Income Tax (International Agreements) Act 1973

No. 11 of 1973

AN ACT

To amend the *Income Tax (International Agreements) Act* 1953-1972.

[*Assented to 31 March 1973*]

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

Short title and citation.

1. (1) This Act may be cited as the *Income Tax (International Agreements) Act* 1973.

(2) The *Income Tax (International Agreements) Act* 1953–1972* is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Income Tax (International Agreements) Act* 1953–1973.

Commencement.

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

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* Act No. 82, 1953, as amended by 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; and No. 48, 1972.

Interpretation.

3. Section 3 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of " agreement " and substituting the following definition:—

" ' agreement ' means—

(a) a convention or agreement a copy of which is set out in a Schedule to this Act;

(b) the previous United Kingdom agreement; or

(c) the previous New Zealand agreement;";

(b) by omitting from sub-section (1) the definition of " the Assessment Act " and substituting the following definition:—

" ' the Assessment Act ' means the *Income Tax Assessment Act* 1936-1972;";

(c) by inserting in sub-section (1), after the definition of " the French agreement ", the following definition:—

" ' the Italian agreement ' means the Agreement between the Government of Australia and the Government of Italy for the avoidance of double taxation of income derived from international air transport, being the agreement a copy of which in the English language is set out in the Eighth Schedule;"; and

(d) by omitting from sub-section (1) the definition of " the New Zealand agreement " and substituting the following definitions:—

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

' the previous New Zealand agreement ' means the Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income that was signed at Canberra on 12th May, 1960;".

4. (1) Section 6B of the Principal Act is repealed and the following section substituted:—

Agreement with New Zealand.

" 6B. (1) Subject to this Act, the provisions of the New Zealand agreement, so far as those provisions affect Australian tax, have, and shall be deemed to have had, the force of law—

(a) in relation to withholding tax—in respect of dividends or interest derived on or after 1st July, 1972, and in relation to which the agreement remains effective; and

(b) in relation to tax other than withholding tax—in respect of income of the year of income that commenced on 1st July, 1972, or of a subsequent year of income in relation to which the agreement remains effective.

" (2) Subject to this Act, the provisions of sub-paragraph (b) of paragraph (3) of Article 18 of the New Zealand agreement have, and shall be deemed to have had, the force of law for the purposes of paragraph (q) of section 23 of the Assessment Act in relation to income of the year of income that ended on 30th June, 1972, and of the three years of income immediately preceding that year of income.

" (3) The provisions of the previous New Zealand agreement, so far as those provisions affect Australian tax, continue to have the force of law in relation to tax in respect of income in relation to which the agreement remains effective.".

(2) The Commissioner may amend an assessment for the purpose of giving effect to sub-section 6B (1) or (2) of the Principal Act as amended by this Act.

5. After section 9 of the Principal Act the following section is inserted:—

Agreement with Italy.

" 10. (1) Subject to this Act, on and after the date of entry into force of the Italian agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have, and shall be deemed to have had, the force of law in relation to tax in respect of income of the year of income that commenced on 1st July, 1966, or of a subsequent year of income in relation to which the agreement remains effective.

" (2) As soon as practicable after instruments of ratification have been exchanged in accordance with Article 4 of the Italian agreement, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date of the exchange of instruments of ratification, and the date so notified shall, for the purposes of this Act, be conclusively presumed to be the date of entry into force of the agreement. ".

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

Provisions relating to certain income derived from sources in the United Kingdom, Singapore, Japan and New Zealand.

(a) by omitting from paragraph (ab) of sub-section (1) the word " or " (last occurring); and

(b) by inserting after paragraph (ab) of sub-section (1) the following paragraph:—

" (ac) income being interest or royalties to which paragraph (1) of Article 9 or paragraph (1) of Article 10 of the New Zealand agreement applies, where the income is derived, in the year of income that commenced on 1st July, 1972, or a subsequent year of income, from sources in New Zealand; or ".

