1980-1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL (NO. 2) 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Howard, M.P.)

14142/81—L Cat. No. 81 4288 0—Recommended retail price 55c

General Outline

The main purpose of this Bill is to give the force of law in Australia to a comprehensive double taxation agreement between Australia and Denmark which was signed in Canberra on 1 April 1981.

The Bill also specifies that interest and royalties derived from Denmark by residents of Australia, and in respect of which, under the agreement, Danish tax is limited to 10 per cent, will not, by reason of the payment of that limited tax, be exempt from Australian tax. Australia will instead allow credit for the limited Danish tax against the Australian tax on this income.

The agreement sets out the basis on which, and the extent to which, income derived in one country by residents of the other is to be taxed in each country and the basis on which relief from double taxation is to be effected where income may be taxed by both countries. The main features of the arrangements with Denmark are as follows :

- Business profits, if they are derived by a resident of one country from a branch or other "permanent establishment" in the other country, may be taxed in the latter country; otherwise they are to be taxed only in the country of residence.

- Dividends, interest and royalties may be subjected to tax in the country of source, but there is a general limit on the tax that that country may charge on such income flowing to residents of the other country. This limit is 15 per cent for dividends and 10 per cent for interest and royalties.

- Income from real property is taxable in full in the country in which the property is situated.

- Profits from international operations of ships and aircraft will be taxed only in the country of residence of the operator.

- Income from independent personal services will be taxed only in the country of residence of the recipient unless the income is attributable to a fixed base of the recipient in the other country.

- Income from dependent personal services, i.e., employees' remuneration, will generally be taxable in the country where the services are performed. However, where the services are performed during a short visit to one country by a resident of the other country, and the remuneration is not an

expense of a resident of, or a permanent establishment in, the country visited the income will be exempt in the country visited provided it is subject to tax in the country of residence of the recipient.

- Government officials are to be taxed by their home country.

- Directors' fees will generally be taxed in the country of residence of the paying company.

- Income derived by public entertainers from their activities as such are to be taxed by the country in which the activities take place.

- Pensions and annuities will generally be taxed only in the country of residence of the recipient.

- A student resident in one country who is temporarily present in the other country solely for the purpose of receiving an education will be exempt from tax in the country visited in respect of payments made from abroad for the purposes of his or her maintenance or education.

- Dual residents of both countries are, according to specified criteria, to be treated for the purposes of the agreement as being residents of only one country.

- Associated enterprises may be taxed on the basis of dealings at arm's length.

- Exchange of information and consultation between the taxation authorities of each country is authorised.

- Double taxation relief to be allowed by the country of residence in respect of income taxed in the other country will be :

    - in Australia, by allowance of credit against Australian tax for Danish tax on interest and royalties (if imposed in future), where that tax is subject to the 10 per cent limit expressed in the agreement, and for Danish tax on dividends received by individuals - dividends received by Australian companies from Denmark and all other categories of taxed income received by Australian residents from Denmark being freed from Australian tax by Australian tax law;

- in Denmark, generally, by allowance of credit against Danish tax for the Australian tax on dividends, interest and royalties and, while taking other income into account in determining the rate of Danish tax on taxable income, by exempting that other income from Danish tax.

Notes on the clauses of the Bill are given below and these are followed by explanations of the articles of the agreement.

Clause 1 : Short title, etc.

This clause formally provides for the short title of the amending Act and refers to the Income Tax (International Agreements) Act 1953 as the Principal Act.

Clause 2 : Commencement

Under section 5(1A) of the Acts Interpretation Act 1901, unless the contrary intention appears, every Act is to come into operation on the twenty-eighth day after the day on which it receives the Royal Assent. By this clause the amending Act will come into operation on the day on which it receives the Royal Assent, thus enabling early implementation of the agreement.

Clause 3 : Interpretation

Section 3 of the Principal Act contains a number of definitions for the more convenient interpretation of the Act. Clause 3 will insert in section 3(1) a definition referring to the comprehensive agreement with Denmark (which by clause 6 of the Bill is being incorporated as Schedule 18 to the Principal Act).

Clause 4 : Agreement with the Kingdom of Denmark

This clause proposes the insertion in the Principal Act of a new section, section 11H, which will give the force of law in Australia to the comprehensive double taxation agreement with Denmark. The agreement will be given the force of law with effect from the dates indicated in the agreement itself (see explanation of Article 27).

