tax-related offence’ means— 20

(a) an offence against—

(i) an Act of which the Commissioner has the general administration or regulations under such an Act; or 25

(ii) the *Crimes (Taxation Offences) Act 1980*; or

(b) an offence against the *Crimes Act 1914* relating to a law referred to in paragraph (a).”;

(c) by omitting from paragraph (4) (hb) “and Youth Affairs”;

(d) by adding at the end of sub-paragraph (4A) (a) (ii) “, other than a proceeding conducted in private”; 30

(e) by inserting after paragraph (4A) (a) the following paragraph:

“(aa) the Royal Commission may divulge the information in the course of a proceeding conducted in private by the Royal Commission;” 35

(f) by inserting after paragraph (4A) (b) the following paragraph:

“(ba) the Royal Commission may communicate the information to the Director of Public Prosecutions or a Special Prosecutor if the Royal Commission is of the opinion that the information relates or may relate to an investigation of a tax-related offence;” 40

- (g) by omitting from paragraph (4A) (c) “paragraphs (a) and (b)” and substituting “the preceding paragraphs”;
- (h) by omitting paragraph (4B) (b) and substituting the following paragraph:

5 “(b) if the person to whose affairs the information relates is a company—

(i) any person who is, or has been, a director or officer of the company; or

10 (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner on behalf of the company; or”;

(j) by inserting in sub-section (4D) “or paragraph (4A) (aa)” after “(4C)”;

15 (k) by inserting after sub-section (4F) the following sub-sections:

“(4FA) Where information is communicated to the Director of Public Prosecutions under paragraph (4A) (ba)—

20 (a) the Director of Public Prosecutions shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;

25 (b) a person who is no longer the Director of Public Prosecutions shall not make a record of the information, or divulge or communicate the information, in any circumstances; and

(c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not—

30 (i) while he or she is a person or employee under the control of the Director of Public Prosecutions—divulge or communicate the information except to the Director of Public Prosecutions, or to another person or employee under the control of the Director of Public Prosecutions, for the purposes of, or in connection with, the performance by the Director of Public Prosecutions of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or

35 (ii) when he or she is no longer a person or employee under the control of the Director of Public Prosecutions—make a record of the information, or divulge or communicate the information, in any circumstances.

40 “(4FB) Where information is communicated to a Special Prosecutor under paragraph (4A) (ba)—

45

- (a) the Special Prosecutor shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment; 5
- (b) a person who is no longer a Special Prosecutor shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
- (c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not— 10
- (i) while he or she is a person or employee under the control of the Special Prosecutor—divulge or communicate the information except to the Special Prosecutor, or to another person or employee under the control of the Special Prosecutor, for the purposes of, on in connection with, the performance by the Special Prosecutor of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or 15
- (ii) when he or she is no longer a person or employee under the control of the Special Prosecutor—make a record of the information, or divulge or communicate the information, in any circumstances.”; 20
- (m) by omitting from paragraph (4G) (a) “and”; 25
- (n) by adding at the end of sub-section (4G) the following word and paragraph:
- “ ; and (c) a member or special member of the Australian Federal Police, or a member of a police force of a State or Territory, assigned to the Royal Commission to carry out an investigation on behalf of, or under the control of, the Royal Commission.”; 30
- (o) by omitting from sub-section (4J) “or (4F)” and substituting “, (4F), (4FA) or (4FB)””; and
- (p) by inserting after sub-section (4J) the following sub-sections: 35
- “(4JA) Where information is communicated to a person under paragraph (4A) (ba) or sub-section (4FA) or (4FB), nothing in sub-section (4FA) or (4FB) prevents—
- (a) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence; or 40
- (b) if the information is admissible in a prosecution of a person for a tax-related offence—the communication of the information to a court in the course of proceedings before that court against the last-mentioned person for that offence. 45

“(4JB) A person to whom information has been communicated in accordance with paragraph (4JA) (a) shall not make a record of the information, or divulge or communicate the information, except for the purposes of, or in connection with, the prosecution of a person for a tax-related offence.”.

## Exemptions

21. Section 23 of the Principal Act is amended—

(a) by omitting from paragraph (z) “scholarship (other than a scholarship referred to in paragraph (zaa) ), bursary or other educational allowance” and substituting “scholarship, bursary or other educational allowance or educational assistance (other than assistance for secondary education or assistance in connection with the education of isolated children)”;

(b) by omitting from sub-paragraph (z) (iii) “or”;

(c) by adding at the end of paragraph (z) the following sub-paragraphs:

“(v) a benefit received as a grant of Tertiary Education Assistance under the *Student Assistance Act 1973* that does not include a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit; or

(vi) if a benefit received as a grant of Tertiary Education Assistance under the *Student Assistance Act 1973* includes a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit—so much of the benefit as exceeds the amount paid in respect of the child or children;”;

(d) by omitting paragraph (zaa) and substituting the following paragraph:

“(zaa) income derived by way of payments made to or in respect of a student under a scheme for the provision by the Commonwealth of assistance for secondary education or assistance in connection with the education of isolated children, but not including—

(i) a payment received under the scheme known as the Adult Secondary Education Assistance Scheme that does not include an amount paid in respect of a child or children wholly or substantially dependent on the person who received the payment; or

(ii) if a payment received under the scheme known as the Adult Secondary Education Assistance Scheme includes an amount paid in respect of a child or children wholly or substantially dependent on the person who received the payment—so much of the

payment as exceeds the amount paid in respect of the child or children; and”.

### Exemption of certain film income

22. Section 23H of the Principal Act is amended—

- (a) by omitting from sub-section (4) “(in this sub-section referred to as the ‘relevant year of income’)”; 5
- (b) by omitting paragraphs (4) (a), (b) and (c) and substituting the following paragraphs:
  - “(a) in a case where the sum of—
    - (i) 50% of so much (if any) of the deductible moneys as are deductible 150% moneys; 10
    - (ii) 33% of so much (if any) of the deductible moneys as are deductible 133% moneys; and
    - (iii) 20% of so much (if any) of the deductible moneys as are deductible 120% moneys, 15
 exceeds the previously recouped amount—the amount of the excess; or
  - (b) in any other case—a nil amount.”; and
- (c) by inserting after the definition of “deductible moneys” in sub-section (4A) the following definition: 20
  - “‘deductible 120% moneys’ means deductible moneys in respect of which the deduction allowed or allowable under section 124ZAF or 124ZAF A is an amount equal to 120% of the deductible moneys;”.