(2) Where there was derived by a taxpayer, on or before 16th November, 1972, income to which paragraph 12 (1) (ac) of the Principal Act as amended by this Act applies, there shall be no increase, by virtue of that application, in the Australian tax payable by the taxpayer in relation to the year of income unless there is a decrease, by virtue of the New Zealand agreement, in the tax payable in New Zealand in respect of that income and, in that case, the amount of that increase shall not exceed the amount of that decrease expressed in Australian currency.

(3) The Commissioner may amend an assessment for the purpose of giving effect to paragraph 12 (1) (ac) of the Principal Act as amended by this Act.

Fourth Schedule.

7. The Fourth Schedule to the Principal Act is repealed and the Schedule set out in Schedule 1 substituted.

Eighth Schedule.

8. The Principal Act is amended by adding at the end thereof the Schedule set out in Schedule 2.

SCHEDULE 1

Section 7

SCHEDULE TO BE INSERTED IN THE PRINCIPAL ACT

FOURTH SCHEDULE

Section 3

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

The Government of the Commonwealth of Australia and the Government of New Zealand,

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

(1) The taxes which are the subject of this Agreement are:

(a) in Australia:

the Commonwealth income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in New Zealand:

the income tax and the excess retention tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting State or which are imposed by the Government of any Territory to which this Agreement is extended under Article 21.

(3) For the purposes of paragraph (1) (b) of this Article the income tax does not include the bonus issue tax.

ARTICLE 2

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

(a) the term ' the Commonwealth ' means the Commonwealth of Australia;

(b) the term 'Australia' means the Commonwealth and, when used in a geographical sense, means the whole of the Commonwealth and includes—

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Coral Sea Islands Territory; and

(vi) any area outside the territorial limits of the Commonwealth and the said Territories in respect of which there is for the time being in force a law of the Commonwealth or of a State or part of the Commonwealth or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf, not including an area referred to in such a law as being adjacent to the Territory of Papua or the Trust Territory of New Guinea;

(c) the term 'New Zealand', when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or the Tokelau Islands; it also includes the continental shelf of the metropolitan territory of New Zealand (including the outlying islands) as defined by a law of New Zealand for the time being in force dealing with the exploration of the seabed and subsoil of the continental shelf and the exploitation of the natural resources thereof;

SCHEDULE 1—*continued*

(d) the terms ' Contracting State ', ' one of the Contracting States ', and ' other Contracting State ' mean Australia or New Zealand, as the context requires;

(e) the term ' person ' includes any body of persons, corporate or not corporate;

(f) the term 'Australian tax ' means tax imposed by the Commonwealth being tax to which this Agreement applies by virtue of Article 1; the term ' New Zealand tax ' means tax imposed by New Zealand being tax to which this Agreement applies by virtue of Article 1;

(g) the term ' tax ' means Australian tax or New Zealand tax, as the context requires;

(h) the term ' competent authority ' means, in the case of Australia, the Commissioner of Taxation or his authorised representative and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative; and, in the case of any Territory to which this Agreement is extended under Article 21, the competent authority for the administration in such Territory of the taxes to which this Agreement applies;

(i) the term ' natural resource royalties ' means payments of any kind to the extent to which they are made as consideration for the use of, or the right to use, any mine or quarry, or as consideration for the extraction, removal or other exploitation of, or the right to extract, remove or otherwise exploit, standing timber or any natural resource;

(j) the term ' industrial or commercial profits ' means profits derived by an enterprise of a Contracting State from the conduct of a trade or business, but does not include—

(i) dividends, interest, royalties (as defined in Article 10) or natural resource royalties;

(ii) income from the sale or other disposition of land situated in the other Contracting State or of any estate or interest in land so situated, or from the sale or other disposition, of any share in a company the assets of which consist wholly or principally of any such land or any such estate or interest;

(iii) income from the grant or renewal, or from the sale or other disposition, of any right relating to the operation of any mine or quarry situated in the other Contracting State or to the extraction, removal or other exploitation of any standing timber or of any natural resource so situated, or from the sale or other disposition of any share in a company the assets of which consist wholly or principally of any such right; in this sub-paragraph (j) (iii), the term ' right ' means any right, licence, permit, authority, title, option, privilege or other concession and includes a share or interest in any right, licence, permit, authority, title, option, privilege or other concession;

(iv) rent;

(v) profits from operating ships or aircraft; or

(vi) remuneration for personal (including professional) services;

(k) the terms ' enterprise of a Contracting State ' and ' enterprise of the other Contracting State ' mean an enterprise carried on by an Australian resident or an enterprise carried on by a New Zealand resident, as the context requires;

(l) words in the singular include the plural and words in the plural include the singular.