By proposed section 11H(1), the Danish agreement will, when the agreement enters into force, have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax that are derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force;
(b) in respect of other income, for any year of income commencing on or after 1 July in the calendar year immediately following that in which the agreement enters into force.

Sub-section (2) of proposed section 11H provides for the date on which the agreement enters into force to be notified in the Gazette as soon as practicable thereafter. The purpose of this is to provide a readily available and authoritative source from which persons may ascertain the fact and date of entry into force of the agreement. Because, under the terms of the agreement, the agreement will enter into force on the exchange of diplomatic notes advising that everything has been done to give the agreement the force of law in Australia and Denmark, it is not possible to indicate in this Bill the date of entry into force.

Sub-section (3) of proposed section 11H arises out of paragraph (7) of Article 10 of the agreement with Denmark. That paragraph is to the effect that an Australian resident individual who receives a dividend from a Danish resident company is to be entitled to the Danish tax credit (skattegodtgorelse) in respect of the dividend, on the same basis as a Danish resident individual. The paragraph also requires that any such tax credit to which an Australian resident individual may be entitled is to be treated as assessable income in Australia. Sub-section (3) will implement this broad rule.

By paragraph (a) of the proposed sub-section, the tax credit is to be included in the assessable income of the taxpayer of the year of income in which the dividend to which the tax credit relates is paid. By paragraph (b), that tax credit is to be added to the dividend. This treatment, which parallels the way in which the dividend and tax credit are aggregated for purposes of Danish tax, is necessary to ensure that credit for the Danish tax may properly be allowed against the Australia tax on the same income as that on which the Danish tax is based.

Clause 5 : Provisions relating to certain income derived from sources in certain countries

The primary purpose of this clause is to apply the credit method of relief of double taxation to interest and royalties that are derived by residents of Australia from Denmark and in respect of which, under the agreement, the Danish tax is subject to limit. Section 12 of the Principal Act, which is to be amended by this clause, already achieves a corresponding result for interest and royalties derived by residents of Australia from countries with which Australia has concluded comprehensive double taxation agreements which limit the foreign tax on such income.

Section 23(q) of the Income Tax Assessment Act 1936 confers relief from double taxation in the form of an exemption from Australian tax for foreign source income (other than dividends) of Australian residents that is taxed (not exempt from tax) in the country of source. Section 12 of the Principal Act gives effect to a policy that this exemption method of relief is not to apply to interest or royalties derived (either directly or through a trustee) from another country where the double taxation agreement with that country limits the tax it may charge. Once the exempting provision is, by section 12, made inapplicable, interest and royalties that are taxed in the other country become assessable income for the general purposes of the Income Tax Assessment Act, but the agreement in each case requires Australia to credit against its tax the limited tax of the other country. Sections 14 and 15 of the Principal Act govern the allowance of the credit.

Clause 5 will apply this policy to interest and royalties derived by Australian residents from Denmark as from the commencement of the first year of income to which the agreement is to apply. Article 23 is the relevant credit article in the agreement. However, as Denmark does not generally tax interest and royalties derived by residents of other countries, the "not exempt from tax" condition of section 23(q) of the Assessment Act is not met, and such income derived by Australian residents is, and will remain, fully taxable.

Paragraph (a) of clause 5 will effect a formal drafting amendment consequent upon the addition to section 12(1) of the Principal Act of new paragraph (an).

Paragraph (b) will insert new paragraph (an) in section 12(1) of the Principal Act. This section formally sets out classes of income to which the exemption under section 23(q) of the Income Tax Assessment Act is not to apply.

The new paragraph (an) will ensure that interest and royalties derived from Denmark by a resident of Australia, the Danish tax on which is expressly limited to 10 per cent of the gross amount of the relevant income, will not be exempt from Australian tax.

Paragraph (an) will have effect in relation to interest and royalties derived in income years commencing on or after 1 July in the calendar year immediately following that in which the agreement enters into force (i.e. the year after that in which notes are exchanged). As noted earlier, Denmark does not, at present, generally impose tax on

outgoing interest and royalty payments. However, should Danish tax be imposed on such income in the future, the agreement would apply to limit the Danish tax to 10 per cent and Australia would allow a credit against the Australian tax on the interest or royalties in respect of this amount of Danish tax.

