

AGREEMENT BETWEEN

AUSTRALIA

AND

THE FEDERAL REPUBLIC OF GERMANY

FOR

THE ELIMINATION OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

AND

THE PREVENTION OF FISCAL EVASION AND AVOIDANCE

Australia and the Federal Republic of Germany,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States), -

Have agreed as follows:

ARTICLE 1

Persons Covered

1 This Agreement shall apply to persons who are residents of one or both of the Contracting States.

2 For the purposes of this Agreement, income (including profits or gains) derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

ARTICLE 2

Taxes Covered

1 This Agreement shall apply to taxes on income, and, in the case of the Federal Republic of Germany, taxes on capital, imposed on behalf of a Contracting State and, in the case of the Federal Republic of Germany, on behalf of one of its States (Länder) or one of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2 There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3 The existing taxes to which this Agreement shall apply are in particular:

(a) in Australia:

the income tax, the fringe benefits tax and resource rent taxes imposed under the federal law of Australia;

(hereinafter referred to as "Australian tax");

(b) in the Federal Republic of Germany:

- (i) the income tax (Einkommensteuer);
- (ii) the corporate income tax (Körperschaftsteuer);
- (iii) the trade tax (Gewerbesteuer); and
- (iv) the capital tax (Vermögensteuer);

including the supplements levied thereon

(hereinafter referred to as "German tax").

4 This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of the Federal Republic of Germany after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their taxation laws.

ARTICLE 3

General Definitions

1 For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Australia", when used in a geographical sense, means the territory of the Commonwealth of Australia, including the following external territories:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,

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

- (b) the term "Federal Republic of Germany", when used in a geographical sense, includes the territory of the Federal Republic of Germany as well as the area of the seabed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights or jurisdiction in conformity with international law and its national legislation for the purposes of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;
- (c) the term "tax" means Australian tax or German tax as the context requires, but does not include any penalty imposed under the law of either Contracting State relating to its tax;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (f) the term "enterprise" applies to the carrying on of any business;
- (g) the term "business" includes the performance of professional services and of other activities of an independent character;
- (h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- (j) the term "competent authority" means:
 - (i) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
 - (ii) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers;

- (k) the term "national" means:
 - (i) in relation to Australia, any individual who is a citizen of Australia and any legal person, company, partnership or association deriving its status as such from the laws in force in Australia;
 - (ii) in relation to the Federal Republic of Germany, any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the laws in force in the Federal Republic of Germany;

- (l) the term "collective investment vehicle" means a vehicle that is widely-held, holds a diversified portfolio of securities or invests directly or indirectly in immovable property for the main purpose of deriving rent, and is subject to investor-protection regulation in the State in which it is established and is:
 - (i) in the case of Australia, a trust that is a managed investment trust for the purposes of Australian tax;
 - (ii) in the case of the Federal Republic of Germany, an investment vehicle within the meaning of the Investment Act (Kapitalanlagegesetzbuch), other than a vehicle that has been established as a partnership; and
 - (iii) any other investment fund or vehicle established in either Contracting State which the Government of Australia and the Government of the Federal Republic of Germany agree, in an Exchange of Notes, to regard as a collective investment vehicle;

- (m) the term "recognised stock exchange" means:

- (i) the Australian Securities Exchange and any other Australian stock exchange recognised as such under Australian law;
- (ii) any German stock exchange on which registered dealings in shares take place; and
- (iii) any other stock exchange agreed upon by the competent authorities.

2 As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State concerning the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1 For the purposes of this Agreement, the term "resident of a Contracting State" means any person who:

- (a) in the case of Australia, is liable to tax as a resident of Australia; and
- (b) in the case of the Federal Republic of Germany, is liable to tax therein by reason of the person's domicile, residence, place of management or any criterion of a similar nature.

The term "resident of a Contracting State" also includes a Contracting State and, in the case of the Federal Republic of Germany, its States (Länder), and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated in the Federal Republic of Germany.

2 Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; if a permanent home is available in both States, that individual shall be deemed to be a resident

only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the State in which the centre of vital interests is situated cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which that individual has an habitual abode;
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated. If the State in which the place of effective management is situated cannot be determined, or the place of effective management is in neither State, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement in accordance with Article 25 the Contracting State of which the person shall be deemed to be a resident for purposes of the Agreement, having regard to its places of management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Agreement.