(2) In determining, for the purposes of Article 8, 9 or 10, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

(3) In this Agreement, the terms ' Australian tax ' and ' New Zealand tax ' do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 1.

(4) In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies by virtue of Article 1.

SCHEDULE 1—*continued*

ARTICLE 3

(1) For the purposes of this Agreement—

(a) the term 'New Zealand resident' means a person who is resident in New Zealand for the purposes of New Zealand tax;

(b) the term 'Australian resident' means a person who is a resident of Australia for the purposes of Australian tax but, in relation to income from sources in New Zealand, a person who is subject to Australian tax on income which is from sources in Australia is to be treated as an Australian resident only where the income from sources in New Zealand is, or but for the fact that it is not exempt from New Zealand tax would be, subject to Australian tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is both a New Zealand resident and an Australian resident then his status shall, for the purposes of this Agreement, be determined as follows—

(a) he shall be treated solely as a New Zealand resident if he has a permanent home available to him in New Zealand and does not have a permanent home available to him in Australia and solely as an Australian resident if he has a permanent home available to him in Australia and does not have a permanent home available to him in New Zealand; and

(b) failing a resolution of the matter under sub-paragraph (a) of this paragraph, he shall be treated solely as a New Zealand resident if he has an habitual abode in New Zealand and does not have an habitual abode in Australia and solely as an Australian resident if he has an habitual abode in Australia and does not have an habitual abode in New Zealand; and

(c) failing a resolution of the matter under sub-paragraph (b) of this paragraph, he shall be treated solely as a New Zealand resident if the Contracting State with which his personal and economic relations are the closer is New Zealand and solely as an Australian resident if the Contracting State with which his personal and economic relations are the closer is Australia.

(3) For the purposes of the last preceding paragraph, an individual's citizenship of a Contracting State shall be a factor in determining the degree of his personal and economic relations with that Contracting State.

(4) Where, by reason of the provisions of paragraph (1) of this Article, a person other than an individual is both a New Zealand resident and an Australian resident then its status shall, for the purposes of this Agreement, be determined as follows—

(a) it shall be treated solely as a New Zealand resident if the centre of its administrative or practical management is situated in New Zealand and solely as an Australian resident if the centre of its administrative or practical management is situated in Australia, whether or not any person outside New Zealand or Australia, as the case may be, exercises or is capable of exercising any over-riding control of it or of its policy or affairs in any way whatsoever; and

(b) failing a resolution of the matter under sub-paragraph (a) of this paragraph, it shall be treated solely as a New Zealand resident if it is established by or under the laws of New Zealand and solely as an Australian resident if it is established by or under a law in force in Australia.

(5) A person who under the foregoing provisions of this Article is neither solely a New Zealand resident nor solely an Australian resident shall, for the purposes of this Agreement, be treated as neither a New Zealand resident nor an Australian resident.

(6) For the purposes of this Agreement the terms 'resident of a Contracting State' and 'resident of the other Contracting State' mean a person who is a New Zealand resident or a person who is an Australian resident, as the context requires.

ARTICLE 4

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

SCHEDULE 1—*continued*

(2) The term ' permanent establishment ' includes—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property; and

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

(3) The term ' permanent establishment ' shall not be deemed to include—

(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 fixed place of trade or business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or

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

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—

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

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

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (7) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(6) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—

(a) on behalf of, or for, or at or to the order of, that enterprise, another enterprise—

(i) manufactures, assembles, processes, packs or distributes in that other Contracting State any goods or merchandise;

(ii) performs, in that other Contracting State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs any operations for the extraction, removal or other exploitation of standing timber or of any natural resource; or

(iii) breeds, manages, agists or raises in that other Contracting State any livestock; and

(b) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise, or the same persons participate directly or indirectly in the management, control or capital of both enterprises.