Clause 6 : Schedule 18

This clause will add the agreement with Denmark as Schedule 18 to the Principal Act.

AGREEMENT WITH DENMARK

The agreement with Denmark is broadly along the lines of other comprehensive double taxation agreements recently concluded by Australia. The country of source is generally allocated the right to tax income arising there, sometimes at limited rates, while the country of residence is given the sole right to tax some other types of income. The relief from double taxation of classes of income taxable in both countries is assured by provisions in the agreement which require the country of residence of the recipient to give a credit against its own tax for the tax imposed in the country of origin, or comparable relief.

Article 1 - Personal Scope

The agreement will apply to persons (which term includes companies) who are residents of either Australia or Denmark.

The situation of persons who are residents of both countries (i.e., dual residents) is dealt with in Article 4.

Article 2 - Taxes Covered

This article specifies the existing taxes to which the agreement applies. These are, in broad terms, the Australian income tax and the Danish State and Municipal income taxes. The article will automatically extend the application of the agreement to any identical or substantially similar taxes which may subsequently be imposed by either country in addition to, or in place of, the existing taxes.

Article 3 - General Definitions

This article defines a number of the terms used in the agreement. Definitions of some other terms are contained in the articles to which they relate and terms not defined in the agreement are to have the meaning which they have under the taxation law of the country applying the agreement.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. By virtue of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities on its continental shelf. The definition also has relevance to Australian taxation of shipping and airline profits under Article 8 of the agreement.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the agreement. Residential status is one of the criteria for determining taxing rights, and the provision of relief, under the agreement. The concepts of when a person is a resident under Australian tax law, or liable to tax by reason of domicile, residence or similar criteria under Danish law, are taken as the basis. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the agreement where a taxpayer - whether an individual, a company or other entity - is regarded by the respective laws as a resident under both countries' domestic laws.

Article 5 - Permanent Establishment

Application of various provisions of the agreement (principally Article 7) is dependent upon whether a resident of one country has a "permanent establishment" in the other, and if so, whether income the person derives in the other country is attributable to the "permanent establishment". The definition of the term "permanent establishment" which this article embodies corresponds closely with definitions of the term in Australia's other double taxation agreements.

The primary meaning of the defined term is stated in paragraph (1) as being a fixed place of business through which the business of an enterprise is wholly or partly carried on. Other paragraphs of the article are concerned with giving examples of what constitutes a "permanent establishment" - such as an office, a factory or a mine - and defining the circumstances in which a resident of one country shall, or shall not, be deemed to have a "permanent establishment" in the other country.

Article 6 - Income from Real Property

By this article, income from real property, including royalties and other payments in respect of the operation of mines or quarries or the exploitation of any natural resource may be taxed in the country in which the property is situated. Income from a lease of land and income from any other direct interest in or over land are, in accordance with paragraph (2), to be regarded as income from real property situated where the land to which the lease or other interest relates is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (7) of that article) and is therefore taxable in the country of source regardless of whether or not the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

This article is concerned with the taxation of business profits derived by a resident of one country from sources in the other country.

The taxing of these profits depends on whether they are attributable to a "permanent establishment" of the taxpayer in that other country. If they are not, the profits will be taxed only in the country of residence of the taxpayer. If, however, a resident of one country carries on business through a "permanent establishment" (as defined in Article 5) in the other country, the country in which the "permanent establishment" is situated may tax profits attributable to the establishment.

Paragraph (2) of the article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing.

Paragraph (4) provides that where it has been customary to calculate profits of a permanent establishment on the basis of an apportionment of the total profits of the enterprise (this method is used in Denmark in a limited number of cases) the arm's length rules in Article 7 are not to preclude the continued application of that apportionment basis, if the result accords with arm's length principles.

Paragraph (6) of the article allows the application of provisions of the source country's domestic law (e.g. the Australian section 136) where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing, while paragraph (8) empowers each country to continue to apply special provisions in its domestic law relating to the taxation of income from general insurance.

Article 8 - Shipping and Air Transport

Under this article the right to tax profits from the operation of ships or aircraft in international traffic, including profits received through participation in a pool service, in a joint transport operating organization or in an international operating agency, is reserved to the country of residence of the operator.