23. Section 32 of the Principal Act is repealed and the following section 25 is substituted:

### Value of live stock at end of year of income

“32. (1) In this section, unless the contrary intention appears—

‘birth date’ means—

- (a) in relation to a horse foaled on or after 1 August in a calendar year—1 August in that year; and 30
- (b) in relation to a horse foaled before 1 August in a calendar year—1 August in the preceding year;

‘eligible horse’ means a horse acquired by the taxpayer under a contract entered into after 20 August 1985, but does not include a horse that was, at the time the contract was entered into— 35

- (a) a gelding; or
- (b) a female horse that had been spayed;

‘general closing value’, in relation to an eligible horse, in relation to a year of income, means the difference between— 40

- (a) the opening value of the horse in relation to the year of income; and

(b) the general reduction amount in relation to the horse in relation to the year of income;

'general reduction amount', in relation to an eligible horse, in relation to a year of income, means—

5 (a) in the case of a male horse—an amount specified in the return of the taxpayer, being an amount not exceeding 50% of the opening value of the horse in relation to the year of income; or

10 (b) in the case of a female horse—33 $\frac{1}{3}$ % of the opening value of the horse in relation to the year of income;

'opening value', in relation to an eligible horse, in relation to a year of income (in this definition referred to as the 'current year of income'), means—

15 (a) in a case where the horse was live stock of the taxpayer at the end of the year of income immediately preceding the current year of income and was live stock of the taxpayer during the whole of the current year of income—the value of the horse taken into account at the end of the preceding year of income; or

20 (b) in a case where the horse became live stock of the taxpayer at a time during the current year of income, whichever is the lesser of—

(i) the cost price of the horse; or

25 (ii) the depreciated value of the horse, within the meaning of section 62, at that time;

'person' includes a partnership and a person in the capacity of trustee of a trust estate;

'scheme' includes—

30 (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

35 'special closing value', in relation to a female eligible horse, in relation to a year of income, means—

(a) in a case to which paragraph (b) does not apply, the difference between—

40 (i) the opening value of the horse in relation to the year of income; and

(ii) the special reduction amount in relation to the horse in relation to the year of income; or

(b) in a case where the special reduction amount in relation to the horse in relation to the year of income is equal to or

greater than the opening value of the horse in relation to the year of income—\$1;

‘special reduction amount’, in relation to a female eligible horse, in relation to a year of income, means—

- (a) in the case of a horse that had not attained the age of 10 years before the day the horse became live stock of the taxpayer, an amount ascertained in accordance with the formula  $\frac{A}{12-B}$ , where—

$12-B$

**A** is the cost price of the horse; 10

**B** is the number of whole years attained by the horse before that day; and

- (b) in the case of a horse that had attained the age of 10 years before the day the horse became live stock of the taxpayer, an amount ascertained in accordance with the formula  $\frac{A}{B}$ , where— 15

**A** is the cost price of the horse; and

**B** is a whole number, not less than 3, notified by the taxpayer to the Commissioner at the same time, and in the same manner, as the taxpayer selects the option referred to in paragraph (5) (b). 20

“(2) For the purposes of this section, the time when a horse attains a particular age expressed in years is the commencement of the relevant anniversary of the birth date of the horse.

“(3) For the purposes of this section, an eligible horse that has become live stock of the taxpayer more than once before the end of the year of income shall be taken to have become live stock of the taxpayer on the last occasion before the end of the year of income on which it became live stock of the taxpayer. 25

“(4) Notwithstanding sub-section (1), where an eligible horse became live stock of a taxpayer at a time during a year of income— 30

- (a) the definition of ‘general reduction amount’ in that sub-section applies in relation to the horse in relation to the year of income as if a reference in that definition to whichever of 50% or 33 $\frac{1}{3}$ % is applicable were a reference to the percentage ascertained in accordance with the formula  $\frac{AB}{C}$ , where— 35

**C**

**A** is whichever of 50% or 33 $\frac{1}{3}$ % is applicable;

**B** is the number of whole days in the period commencing at that time and ending at the end of the year of income; and

**C** is the number of whole days in the year of income; and 40



- (b) the special reduction amount in relation to the horse in relation to the year of income shall be ascertained in accordance with the formula  $\frac{AB}{C}$ , where—

C

- 5           A is the amount that would, but for this sub-section, be the special reduction amount in relation to the horse in relation to the year of income;
- B is the number of whole days in the period commencing at that time and ending at the end of the year of income; and
- 10           C is the number of whole days in the year of income.

“(5) Subject to sub-sections (6) and (7), the value of live stock to be taken into account at the end of the year of income shall be, at the option of the taxpayer—

- 15           (a) in a case where the live stock is an eligible horse of either sex—the general closing value of the horse in relation to the year of income;
- (b) in a case where the live stock is a female eligible horse—the special closing value of the horse in relation to the year of income;
- (c) in any case—the cost price of the live stock; or
- (d) in any case—the market selling value of the live stock.

20           “(6) Where the Commissioner is satisfied that there are circumstances which justify the adoption by the taxpayer of some other value, the taxpayer may adopt that other value.

25           “(7) If the taxpayer does not exercise the option within the time and in the manner prescribed, the value of the live stock to be taken into account at the end of the year of income shall be the cost price of the live stock.

“(8) Where the Commissioner is satisfied that—

- (a) on or before 20 August 1985 a taxpayer—
- (i) owned a horse; or
- (ii) entered into a contract or arrangement for the acquisition of a horse;
- 30           (b) after 20 August 1985 and at a time when—
- (i) in a case to which sub-paragraph (a) (i) applies—the taxpayer was the owner of the horse; or
- (ii) in a case to which sub-paragraph (a) (ii) applies—the taxpayer was a party to the contract or arrangement or was, by reason of the horse having been acquired pursuant to that contract or arrangement, the owner of the horse,
- 35           the taxpayer entered into a scheme pursuant to which—
- (iii) the taxpayer became the owner of the horse (otherwise than pursuant to the contract or arrangement referred to in sub-paragraph (a) (ii)); or
- 40           (iv) the taxpayer became the ultimate user of the horse;