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

SCHEDULE 1—*continued*

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

ARTICLE 5

(1) Industrial or commercial profits of an enterprise of a Contracting State shall be subject to tax only in that Contracting State unless the enterprise carries on trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on trade or business as aforesaid, tax may be imposed by that other Contracting State on the whole of the industrial or commercial profits of the enterprise from sources within that other Contracting State whether or not those profits are attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.

(3) In determining the industrial or commercial profits attributable to a permanent establishment in a Contracting State, there shall be allowed as deductions all expenses of the enterprise, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) If the information available to the competent authority of the Contracting State concerned is inadequate to determine the industrial or commercial profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of that Contracting State in relation to the liability of the enterprise to pay tax in respect of the permanent establishment on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

(5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Agreement relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this sub-paragraph as may be appropriate.

ARTICLE 6

(1) Where—

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

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

and in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any 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.

SCHEDULE 1—*continued*

(2) Profits included in the profits of an enterprise of a Contracting State under paragraph (1) of this Article shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

(3) If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

ARTICLE 7

(1) A resident of a Contracting State shall, subject to paragraphs (2), (3) and (4) of Article 5 and to Article 6, be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than operations confined solely to places in that other Contracting State.

(2) The relief provided in paragraph (1) of this Article shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency but only to the extent to which the share of the profits is not attributable to profits from voyages, flights or operations confined solely to places in the other Contracting State.

(3) For the purposes of this Article and Article 18, profits derived from the carriage of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that Contracting State shall be treated as profits from the operation of a ship or aircraft confined solely to places in that Contracting State. For the purposes of this paragraph the carriage of passengers, livestock, mails, goods or merchandise—

(a) from a place in Australia to a place in the Territory of Papua or the Trust Territory of New Guinea shall be treated as carriage between places in Australia;

(b) from a place in New Zealand to a place in the Cook Islands, Niue or the Tokelau Islands shall be treated as carriage between places in New Zealand.

ARTICLE 8

(1) The Australian tax on dividends, being dividends paid by a company which is a resident of Australia for the purposes of Australian tax, derived and beneficially owned by a New Zealand resident, shall not exceed 15 per centum of the gross amount of the dividends.

(2) The New Zealand tax on dividends, being dividends paid by a company which is resident in New Zealand for the purposes of New Zealand tax, derived and beneficially owned by an Australian resident, shall not exceed 15 per centum of the gross amount of the dividends.

(3) Paragraphs (1) and (2) of this Article shall not apply if the person who is the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with that permanent establishment.

(4) Dividends paid by a company which is a resident of a Contracting State, being dividends which are derived and beneficially owned by a person who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting 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 resident in New Zealand for the purposes of New Zealand tax.

ARTICLE 9

(1) The tax of a Contracting State on interest derived and beneficially owned by a resident of the other Contracting State shall not exceed 10 per centum of the gross amount of the interest.

SCHEDULE 1—*continued*

(2) Paragraph (1) of this Article shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with that permanent establishment.

(3) Paragraph (1) of this Article shall not apply where the person paying the interest and the person who is the beneficial owner of the interest are associated with each other. For the purposes of this paragraph a person is associated with another person if either person controls directly or indirectly the other or if the same persons control directly or indirectly both. For this purpose the term ' control ' includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(4) Where the application of paragraph (1) of this Article to any interest is not excluded by virtue of the foregoing provisions of this Article but owing to a special relationship between the person paying the interest and the person who is the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, paragraph (1) of this Article shall apply only to the last-mentioned amount.

(5) In the application of this Article by a Contracting State, the term ' interest ' as used in this Article shall not include any income which, for purposes of the imposition of tax on the income by that Contracting State, is treated as a dividend under the law of that Contracting State.

ARTICLE 10

(1) The tax of a Contracting State on royalties derived and beneficially owned by a resident of the other Contracting State shall not exceed 15 per centum of the gross amount of the royalties.