Any profits derived by a resident of one country from internal traffic in the other country may be taxed in that other country. By reason of the definition of "Australia" in Article 3 and the terms of paragraph (4) of Article 8, any shipments by air or sea from a place in Australia to another place in Australia, its continental shelf or external territories are to be treated as forming part of internal traffic.

Article 9 - Associated Enterprises

This article authorises the re-allocation (on an arm's length basis) of profits between inter-connected enterprises in Australia and Denmark where the commercial or financial arrangements between the enterprises differ from those that might be expected to operate between independent enterprises dealing at arm's length with one another.

Where a re-allocation of profits is effected under paragraph (1), so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (3) requires the other country concerned to make an appropriate adjustment in these circumstances with a view to relieving any such double taxation.

Article 10 - Dividends

This article in general limits to 15 per cent of the gross amount of dividends, the tax that the country of source may impose on dividends payable to beneficial owners resident in the other country. Under this article, Australia and Denmark will reduce the rate of withholding tax on dividends paid to residents of the other country from 30 per cent to 15 per cent.

Paragraph (4) declares that the 15 per cent limitation on the source country's tax will not apply to dividends derived by a resident of the other country who has a "permanent establishment" or "fixed base" in the country from which the dividends are derived, if the holding giving rise to the dividends is effectively connected with that "permanent establishment" or "fixed base". In those cases the dividends will be taxed in accordance with the relevant articles, Article 7 or Article 14.

Paragraph (5) is a provision which ensures, broadly, that one country will not tax dividends paid by a company resident solely in the other country unless the person deriving the dividend is a resident of the first country or the holding giving rise to the dividends is effectively connected with a "permanent establishment" or "fixed base" in that country.

Paragraph (6) preserves the right of Australia to impose the "branch profits" tax provided for in its domestic law.

Paragraph (7) grants to Australian individual shareholders in Danish companies certain benefits of the Danish system of taxing company profits which normally accrue only to Danish resident shareholders. Within Denmark, the broad position with respect to individual shareholders is that part of the tax paid by a Danish company is allowed as a credit ("skattegodtgorelse") against the tax that a Danish shareholder receiving dividends from the company is liable to pay. By paragraph (7), Australian individual shareholders in Danish companies will be entitled to a similar credit. The amount of the credit, less Danish tax at the rate of 15 per cent as specified in sub-paragraph (a), will be paid to the shareholders concerned by the Danish Government. By sub-paragraph (b), together with sub-section (3) of Section 11H, which will be inserted in the Principal Act by clause 4 of the Bill, the amount of the credit will be included in assessable income in Australia - the credit will be added to the dividend to which it relates, and the total of those two amounts will be treated as a dividend. The Australian shareholder will be required to include this amount in his or her assessable income of the year in which the dividend is paid and will be entitled, under the provisions of the agreement and the Principal Act to a credit in respect of Danish tax of 15 per cent of the sum of the dividend and the credit.

Article 11 - Interest

By paragraph (2) of this article the tax which the country of source may impose on interest payable to a resident of the other country is generally limited to 10 per cent of the gross amount of the interest. As the rate of the Australian withholding tax on interest paid to non-residents is 10 per cent, the agreement will not change the amount of Australian tax on interest flowing to residents of Denmark. Denmark does not impose tax on interest paid to non-residents unless, broadly, it is derived through a "permanent establishment" in Denmark. The 10 per cent limitation, therefore, does not have any practical application as regards Danish tax on interest paid to non-residents.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (4) of Article 11 requires that the 10 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (6)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons not so related.

Article 12 - Royalties

The purpose of this article is to place a limit of 10 per cent of the amount of the gross royalties on the tax Australia and Denmark may charge on royalties derived by a resident of the other country. The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed. In the absence of the 10 per cent limitation Australia generally taxes such royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax. Denmark does not impose tax on royalties paid to non-residents unless, broadly, the income is derived through a "permanent establishment" in Denmark.

As in the case of dividends and interest, it is specified in paragraph (4) that the 10 per cent limitation of tax in the country of origin is not to apply to royalties effectively connected with a "permanent establishment" or "fixed base" in that country.

By paragraph (6), if royalties flow between related persons, the 10 per cent limitation will apply only to the extent that the royalties are not excessive.