- (c) but for this sub-section, the horse would be treated for the purposes of this section as an eligible horse of—
- (i) in a case to which sub-paragraph (b) (iii) applies—the taxpayer; or
  - (ii) in a case to which sub-paragraph (b) (iv) applies—a person who was the owner of the horse at any time when the taxpayer was the ultimate user of the horse; and 5
- (d) in a case to which sub-paragraph (b) (iii) applies—the taxpayer entered into the scheme for the purpose, or for purposes that included the purpose, of enabling the horse to be treated as an eligible horse of the taxpayer for the purposes of this section, 10

the Commissioner may apply this section for the purposes of ascertaining the value to be taken into account in relation to the horse in relation to the taxpayer or a person referred to in sub-paragraph (c) (ii), as the case may be, as if the taxpayer or the other person, as the case may be, acquired the horse under a contract entered into before 21 August 1985. 15

“(9) For the purposes of sub-section (8), a taxpayer shall be taken to be the ultimate user of a horse if, under a scheme to which the taxpayer is a party—

- (a) at a time when the horse is owned by a person other than the taxpayer, the horse is, or is to be, used (whether or not by that person), wholly or principally, in connection with activities of the taxpayer; and 20
- (b) the taxpayer controls, or is able to control, directly or indirectly, the use of the horse in or in connection with those activities.”. 25

### Full-year deductions and partnership deductions

24. Section 50F of the Principal Act is amended—

- (a) by omitting from paragraph (1) (c) “, under Division 10AA (other than section 124AM)”;
  - (b) by adding at the end of paragraph (1)(d) “or under Division 10AA (other than section 124AM).”; 30
  - (c) by omitting sub-section (2) and substituting the following sub-section:
    - “(2) Where a company has made an election—
    - (a) in relation to a year of income under section 122D, 122DB, 122DD or 122DF; or 35
    - (b) in relation to a year of income in relation to expenditure of a particular kind under section 122DG, 122J, 124ADH or 124AH,
- a deduction allowable to the company—
- (c) where paragraph (a) applies—under the section referred to in that paragraph; or 40
  - (d) where paragraph (b) applies—under the section referred to in that paragraph, or, in the case of an election under section

124ADH, under Division 10AA, in relation to an amount of expenditure of the kind to which the election relates, in relation to the year of income shall be deemed not to be a full-year deduction in relation to the company in relation to the year of income.”;

- 5 (d) by omitting paragraphs (4) (a) and (b) and substituting the following paragraphs:

“(a) any deduction allowable to the partnership under section 78 or under Subdivision BA of Division 3;

10 (b) subject to sub-section (5), any deduction allowable to the partnership under Division 10 (other than section 122K) or under Division 10AA (other than section 124AM).”;

- (e) by omitting sub-section (5) and substituting the following sub-section:

15 “(5) Where a partnership has made an election—

(a) in relation to a year of income under section 122D, 122DB, 122DD or 122DF; or

20 (b) in relation to a year of income in relation to expenditure of a particular kind under section 122DG, 122J, 124ADH or 124AH,

a deduction allowable to the partnership—

(c) where paragraph (a) applies—under the section referred to in that paragraph; or

25 (d) where paragraph (b) applies—under the section referred to in that paragraph, or, in the case of an election under section 124ADH, under Division 10AA, in relation to an amount of expenditure of the kind to which the election relates,

30 in relation to the year of income shall be deemed not to be a full-year partnership deduction in relation to the partnership in relation to the year of income.”.

### Divisible deductions

25. Section 50G of the Principal Act is amended—

- (a) by adding at the end of sub-section (1) the following paragraph:

35 “; (ba) where the company has made an election in relation to the year of income in relation to expenditure of a particular kind under section 122DG, 122J, 124ADH or 124AH—any deduction allowable to the company under that section, or, in the case of an election under section 124ADH, under Division 10AA, in relation to the year of income in relation to an amount of expenditure of that kind.”; and

- 40 (b) by omitting from paragraph (2) (q) “or 122DF” and substituting “, 122DF, 122DG, 122J or 124AH or under Division 10AA”.

**Calls paid by certain holding companies**

26. Section 77B of the Principal Act is amended—

- (a) by omitting sub-section (3); and
- (b) by omitting from sub-section (6) “or paragraph 78 (1) (b)”.

**Moneys paid on shares for the purposes of certain exploration, prospecting or mining**

5

27. Section 77D of the Principal Act is amended—

- (a) by omitting from paragraph (11) (a) “, under section 77C or under paragraph 78 (1) (b)” and substituting “of this section, or under section 77C”; and
- (b) by omitting from sub-section (16) “or paragraph 78 (1) (b)” (twice occurring).

10

**Gifts, pensions, &c.**

28. Section 78 of the Principal Act is amended by omitting paragraph (1) (b) and sub-section (7).

15

**Transfer of loss within company group**

29. Section 80G of the Principal Act is amended by omitting from sub-section (10) all the words after “other than—” and substituting the following:

- “(a) deductions from that assessable income under section 80, 80AAA, 80AA, 124AD, 124ADB, 124ADD, 124ADF or 159GC;
- (b) deductions from that assessable income under section 122D, 122DB, 122DD or 122DF where the loss company has not made an election under that section in relation to the year of income; or
- (c) deductions from that assessable income under section 122DG or 122J or Division 10AA in respect of expenditure in relation to which the loss company has not made an election under section 122DG, 122J, 124ADH or 124AH, as the case requires, in relation to the year of income,

20

25

sub-section (6) applies in relation to so much (if any) of the amount of a loss that is deemed to have been incurred by the loss company for the purposes of section 80 as is not allowable as a deduction from that assessable income under sub-section 80 (2), 80AAA (7) or 80AA (4).”.

30

**Interpretation**

30. Section 82KH of the Principal Act is amended by omitting “or” from paragraph (s) of the definition of “relevant expenditure” in sub-section (1).

35

**Deduction of allowable (post 19 July 1982) capital expenditure**

31. Section 122DG of the Principal Act is amended—

- (a) by omitting from sub-section (6) “The” and substituting “Subject to sub-section (6B), the ”; and

40

(b) by inserting after sub-section (6) the following sub-sections:

“(6A) A taxpayer may elect, in relation to a year of income specified in the election, that sub-section (6B) shall apply in relation to all allowable (post 19 July 1982) capital expenditure in relation to the taxpayer incurred after the end of the year of income that commenced on 1 July 1984.

“(6B) Where—

(a) a taxpayer makes an election under sub-section (6A) in relation to expenditure of a kind referred to in that sub-section in relation to a year of income; and

(b) but for this sub-section, sub-section (6) would apply to limit or reduce the amount of a deduction otherwise allowable under sub-section (2) in relation to the year of income in relation to an amount of expenditure of that kind,

sub-section (6) does not apply to limit or reduce the amount of the deduction.