(2) The term ' royalties ' in this Article means payments of any kind to the extent to which they are paid as consideration for—

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

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

(ii) industrial, commercial or scientific equipment;

(iii) motion picture films; or

(iv) films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting;

(b) the supply of—

(i) scientific, technical, industrial or commercial knowledge or information; or

(ii) any assistance which is given as a means of enabling the application or enjoyment of such knowledge or information; or

(c) the supply by a resident of a Contracting State of management services in the other Contracting State,

but does not include natural resource royalties.

(3) Paragraph (1) of this Article shall not apply if the person who is the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the knowledge, information, assistance, right or property giving rise to the royalties is effectively connected with that permanent establishment.

(4) Where the application of paragraph (1) of this Article to any royalties is not excluded by virtue of paragraph (3) of this Article but owing to a special relationship between the person paying the royalties and the person who is the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, paragraph (1) of this Article shall apply only to the last-mentioned amount.

SCHEDULE 1—*continued*

ARTICLE 11

(1) Subject to Articles 13, 14 and 15, remuneration derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services shall be subject to tax only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof shall be deemed to have a source in, and may be subjected to tax in, that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of personal (including professional) services performed in the other Contracting State shall be exempt from tax in that other Contracting State if—

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

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

(c) the remuneration is not deductible in determining taxable income of a permanent establishment which that person has in that other Contracting State; and

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

(3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be subjected to tax in that Contracting State.

ARTICLE 12

(1) Notwithstanding anything contained in Article 11, income derived by public entertainers (such as theatrical, motion picture, radio or television artists, musicians, and athletes) from their personal activities as such shall be deemed to have a source in, and may be subjected to tax in, the Contracting State in which these activities are exercised.

(2) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if it provides the services of a public entertainer referred to in paragraph (1) of this Article in that other Contracting State.

ARTICLE 13

(1) A pension or an annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State.

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

ARTICLE 14

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth or of any State of the Commonwealth to any individual for services rendered to the Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand for the purposes of New Zealand tax or is resident in New Zealand for the purposes of New Zealand tax solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of New Zealand to an individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia for the purposes of Australian tax or is a resident of Australia for the purposes of Australian tax solely for the purpose of rendering those services.

(3) Paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by a Government referred to in those paragraphs.

SCHEDULE 1—*continued*

ARTICLE 15

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

ARTICLE 16

A student who is a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education shall not be subjected to tax in that other Contracting State on payments which he receives for the purpose of his maintenance or education, provided that such payments are made to him from sources outside that other Contracting State.

ARTICLE 17

(1) This Article shall apply to a person who is a resident of Australia for the purposes of Australian tax and is also resident in New Zealand for the purposes of New Zealand tax.

(2) Where such a person is treated for the purposes of this Agreement solely as a resident of a Contracting State he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Agreement, is derived, or is deemed to be derived, from sources in that other Contracting State.

ARTICLE 18

(1) Subject to any provisions of the law of the Commonwealth which may from time to time be in force and 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), New Zealand tax paid under the law of New Zealand and consistently with this Agreement, whether directly or by deduction, in respect of income derived by an Australian resident from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

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

(3) For the purposes of this Article—

(a) (i) New Zealand tax borne by an Australian resident in respect of dividends paid by a company which is resident in New Zealand for the purposes of New Zealand tax shall be treated as tax in respect of income from sources in New Zealand;

(ii) Australian tax borne by a New Zealand resident in respect of dividends paid by a company which is a resident of Australia for the purposes of Australian tax shall be treated as tax in respect of income from sources in Australia;

(b) interest, royalties (as defined in Article 10) and natural resource royalties which are derived by a resident of a Contracting State and which under the law of the oth Contracting State—

(i) are derived from sources in that other Contracting State; or

(ii) being derived by a non-resident are subject to withholding tax,

shall be treated in the first-mentioned Contracting State as having a source in that other Contracting State;

(c) remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State shall be treated as having a source in that Contracting State;

SCHEDULE 1—*continued*

(d) profits derived by a resident of a Contracting State from the operation of ships or aircraft, being profits from operations confined solely to places in the other Contracting State, shall be treated as having a source in that other Contracting State;

(e) an amount which, for the purposes of tax in a Contracting State, is included in the taxable income of a person who is a resident of the other Contracting State, and which is so included under any provision of the law of the first-mentioned Contracting State for the time being in force relating to the taxation of any income from the business of any form of insurance shall be treated as having a source in that first-mentioned Contracting State;

(f) income referred to in paragraph (ii), (iii) or (iv) of the definition of ' industrial or commercial profits ' in sub-paragraph (j) of paragraph (1) of Article 2 shall be treated as having a source in the Contracting State in which the land, mine, quarry, standing timber, natural resource or rent-producing property is situated.