Article 13 - Alienation of Property

Under this article, income from the alienation of real property may be taxed in the country in which that property is situated. Real property is defined for the purposes of the article as including a lease of land or other direct interest in or over land and rights to exploit, or to explore for, natural resources. 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 countries, or of rights to exploit or explore for natural resources in one of the countries, are also for these purposes deemed to be real property.

By paragraph (3), income from the alienation of capital assets of an enterprise or resident of one country will be taxable only in that country. However, where those assets form part of the business assets of a "permanent establishment" or "fixed base" in the other country the income may be taxed in that other country.

Article 14 - Independent Personal Services

At present, an individual resident in Australia or in Denmark may be taxed in the other country on income derived from the performance in that other country of professional services or other similar independent activities. By this article, such income will continue to be subject to tax in the country in which the services are performed if the recipient has a "fixed base" regularly available in that country for the purposes of performing his or her activities, and the income is attributable to activities exercised from that base. If the tests mentioned are not met the income will be taxed only in the country of residence. Remuneration derived as an employee and income derived by public entertainers are the subject of other articles of the agreement and will not be covered by this article.

Article 15 - Dependent Personal Services

This article sets out the basis for taxing remuneration derived by visiting employees. A resident of one country will generally be taxed in the other country on salaries, wages, etc., from an employment where the services are rendered during a visit to the other country but, subject to specified conditions, there is a conventional exemption from this rule for short-term visitors which, where it applies, provides an exemption from the tax of the country being visited. The conditions for exemption are, in broad

terms, that the visit not exceed 183 days in the year of income, that the remuneration not be an expense of a resident of or "permanent establishment" in the country visited, and that the remuneration will be taxed in the country of residence.

Paragraph (3) will mean that income from an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the country in which the place of effective management of the enterprise operating the ship or aircraft is situated.

Article 16 - Directors' Fees

This article relates to remuneration received by a resident of one country in the capacity of a director of a company which is a resident of the other country. The remuneration is to be taxed in the country of residence of the company.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, no matter how short their visit to that country.

The article also contains safeguards against attempts by entertainers to circumvent its general purpose by, e.g., having fees paid to a separate enterprise which the entertainer controls, and which formally provides his or her services. In such a case, the profits of the enterprise from the provision of the services of the entertainer may be taxed in the country in which the entertainer performs, whether or not that enterprise has a "permanent establishment" in that country.

Article 18 - Pensions and Annuities

Under this article pensions and annuities are, with one exception, to be taxed only by the country of residence of the recipient.

Paragraph (3) provides that any pension paid by the government (including State and local government) of one country in respect of services rendered to that government, or under the social security system of that country, may be taxed in that country. However, this provision is only to apply if the recipient of the pension is a citizen of that country.

Article 19 - Government Service

This article provides for a reciprocal exemption from tax by each country in respect of remuneration of government employees of the other country. The article is subject to the provisos that the exemption conferred by the article will not apply where the services are rendered in connection with a trade or business carried on by the government, or where, in broad terms, the employee is a citizen of, or ordinarily resides in, the country where he performs his governmental duties for the other country.

Article 20 - Students

This article applies to students temporarily present in a country solely for the purpose of their education who are, or immediately before the visit were, resident in the other country. In these circumstances, a student will be exempt from the tax of the country visited in respect of payments made from abroad for the purposes of his or her maintenance or education.

Article 21 - Income not Expressly Mentioned

This article provides rules for the allocation between the two countries of taxing rights in relation to items of income not expressly mentioned in the preceding articles of the agreement.

Broadly, such income derived by a resident of one country is to be taxed only in his country of residence unless it is derived from sources in the other country, in which case the income may also be taxed in the country of source.

However, the first mentioned exclusive taxing right of the country of residence does not apply where the income is effectively connected with a "permanent establishment" or "fixed base" which a resident of one country has in the other. In such cases the provisions of Article 7 or Article 14 apply.

Article 22 - Source of Income

Article 22 specifies the source of various classes of income for the purpose of ensuring that Australia is empowered to exercise the taxing rights assigned to it by the agreement over residents of Denmark and that, as the agreement intends, Australia will give double taxation relief in respect of tax levied by Denmark pursuant to equivalent rights assigned to it. The article eliminates any question

of income not having, by domestic law rules, a source in the country that is, by the agreement, entitled to tax that income in the hands of a resident of the other country. The article does not apply for purposes of Danish tax, for the reason that Danish domestic law has much the same effect in relation to Danish tax as this article will have in relation to Australian tax.