“(6C) Where, apart from sub-section (6B), sub-section (6) would apply to limit or reduce the amount of a deduction otherwise allowable in relation to a year of income in relation to an amount of expenditure in respect of which a taxpayer has not made an election under this section in relation to the year of income, nothing in sub-section (6B) affects the application of sub-section (6) in relation to that year of income in relation to that amount.”.

### **Exploration and prospecting expenditure**

32. Section 122J of the Principal Act is amended—

(a) by omitting from sub-section (4B) “The” and substituting “Subject to sub-section (4BB), the ”; and

(b) by inserting after sub-section (4B) the following sub-sections:

“(4BA) A taxpayer may elect, in relation to a year of income specified in the election, being the year of income that commenced on 1 July 1985 or a subsequent year of income, that the limit in sub-section (4B) shall not apply in relation to actual expenditure in relation to the taxpayer in relation to the year of income.

“(4BB) Where—

(a) a taxpayer makes an election under sub-section (4BA) in relation to a year of income; and

(b) but for this sub-section, sub-section (4B) would apply to limit the amount of the deduction otherwise allowable under this section in relation to expenditure incurred by the taxpayer during the year of income,

the following provisions have effect:

(c) sub-section (4B) does not apply in relation to expenditure incurred by the taxpayer during the year of income;

- (d) the deduction allowable under this section in respect of any deemed expenditure in relation to the taxpayer in relation to the year of income is an amount ascertained in accordance

with the formula  $\frac{A \ C}{A + B}$ , where—

A is the number of whole dollars in the amount of the deemed expenditure in relation to the taxpayer in relation to the year of income; 5

B is the number of whole dollars in the amount of the actual expenditure in relation to the taxpayer in relation to the year of income; and 10

C is an amount equal to the assessable income of the taxpayer of the year of income reduced by the sum of all deductions allowable from that assessable income, other than deductions allowable under this section in respect of expenditure incurred after 21 August 1984. 15

“(4BC) For the purposes of sub-sections (4BA) and (4BB)—

(a) a reference to actual expenditure in relation to a taxpayer in relation to a year of income is a reference to expenditure of a kind referred to in sub-section (1) incurred by the taxpayer during the year of income, other than deemed expenditure in relation to the taxpayer in relation to the year of income; and 20

(b) a reference to deemed expenditure in relation to a taxpayer in relation to a year of income is a reference to expenditure of a kind referred to in sub-section (1) that is deemed by sub-section (4C) to have been incurred by the taxpayer during the year of income.”. 25

### **Elections**

33. Section 122M of the Principal Act is amended by omitting from subparagraph (b) (iii) “or 122H” and substituting “, 122DG, 122H or 122J”. 30

34. After section 124ADG of the Principal Act the following section is inserted:

#### **Election in relation to limit on certain deductions**

“124ADH. (1) A taxpayer may elect, in relation to a year of income specified in the election, that sub-section (3) shall apply in relation to all allowable capital expenditure of the taxpayer incurred after the end of the year of income that commenced on 1 July 1984. 35

“(2) An election under sub-section (1) shall be made in writing signed by or on behalf of the taxpayer and shall be delivered to the Commissioner on or before the last day for the furnishing of the taxpayer’s return of income of the year of income specified in the election or within such further time as the Commissioner allows. 40

“(3) Where—

(a) a taxpayer makes an election under sub-section (1) in relation to expenditure of a kind referred to in that sub-section in relation to a year of income; and

5 (b) but for this sub-section any of the following sub-sections:

(i) sub-section 124ADB (3);

(ii) sub-section 124ADD (3);

(iii) sub-section 124ADF (3);

(iv) sub-section 124ADG (6),

10 would apply to limit or reduce the amount of a deduction otherwise allowable under this Division in relation to a year of income in relation to an amount of expenditure of that kind,

none of the sub-sections referred to in sub-paragraphs (b) (i) to (iv) (inclusive) applies to limit or reduce the amount of the deduction.

15 “(4) Where, apart from this section, any of the sub-sections referred to in sub-paragraphs (3) (b) (i) to (iv) (inclusive) would apply to limit or reduce the amount of a deduction otherwise allowable in relation to a year of income in relation to an amount of expenditure in respect of which a taxpayer has not made an election under this section in relation to the year of income, nothing in this section affects the application of that sub-section in relation to that year of income in relation to that amount.”.

20

### **Exploration and prospecting expenditure**

35. Section 124AH of the Principal Act is amended—

25 (a) by omitting from sub-section (4A) “The” and substituting “Subject to sub-section (4AC), the”; and

(b) by inserting after sub-section (4A) the following sub-sections:

30 “(4AA) A taxpayer may elect, in relation to a year of income specified in the election, being the year of income that commenced on 1 July 1985 or a subsequent year of income, that the limit in sub-section (4A) shall not apply in relation to actual expenditure in relation to the taxpayer in relation to the year of income.

35 “(4AB) An election under sub-section (4AA) shall be made in writing signed by or on behalf of the taxpayer and be delivered to the Commissioner on or before the last day for the furnishing of the taxpayer’s return of income of the year of income specified in the election or within such further time as the Commissioner allows.

“(4AC) Where—

(a) a taxpayer makes an election under sub-section (4AA) in relation to a year of income; and

40 (b) but for this sub-section, sub-section (4A) would apply to limit the amount of the deduction otherwise allowable under this section in relation to expenditure incurred by the taxpayer during the year of income,

the following provisions have effect:

- (c) sub-section (4A) does not apply in relation to expenditure incurred by the taxpayer during the year of income;
- (d) the deduction allowable under this section in respect of any deemed expenditure in relation to the taxpayer in relation to the year of income is an amount ascertained in accordance with the formula  $\frac{A C}{A + B}$ , where—

- A** is the number of whole dollars in the amount of the deemed expenditure in relation to the taxpayer in relation to the year of income; 10

- B** is the number of whole dollars in the amount of the actual expenditure in relation to the taxpayer in relation to the year of income; and

- C** is an amount equal to the assessable income of the taxpayer of the year of income reduced by the sum of all deductions allowable from that assessable income, other than deductions allowable under this section in respect of expenditure incurred after 17 August 1976. 15

“(4AD) For the purposes of sub-sections (4AA) and (4AC)—

- (a) a reference to actual expenditure in relation to a taxpayer in relation to a year of income is a reference to expenditure of a kind referred to in sub-section (1) incurred by the taxpayer during the year of income, other than deemed expenditure in relation to the taxpayer in relation to the year of income; and 20 25