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

(5) Sub-paragraph (b) of paragraph (3) of this Article shall have effect for the purposes of any law of a Contracting State under which income of its residents from sources outside the Contracting State is exempt from tax if the income is not exempt from tax in the country where it is derived.

ARTICLE 19

(1) Where a taxpayer considers that the action of the competent authority in a Contracting State has resulted, or is likely to result, in double taxation contrary to the provisions of this Agreement, he shall be entitled to present the facts to the competent authority in the Contracting State of which he is a resident and, should the taxpayer's claim be deemed worthy of consideration, the competent authority in that Contracting State shall endeavour to come to an agreement with the competent authority in the other Contracting State with a view to the avoidance of the double taxation in question.

(2) The competent authority in a Contracting State may communicate directly with the competent authority in the other Contracting State for the purpose of giving effect to the provisions of this Agreement and in an endeavour to assure its consistent interpretation and application.

ARTICLE 20

(1) The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of Article 1.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue of Article 1, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

(4) A competent authority shall not be obliged by this Article to disclose to the other competent authority any information which does not relate directly to the affairs of a taxpayer with whom the other competent authority is concerned.

SCHEDULE 1—*continued*

ARTICLE 21

(1) This Agreement may be extended, either in its entirety or with modifications, to any Territory for whose international relations either Contracting State is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Agreement and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in Notes to be exchanged through diplomatic channels for this purpose.

(2) The termination in respect of the Commonwealth or New Zealand of this Agreement under Article 23 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Agreement to any Territory to which it has been extended under this Article.

ARTICLE 22

(1) This Agreement shall come into force on the date on which the last of all such things shall have been done in Australia and New Zealand as are necessary to give the Agreement the force of law in Australia and New Zealand so far as its provisions affect Australian tax and New Zealand tax respectively and, subject to paragraph (2) of this Article, shall thereupon have effect—

(a) in Australia—

(i) in relation to withholding tax, in respect of income derived on or after 1 July 1972;

(ii) in relation to other Australian tax, in respect of income derived during any year of income beginning on or after 1 July 1972;

(b) in New Zealand—

in relation to New Zealand tax in respect of income derived during any income year beginning on or after 1 April 1972.

(2) Upon this Agreement coming into force in accordance with paragraph (1) of this Article, sub-paragraph (b) of paragraph (3) of Article 18 shall have effect, for the purposes of the law of a Contracting State relating to relief allowable to its residents (being relief in respect of income on which tax is paid in the other Contracting State), in relation to income derived during the four income years or years of income, as the case may be, of the first-mentioned Contracting State immediately preceding the first income year or year of income of that first-mentioned Contracting State in respect of which this Agreement has effect by virtue of paragraph (1) of this Article.

(3) Subject to paragraph (4) of this Article, the Agreement between the Government of the Commonwealth of Australia and the Government of New Zealand signed at Canberra on 12 May 1960 shall terminate and cease to have effect in relation to any tax in respect of which this Agreement comes into effect in accordance with paragraph (1) of this Article.

(4) Where any provision of the Agreement signed at Canberra on 12 May 1960 would have afforded any greater relief from tax in one of the Contracting States than is afforded by this Agreement, any such provision shall continue to have effect in that Contracting State—

(a) in the case of Australia, in relation to withholding tax in respect of income derived during any financial year beginning before the date this Agreement shall enter into force and, in relation to other Australian tax, in respect of income derived during any year of income beginning before that date;

(b) in the case of New Zealand, in relation to New Zealand tax in respect of income derived during any income year beginning before the date this Agreement shall enter into force.