Article 23 - Methods of Elimination of Double Taxation

This article provides for the formal relief of double taxation where income that is derived by a resident of one country from sources in the other country would otherwise be taxed in both countries.

Some income flowing between the two countries may be taxed only in one country, in which case there is no need to give further relief. Other income may be taxed in the country of source and if the country of residence would, but for this article, also tax, the article requires the country of residence to relieve the ensuing double taxation.

Paragraph (1) of the article requires Australia to allow against its own tax a credit for Danish tax on income derived by a resident of Australia from sources in Denmark. Australia will allow credit for the Danish tax on dividends derived by individuals from Denmark and on interest and royalties (if Danish tax is imposed) derived by individuals and companies from Denmark in respect of which the tax of that country is limited by the agreement to 10 per cent. Section 46 of the Income Tax Assessment Act continues to free from Australian tax dividends derived from Denmark by Australian resident companies.

Other income of Australian residents that is taxed in Denmark will continue to qualify for exemption from Australian tax under section 23(q) of the Assessment Act. In these latter cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part, Denmark will include in assessable income, certain types of income which may be taxed in Australia (broadly, dividends, interest or royalties), and allow its residents a credit for the Australian tax paid up to but not exceeding the Danish tax on the income. Income derived by a Danish resident from Australia, which under the agreement is to be taxed only in Australia, will be exempt from Danish tax but may be taken into account in determining the amount of tax on the remaining income of the Danish resident. This is commonly known as the "exemption with progression" method of relief.

The Danish domestic income tax law contains provisions broadly similar to those contained in section 46 of the Income Tax Assessment Act. In the Danish situation a Danish company may be entitled to relief broadly equivalent to the Danish tax on dividends received from a non-resident company where the Danish recipient company holds at least 25 per cent of the paid-up share capital of the non-resident company from which the dividends are received. Paragraph (3) provides that if either country should alter its domestic law provision relating to intercorporate dividends, the country concerned is to notify the other of the change and enter into negotiations to establish new provisions in this regard.

Article 24 - Mutual Agreement Procedure

One of the purposes of this article is to provide for the taxation authorities of the two countries to consult with a view to reaching a satisfactory solution where a taxpayer is able to demonstrate actual or potential subjection to taxation, contrary to the provisions of the agreement. A taxpayer wishing to use this procedure must present a case within three years of the first notification of the action giving rise to the taxation not in accordance with the agreement. Any solution so reached may be made notwithstanding any time limits imposed by domestic tax laws of the relevant country.

The other main object of the article is to authorise consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the agreement and to give effect to it.

Article 25 - Exchange of Information

This article authorises the exchange of information between the taxing authorities of each country, where this is necessary for the carrying out of the agreement or of domestic laws concerning the taxes to which the agreement applies. The restrictions which it contains in relation to the purposes for which this information may be used and the persons to whom it may be disclosed are along the lines of Australia's other double taxation agreements.

The article does not permit the exchange of information that would disclose any trade, business, industrial or professional secret or trade process or which would be contrary to public policy.

Article 26 - Diplomatic and Consular Officials

This article ensures that members of diplomatic and consular posts will, under the provisions of the agreement, receive no less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, fiscal privileges are conferred on such persons by the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 27 - Entry into Force

This article provides for the entry into force of the agreement. This will be on the date on which notes are exchanged through the diplomatic channel notifying that the last of all such things has been done in Australia and Denmark as is necessary to give the agreement the force of law in both countries.

Once it enters into force the agreement will, in general, have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force. It will have effect in Australia, in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July in the calendar year immediately following that in which the agreement enters into force. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July in the year in which the agreement first has effect, will be the date from which the agreement will take effect. In Denmark, the agreement will have effect in respect of income derived on or after 1 January in the calendar year immediately following that in which the agreement enters into force.

Article 28 - Termination

This article declares that the agreement is to continue in effect indefinitely but that either country may give written notice of termination on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force. In that event, the agreement would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 January in the calendar year immediately following that in which the notice of termination is given. It would cease to be effective, in Australia, for tax other than

withholding 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. It would cease to be effective in Denmark in respect of income derived on or after 1 January in the calendar year next following that in which the notice of termination is given.

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