- (b) a reference to deemed expenditure in relation to a taxpayer in relation to a year of income is a reference to expenditure of a kind referred to in sub-section (1) that is deemed by sub-section (4B) to have been incurred by the taxpayer during the year of income.”. 30

**Deductions for capital expenditure under pre 13 January 1983 contracts and certain other contracts**

36. Section 124ZAF of the Principal Act is amended—

- (a) by omitting from paragraph (2A) (f) “or” (last occurring); and
- (b) by omitting paragraph (2A) (g) and substituting the following paragraphs: 35

- “(g) where the relevant moneys were expended by the taxpayer under a contract that was entered into after 23 August 1983 and on or before 19 September 1985—133%; or

- (h) where the relevant moneys were expended by the taxpayer under a contract that was entered into after 19 September 1985—120%,”. 40



**Deductions for capital expenditure under post 12 January 1983 contracts**

37. Section 124ZAFA is amended—

- (a) by omitting from paragraph (1) (e) “or” (last occurring);  
(b) by omitting paragraph (1) (f) and substituting the following paragraphs:

“(f) where the moneys were expended under a contract that was entered into after 23 August 1983 and on or before 19 September 1985—133%; or

(g) where the moneys were expended under a contract that was entered into after 19 September 1985—120%,”;

- (c) by inserting in paragraph (1A) (b) “or 120%” after “133%”;  
(d) by omitting from paragraph (1A) (f) “and”;  
(e) by omitting paragraph (1A) (g) and substituting the following paragraphs:

“(g) if paragraph (f) does not apply and the contract referred to in paragraph (a) was entered into after 23 August 1983 and on or before 19 September 1985—the sum of—

(i) 150% of so much of the relevant moneys as is equal to the amount of the excess referred to in paragraph (e); and

(ii) 133% of the remainder of the relevant moneys; or

(h) if paragraph (f) does not apply and the contract referred to in paragraph (a) was entered into after 19 September 1985—the sum of—

(i) 150% of so much of the relevant moneys as is equal to the amount of the excess referred to in paragraph (e); and

(ii) 120% of the remainder of the relevant moneys.”;

- (f) by inserting after sub-section (1A) the following sub-section:

“(1AA) Where—

(a) a taxpayer has, under a contract entered into after 19 September 1985, expended capital moneys (in this sub-section referred to as the ‘relevant moneys’) by way of contribution to the cost of producing a film;

(b) but for this sub-section, an amount equal to 120% of the relevant moneys would be allowable as a deduction under sub-section (1) in respect of the relevant moneys in an assessment of the taxpayer;

(c) the production contract referred to in sub-sub-paragraph (1) (d) (iv) (A) or, in a case to which sub-sub-paragraph (1) (d) (iv) (B) applies, the underwriting contract or each of the underwriting contracts, as the case may be, referred to in that last-mentioned sub-sub-paragraph, was entered into on or before 19 September 1985;

- (d) in a case to which sub-sub-paragraph (1) (d) (iv) (A) applies—under the production contract referred to in that sub-sub-paragraph, a person conditionally agreed to expend capital moneys by way of contribution to the cost of producing the film; and 5
- (e) the amount specified in the production contract referred to in sub-sub-paragraph (1) (d) (iv) (A) or (B), as the case may be, exceeded the amount of the committed capital in relation to the film at the time when the taxpayer entered into the contract referred to in paragraph (a), 10
- the amount of the deduction allowable under sub-section (1) in respect of the relevant moneys is an amount equal to—
- (f) if the amount of the relevant moneys does not exceed the amount of the excess referred to in paragraph (e)—133% of the amount of the relevant moneys; and 15
- (g) in any other case—the sum of—
- (i) 133% of so much of the relevant moneys as is equal to the amount of the excess referred to in paragraph (e); and
- (ii) 120% of the remainder of the relevant moneys.”; and 20
- (g) by omitting from sub-section (1B) “sub-section (1A)” and substituting “sub-sections (1A) and (1AA)”.

**Rebate for moneys paid on shares for the purposes of petroleum exploration, prospecting or mining**

38. Section 160ACA of the Principal Act is amended— 25
- (a) by omitting paragraph (5A) (b) and substituting the following paragraph:
- “(b) a rebate of tax equal to 27% of so much of the moneys paid on shares by the taxpayer during that year of income to an eligible petroleum company as are specified in a declaration duly lodged by the company under sub-section (3A), being moneys paid to the company— 30
- (i) after 30 April 1981 and on or before 19 September 1985; or
- (ii) after 19 September 1985 in respect of calls made on or before 19 September 1985 in respect of shares of which the taxpayer became the owner or beneficial owner on or before 19 September 1985, 35
- but not being moneys paid in respect of calls made on or before 30 April 1981 in respect of shares of which the taxpayer became the owner or beneficial owner on or before 30 April 1981.”; and 40
- (b) by omitting paragraph (15A) (b) and substituting the following paragraph:

- 5 “(b) a rebate of tax equal to 27% of so much of the moneys on shares by the taxpayer during that year of income company as are specified in a declaration duly lodged by company under sub-section (7A), being moneys paid to a company—
- (i) after 30 April 1981 and on or before 19 September 1985; or
- 10 (ii) after 19 September 1985 in respect of calls made on or before 19 September 1985 in respect of shares of which the taxpayer became the owner or beneficial owner on or before 19 September 1985,
- 15 but not being moneys paid in respect of calls made on or before 30 April 1981 in respect of shares of which the taxpayer became the owner or beneficial owner on or before 30 April 1981.”

### Interpretation

39. Section 221A of the Principal Act is amended—

(a) by omitting from paragraph (j) of the definition of “salary or wages” in sub-section (1) “or”; and

20 (b) by inserting after paragraph (k) of the definition of “salary or wages” in sub-section (1) the following paragraphs:

25 “(m) by way of living allowance under a grant of Tertiary Education Assistance, being a living allowance paid under sub-paragraph 11 (b) (i) of the *Student Assistance Act 1973*; or

(n) by way of living allowance under the scheme known as the Adult Secondary Education Assistance Scheme.”

### Interpretation

30 40. (1) Section 221YHA of the Principal Act is amended by omitting from paragraph (3) (a) “of a construction project by another person” and substituting “by another person, or by other persons, of a construction project, or of a part of a construction project”.