ARTICLE 23

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30 June in any calendar year after the year 1975 give to the other Contracting State notice of termination and, in that event, this Agreement shall cease to be effective—

(a) in Australia—

(i) in relation to withholding tax, in respect of income derived on or after the commencement of the financial year beginning on 1 July in the calendar year next following that in which the notice is given;

SCHEDULE 1—*continued*

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

(b) in New Zealand—

in relation to New Zealand tax in respect of income derived during any income year beginning on or after 1 April in the calendar year next following that in which the notice is given.

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

DONE at Melbourne in duplicate this eighth day of November, One thousand nine hundred and seventy-two.

B. M. Snedden
FOR THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

A. J. Yendell
FOR THE GOVERNMENT OF NEW ZEALAND

SCHEDULE 2

Section 8

SCHEDULE TO BE ADDED AT THE END OF THE PRINCIPAL ACT

EIGHTH SCHEDULE

Section 3

AGREEMENT BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME DERIVED FROM INTERNATIONAL AIR TRANSPORT

The Government of the Commonwealth of Australia and the Government of Italy desiring to conclude an Agreement for the avoidance of double taxation of income derived from international air transport,

Have agreed as follows:

ARTICLE 1

(1) The existing taxes to which the Agreement applies are—

(a) in Australia:

the Commonwealth income tax, including the additional tax upon the undistributed amount of the distributable income of a private company, (hereinafter referred to as "Australian tax");

(b) in Italy:

(i) the tax on income from movable wealth (imposta sui redditi di ricchezza mobile);

(ii) the complementary tax (imposta complementare progressiva sul reddito);

(iii) the tax on companies insofar as the tax is charged on income and not on capital (imposta sulle societa', per la parte che grava sul reddito e non sul patrimonio); and

(iv) the taxes on income imposed on behalf of provinces, municipalities and Chambers of commerce (imposte provinciali, comunali e camerali sul reddito),

(hereinafter referred to as "Italian tax").

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

SCHEDULE 2—*continued*

ARTICLE 2

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

(a) the term " Australia " includes any Territory of or under the authority of the Commonwealth of Australia and any Territory governed by it under a Trusteeship Agreement;

(b) the term " Italy " means the Italian Republic;

(c) the terms " Contracting State " and " other Contracting State " mean Australia or Italy, as the context requires;

(d) the term " Australian enterprise " means an enterprise that has its place of effective management in Australia;

(e) the term " Italian enterprise " means an enterprise that has its place of effective management in Italy;

(f) the term " enterprise of a Contracting State " means an Australian enterprise or an Italian enterprise, as the context requires;

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

(h) the term " operation of aircraft in international traffic " means the operation of aircraft for the carriage of persons, livestock, goods or mail between—

(i) Australia and Italy;

(ii) Australia and any other country;

(iii) Italy and any other country;

(iv) countries other than Australia or Italy or places in any such country,

and in respect of an enterprise engaged in such operations includes the sale of tickets for, and the provision of services connected with, such carriage, either for the enterprise itself or for any other enterprise engaged in such operations.

(2) In the application of the provisions of this Agreement in one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes to which this Agreement applies.

ARTICLE 3

(1) Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic or arising from the carriage by air of persons, livestock, goods or mail between places in that Contracting State, shall be exempt from tax in the other Contracting State.

(2) The exemption provided in paragraph 1 of this Article shall apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

ARTICLE 4

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

(2) This Agreement shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect—

(a) in Australia, for the year of income that commenced on the first day of July 1966 and subsequent years of income;

(b) in Italy, in respect of income assessable for any taxable period commencing on or after the first day of January 1966.

ARTICLE 5

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1973, give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective—

(a) in Australia, for the year of income commencing on the first day of July in the calendar year next following that in which the notice of termination is given, and subsequent years of income; and

SCHEDULE 2—*continued*

(b) in Italy, in respect of income assessable for any taxable period commencing on or after the first day of January in the calendar year next following that in which the notice of termination is given.

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

Done in duplicate at Canberra the thirteenth day of April, 1972 in the English and Italian languages, both texts being equally authoritative.

B. M. Snedden
For the Government
of the
Commonwealth of Australia

Paolo Canali

For the Government
of Italy