(2) Section 221YHA of the Principal Act is amended—

35 (a) by omitting from sub-section (3) “Where” and substituting “Subject to sub-section (3A), where”;

(b) by inserting after sub-section (3) the following sub-sections:

“(3A) For the purposes of this Division, a person is not a householder in relation to a prescribed payment in relation to which the person is an owner-builder.

40 “(3B) Where—

(a) if sub-section (3A) had not been enacted, a natural person would, for the purposes of this Division, be a householder in relation to a prescribed payment that is made, or is liable to

- be made, by the natural person under a contract or contracts for the undertaking or carrying out of a construction project, or of a part of a construction project;
- (b) an issuing authority has issued in the name of—
- (i) the natural person; or
  - (ii) a person (in this sub-section referred to as the 'authorised person') other than the natural person, a construction permit in respect of the construction project; and
- (c) in a case where sub-paragraph (b) (ii) applies—
- (i) so much of the construction project as is proposed to be carried out or undertaken by the authorised person or pursuant to a contract or contracts entered into, or proposed to be entered into, by the authorised person; and
  - (ii) so much of the construction project as has been carried out or undertaken by, or pursuant to a contract or contracts entered into by, the authorised person, together constitute neither the whole nor the greater part of the construction project,
- the natural person is, for the purposes of this Division, an owner-builder in relation to any prescribed payment that is made, or is liable to be made, by the natural person under the contract or contracts referred to in paragraph (a)."; and
- (c) by inserting in sub-paragraph (4) (b) (i) “, or an owner-builder,” after “householder”.

### **Deductions from certain withdrawals from film accounts**

- 41.** Section 221ZN of the Principal Act is amended—
- (a) by omitting from sub-paragraph (1) (a) (i) “61%” and substituting “55%”;
  - (b) by omitting from sub-paragraph (1) (a) (ii) “80%” and substituting “72%”; and
  - (c) by omitting from paragraph (1) (b) “80%” and substituting “72%”.

### **Application of amendments**

- 42. (1)** In this section, “amended Act” means the Principal Act as amended by this Act.
- (2)** The amendments made by section 21 apply in relation to income received in respect of a period commencing on or after 1 January 1986.
- (3)** The amendments made by section 22 of this Act apply to—
- (a) in a case where sub-section 23H (5) of the amended Act would, if those amendments applied, deem capital moneys to be expended by a taxpayer in a year of income (in this sub-section referred to as

the “relevant year of income”) preceding the year of income in which 19 September 1985 occurred and to be deductible 120% moneys as defined by sub-section 23H (4A) of the amended Act—  
5 an assessment in respect of income of the taxpayer of the relevant year of income or of a subsequent year of income; or

(b) in any other case—an assessment in respect of income of the year of income in which 19 September 1985 occurred or of a subsequent year of income.

10 (4) The amendment made by section 23 applies to assessments in respect of income of the year of income commencing on 1 July 1985 and of all subsequent years of income.

15 (5) Regulations in force for the purposes of section 32 of the Principal Act immediately before the commencement of this section continue in force after that commencement as if they were made for the purposes of sub-section 32 (7) of the amended Act.

(6) Subject to sub-section (7) of this section, the amendments made by sections 19, 26, 27 and 28 apply in relation to a call paid after 19 September 1985.

20 (7) Notwithstanding the amendments referred to in sub-section (6) of this section, the provisions of sub-sections 6 (1), 77B (3) and (6) and 77D (11) and (16), of paragraph 78 (1) (b), and of sub-section 78 (7), of the Principal Act continue to have effect in relation to a call paid after 19 September 1985 by a taxpayer on shares owned by the taxpayer, if—

(a) the call was made on or before that date; and

25 (b) the taxpayer became the owner or beneficial owner of the shares on or before that date.

(8) The amendments made by section 39 apply in relation to payments made in respect of a period commencing on or after 1 January 1986.

30 (9) The amendments made by sub-section 40 (1) apply in relation to a prescribed payment that is made on or after the date of commencement of this Part under a contract or contracts entered into on or after that date.

35 (10) The amendments made by sub-section 40 (2) apply in relation to a prescribed payment that is made on or after 1 July 1986, or is liable to be so made, under a contract or contracts (whether entered into before, on or after that date) for the undertaking or carrying out of a construction project, or of a part of a construction project, being a construction project the undertaking or carrying out of which commences on or after that date.

40 (11) In determining for the purposes of sub-section (10) when the undertaking or carrying out of a construction project commences, the undertaking or carrying out of surveying, design or other activities preliminary to the construction project shall be disregarded.

(12) Section 221YHA of the Principal Act applies for the purposes of sub-sections (9), (10) and (11) of this section and so applies as if those sub-sections were provisions of Division 3A of Part VI of the Principal Act.

(13) The amendments made by section 41 apply in relation to amounts withdrawn from film accounts more than 28 days after the date of commencement of this Part. 5

#### **Amendment of assessments**

43. Nothing in section 170 of the Principal Act prevents the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Part. 10

### **PART VIII—AMENDMENTS OF THE INCOME TAX (INTERNATIONAL AGREEMENTS) ACT 1953**

#### **Principal Act**

44. The *Income Tax (International Agreements) Act 1953*<sup>7</sup> is in this Part referred to as the Principal Act. 15

#### **Interpretation**

45. Section 3 of the Principal Act is amended by inserting after the definition of “the Danish agreement” in sub-section (1) the following definition:

“the Finnish agreement’ means the Agreement between Australia and Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that agreement, being the agreement and protocol a copy of each of which in the English language is set out in Schedule 25;” 20

46. After section 11N of the Principal Act the following section is inserted: 25

#### **Agreement with Finland**

“11P. (1) Subject to this Act, on and after the date of entry into force of the Finnish agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have the force of law— 30

(a) in relation to withholding tax—in respect of dividends or interest derived on or after 1 January 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. 35

“(2) As soon as practicable after the entry into force of the Finnish agreement in accordance with Article 27 of the agreement, the Treasurer 40

shall cause to be published in the *Gazette* a notice specifying the date on which the agreement entered into force.”.

**Provisions relating to certain income derived from sources in certain countries**

- 5       **47.** Section 12 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (at) “or” (last occurring); and
  - (b) by inserting after paragraph (1) (at) the following paragraph:
    - 10           “(au) income being interest or royalties to which paragraph (1) of Article 11 or paragraph (1) of Article 12 of the Finnish agreement applies, where the income is derived, in the year of income commencing on 1 July in the calendar year next following that in which the agreement enters into force, or a subsequent year of income, from sources in Finland; or”.

**Schedule**

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

**PART IX—AMENDMENT OF THE TAXATION  
ADMINISTRATION ACT 1953**

**Principal Act**

- 20       **49.** The *Taxation Administration Act 1953*<sup>8</sup> is in this Part referred to as the Principal Act.

**Provision of taxation information to National Crime Authority**

- 25       **50.** Section 3D of the Principal Act is amended by omitting paragraph (12) (b) and substituting the following paragraph:
- 30           “(b) if the person to whose affairs the information relates is a company—
    - (i) any person who is, or has been, a director or officer of the company; or
    - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner on behalf of the company; or”.

---

**SCHEDULE**

Section 48

**SCHEDULE TO BE ADDED AT END OF INCOME TAX (INTERNATIONAL AGREEMENTS) ACT 1953****“SCHEDULE 25**

Section 3

**AGREEMENT BETWEEN AUSTRALIA AND FINLAND 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 Finland,  
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 Finland:

- (i) the state income tax;
- (ii) the communal tax;
- (iii) the church tax;
- (iv) the sailors' tax; and
- (v) the tax withheld at source from non-residents' income.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the law of Australia or the law of Finland after the date of signature of this Agreement in addition to, or in place of, the existing taxes. As soon as possible after the end of each calendar year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective laws relating to the taxes to which this Agreement applies.

**ARTICLE 3****General Definitions**

(1) For the purposes of 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;



**SCHEDULE—continued**

- (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;
- (b) the term 'Finland' means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration and exploitation of the natural resources of the sea-bed and its subsoil may be exercised;
  - (c) the terms 'Contracting State', 'one of the Contracting States' and 'other Contracting State' mean Australia or Finland, 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 company or body corporate for tax purposes;
  - (f) the terms 'enterprise of one of the Contracting States' and 'enterprise of the other Contracting State' mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Finland, as the context requires;
  - (g) the term 'tax' means Australian tax or Finnish 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 'Finnish tax' means tax imposed by Finland, 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 Finland, the Ministry of Finance or its authorized representative.
- (2) For the purposes of this Agreement, the terms 'Australian tax' and 'Finnish 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, subject to paragraph (2), a resident of one of the Contracting States:
  - (a) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax; and

**SCHEDULE—continued**

- (b) in the case of Finland, if the person is liable under the laws of Finland to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
- (2) A person is not a resident of a Contracting State for the purposes of this Agreement if he is liable to tax in that State in respect only of income from sources in that State.
- (3) For the purposes of taxation in Finland, an undivided estate of a deceased person shall be deemed to be a person who is a resident of the Contracting State of which the deceased was a resident, at the time of his death, in accordance with the provisions of this Article.
- (4) Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;
  - (b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.
- (5) Where, by reason of any of the preceding provisions of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which it is incorporated, created or organized.

**ARTICLE 5****Permanent Establishment**

- (1) For the purposes of this Agreement, the term 'permanent establishment', in relation to an enterprise, means a fixed place of business through which the business of the 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 situated in Australia;
  - (h) a building site or construction, installation or assembly project which exists for more than twelve months.
- (3) An enterprise shall not be deemed to have a permanent establishment merely by reason of:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

**SCHEDULE—continued**

- (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 binding the enterprise, unless the activities of that person are limited to those mentioned in paragraph (3) and are such that, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph; or
  - (b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.
- (6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.
- (7) The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.
- (8) The principles set forth in the preceding paragraphs of this Article 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 income from an agricultural, pastoral or forestry property in Finland, may be taxed in the Contracting State in which that property is situated.
- (2) For the purposes of this Article, the term 'real property':
  - (a) in the case of Australia, has the meaning which it has under the laws of Australia, and shall also include:

**SCHEDULE—continued**

- (i) a lease of land and any other interest in or over land, whether improved or not;
  - (ii) a right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
- (b) in the case of Finland, means such property which, according to the laws of Finland, is immovable property and shall in any case include:
- (i) property accessory to immovable property;
  - (ii) livestock and equipment used in agriculture and forestry;
  - (iii) rights to which the provisions of the general law respecting landed property apply;
  - (iv) usufruct of immovable property and rights to variable or fixed payments as consideration for the working of or the right to work mineral deposits, mineral sources and other natural resources.

Ships and aircraft shall not be regarded as immovable property.

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

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

(5) Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company and situated in Finland, the income from the direct use, letting or use in any other form of such right to enjoyment may be taxed in Finland.

(6) The provisions of paragraphs (1) and (4) shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

(7) The provisions of paragraph (5) shall also apply to income of an enterprise from a right to enjoyment referred to in that paragraph and shall also apply to income from such a right to enjoyment that is 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

**SCHEDULE—continued**

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 one of the Contracting States 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) For the purposes of the preceding paragraphs, 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.

(7) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, 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.

(8) 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.

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

**ARTICLE 8**

**Shipping and Air Transport**

(1) 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 one of the Contracting States 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.

**SCHEDULE—continued**

(5) The amount which shall be charged to tax in one of the Contracting States under paragraph (2) shall not exceed 5 per cent of the amount paid or payable (net of rebates) in respect of carriage in such operations.

(6) Paragraph (5) shall not apply to profits from the operation of ships derived by a resident of one of the Contracting States if:

- (a) his principal place of business is in the other Contracting State; or
- (b) those profits are derived from activities other than the carriage of passengers, cargo or mail.

In such cases, the provisions of Article 7 shall apply.

**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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, 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.

(3) Where, according to the provisions of paragraph (1), profits are included by one of the Contracting States in the profits of an enterprise, the other Contracting State shall, on a claim being made by the other enterprise concerned, consistently with its law consider the inclusion so made and the provision of relief to that other enterprise in relation to the taxation of profits which the other State determines to be profits which, but for the particular conditions referred to in paragraph (1), might have been expected to accrue to the first-mentioned enterprise. For the purpose of determining any such relief, due regard shall be had to the other provisions of this Agreement in relation to the nature of the income and the competent authorities of the States shall if necessary consult each other.

**ARTICLE 10****Dividends**

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

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that

**SCHEDULE—continued**

State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. 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 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 paragraph (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 any such 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 Finland for the purposes of Finnish tax.

(6) Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing on the income of a company which is a resident of the other Contracting State, tax in addition to the taxes referred to in Article 2 in relation to the first-mentioned Contracting State which are payable by a company which is a resident of the first-mentioned State, provided that any such additional tax shall not exceed 15 per cent of the amount by which the taxable income of the first-mentioned company of a year of income exceeds the tax payable on that taxable income to the first-mentioned State. Any tax payable to one of the Contracting States on the undistributed profits of a company which is a resident of the other Contracting State shall be calculated as if that company were not liable to the additional tax referred to in this paragraph and had paid dividends of such amount that tax equal to the amount of that additional tax would have been payable on the dividends in accordance with paragraph (2) of this Article.

**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' as used 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.

### SCHEDULE—continued

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

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State, a statutory authority of that State or of a political subdivision thereof 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 one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(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' as used 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 sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge 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



**SCHEDULE—continued**

- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.
- (4) The provisions of paragraph (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 property or right 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 subdivision or local authority of that State, a statutory authority of that State or of a political subdivision thereof 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 one of the Contracting States or not, has in one of the Contracting States 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.
- (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**

Income From Alienation of Property

- (1) Income from the alienation of real property may be taxed in the Contracting State in which that property is situated.
- (2) For the purposes of this Article, the term 'real property':
  - (a) in the case of Australia, shall have the meaning which it has under the laws of Australia and 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; and
  - (b) in the case of Finland, shall have the same meaning that it has for the purposes of Article 6 and shall include shares or other corporate rights in a company which entitle the owner of those shares or other corporate rights to the enjoyment of real property held by the company and situated in Finland.
- (3) Real property shall be deemed to be situated:
  - (a) where it consists of direct interests in or over land—in the Contracting State in which the land is situated;

**SCHEDULE—continued**

- (b) 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;
- (c) 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; and
- (d) where it consists of any of the rights or property referred to in sub-paragraph (2) (b) of Article 6 or shares or other corporate rights referred to in paragraph (5) of Article 6—in Finland.

**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.

(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;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State;
- (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 by a resident of one of the Contracting States may be taxed in that State.

**SCHEDULE—continued**

**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 or of a similar organ of a company which is 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, a political subdivision or a statutory authority of that State or a political subdivision thereof or a local authority of that State to any individual in respect of services rendered to that State, political subdivision, statutory authority or local authority, as the case may be, and pensions paid and other payments made under the social security legislation 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 or nationals of the Contracting State from which the payments are made.

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

**ARTICLE 19**

**Government Service**

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

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

**SCHEDULE—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, a political subdivision or local authority of that State or by a statutory authority of that State or of a political subdivision thereof. 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 State.

(2) However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

(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 Finland which, under any one or more of Articles 6 to 8, Articles 10 to 19 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, Articles 10 to 19 and Article 21, may be taxed in Finland 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 Finland.

**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), Finnish tax, other than that paid by reason of the provisions of sub-paragraph (c) of paragraph (2) of this Article, paid under the law of Finland 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 Finland (not including, in the case of a dividend, tax paid in

**SCHEDULE—continued**

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) In the case of Finland double taxation shall be eliminated as follows:
- (a) where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Australia, Finland shall, subject to the provisions of sub-paragraph (b), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Australia. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia;
  - (b) dividends paid by a company which is a resident of Australia to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland;
  - (c) notwithstanding any other provision of this Agreement, an individual who is a resident of Australia and, under Finnish taxation law with respect to Finnish tax, also is regarded as a resident of Finland may be taxed in Finland. However, Finland shall allow any Australian tax paid on the income as a deduction from Finnish tax in accordance with the provisions of sub-paragraph (a). The provisions of this sub-paragraph shall apply only to nationals of Finland;
  - (d) where in accordance with any provision of this Agreement any income derived by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on any other income of such resident, take into account the exempted income.

**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 by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. 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 by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

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

**SCHEDULE—continued****ARTICLE 25****Exchange of Information**

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for 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, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

(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 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 to supply information the disclosure of which would be contrary to public policy (ordre public).

**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.

**ARTICLE 27****Entry into Force**

This Agreement shall enter into force on the thirty-first day after 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 Finland, 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 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 Finland:
  - (i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
  - (ii) in respect of other Finnish tax on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.

**SCHEDULE—continued**

**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 January in the calendar year next following that in which the notice of termination is given;
  - (ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (b) in Finland:
  - (i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the notice is given;
  - (ii) in respect of other Finnish tax on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

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

DONE at Canberra this twelfth day of September One thousand nine hundred and eighty-four in duplicate in the English and Finnish languages, both texts being equally authentic.

PAUL KEATING  
FOR THE GOVERNMENT  
OF AUSTRALIA

JERMO LAINE  
FOR THE GOVERNMENT  
OF FINLAND

PROTOCOL

**THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF FINLAND**

HAVE AGREED AT THE SIGNING today of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

If, in an agreement for the avoidance of double taxation that is made after 12 September 1984 between Australia and a third State, being a State that is a member of the Organisation for Economic Co-operation and Development

- (a) Australia agrees to limit the rate of its taxation:
  - (i) on dividends paid by a company which is a resident of Australia for the purposes of Australian tax to which a company that is a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 10; or
  - (ii) on interest arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or
  - (iii) on royalties arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12; or

**SCHEDULE—continued**

(b) there is included a Non-Discrimination Article, the Government of Australia shall immediately inform the Government of Finland in writing through the diplomatic channel and shall enter into negotiations with the Government of Finland, in the case of paragraph (a), to review the provisions specified in that paragraph in order to provide the same treatment for Finland as that provided for the third State and, in the case of paragraph (b), in order to provide the same treatment for Finland as that provided for the third State.

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

DONE at Canberra this twelfth day of September One thousand nine hundred and eighty-four in duplicate in the English and Finnish languages, both texts being equally authentic.

PAUL KEATING  
FOR THE GOVERNMENT  
OF AUSTRALIA

JERMU LAINE  
FOR THE GOVERNMENT  
OF FINLAND”.



**NOTES**

1. No. 42, 1969, as amended. For previous amendments, see No. 216, 1973; Nos. 61, 92 and 127, 1981; No. 127, 1982; No. 39, 1983; and No. 123, 1984.
2. No. 44, 1969.
3. No. 45, 1969, as amended. For previous amendments, see No. 216, 1973; Nos. 125 and 130, 1981; and No. 125, 1982.
4. No. 47, 1969, as amended. For previous amendments, see No. 93, 1972; and No. 216, 1973.
5. No. 46, 1969, as amended. For previous amendments, see No. 92, 1972; and No. 216, 1973.
6. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 47, 115, 123 and 124, 1984; and Nos. 47 and 49, 1985.
7. 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; and Nos. 123 and 125, 1984.
8. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; and Nos. 4, 47 and 65, 1985.