4 Notwithstanding the other provisions of this Agreement, a collective investment vehicle which is established in a Contracting State and which receives income (including profits and gains) arising in the other Contracting State shall be treated, for the purposes of applying the Agreement to such income, as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives (provided that, if an individual who is a resident of the first-mentioned State had received the income in the same circumstances, such individual would have been considered to be the beneficial owner thereof), but only to the extent that the beneficial interests in the collective investment vehicle are owned by residents of the Contracting State in which the collective investment vehicle is established and equivalent beneficiaries. However, if:

- (a) in the case of a collective investment vehicle established in Australia, the principal class of shares, units or other comparable interests in the collective investment vehicle is listed and regularly traded on a recognised stock exchange in Australia;
- (b) at least 75 per cent of the value of the beneficial interests in the collective investment vehicle is owned by residents of the Contracting State in which the collective investment vehicle is established; or
- (c) at least 90 per cent of the value of the beneficial interests in the collective investment vehicle is owned by equivalent beneficiaries,

the collective investment vehicle shall be treated as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of all the income it receives (provided that, if an individual who is a resident of that State had received the income in the same circumstances, such individual would have been considered to be the beneficial owner thereof).

5 For purposes of paragraph 4, the term "equivalent beneficiary" means:

- (a) a resident of the Contracting State in which the collective investment vehicle is established; and
- (b) a resident of any other State with which the Contracting State in which the income arises has a tax agreement that provides for effective and comprehensive information exchange who would, if such resident received the particular item of income for which benefits are being claimed under this Agreement, be entitled under that agreement, or under the domestic law of the Contracting State in which the income arises, to a rate of tax with respect to that item of income that is at least as low as the rate claimed under this Agreement by the collective investment vehicle with respect to that item of income.

ARTICLE 5

Permanent Establishment

1 For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2 The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
- (g) an agricultural, pastoral or forestry property.

3 A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.

4 Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State:

- (a) carries on supervisory or consultancy activities in the other State for more than nine months in connection with a building site, or a construction or installation project, which is being undertaken in that other State;
- (b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or

- (c) operates substantial equipment in the other State (including as provided in subparagraph (b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period,

such activities shall be deemed to be carried on through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.

5 Where an enterprise of a Contracting State carries on any of the activities referred to in paragraphs 3 and 4 in the other Contracting State, any connected activities carried on in that other Contracting State during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise will be added to the period of time during which the first-mentioned enterprise has carried on the activities for the purpose of determining whether the periods referred to in paragraphs 3 and 4 have been exceeded.

6 Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not 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 stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity,
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

7 Paragraph 6 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

8 Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 9, where a person is acting in a Contracting State on behalf of an enterprise and

- (a) in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (iii) for the provision of services by that enterprise, or
- (b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9 Paragraph 8 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

10 For the purpose of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interests in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

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

12 The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

ARTICLE 6

Income from Immovable Property

1 Income derived by a resident of a Contracting State from immovable property (including from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2 The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include:

- (a) a lease of land or any other interest in or over land;
- (b) property accessory to immovable property;
- (c) livestock and equipment used in agriculture and forestry;
- (d) rights to which the provisions of general law respecting landed property apply;
- (e) usufruct of immovable property;
- (f) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
- (g) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

Ships and aircraft shall not be regarded as immovable property.

3 Any interest or right referred to in paragraph 2 shall be regarded as situated where the immovable property, landed property, land, mineral, oil or gas deposits, quarries, mineral resources or natural resources, as the case may be, are situated or where the exploration may take place.

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

5 The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1 The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2 Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises.

3 In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the State in which the permanent establishment is situated or elsewhere.

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

5 Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

6 Notwithstanding the preceding provisions of this Article, profits of an enterprise of a Contracting State from carrying on a business of any form of insurance other than life insurance may be taxed in the other Contracting State in accordance with the law of that other State.

7 Where:

- (a) a resident of the Federal Republic of Germany is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in Australia by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in Australia,

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

8 A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after the expiration of 10 years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, wilful default or, in the case of Australia, gross negligence, or, in the case of the Federal Republic of Germany, negligence, or where, within that period of 10 years, an audit into the profits of the enterprise has been initiated by either State.

ARTICLE 8

Shipping and Air Transport

1 Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2 Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting

State and are discharged at a place in that other State, or from leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.

3 The provisions of paragraphs 1 and 2 shall also apply to profits from the operation of ships or aircraft derived through participation in a pool, a joint business or an international operating agency.

4 Profits derived by a resident of a Contracting State (being an operator of ships or aircraft or a provider of transport services) from the lease of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, provided such lease is directly connected or ancillary to the operation of ships or aircraft in international traffic.

ARTICLE 9

Associated Enterprises

1 Where:

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

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

2 Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the

conditions made between the enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

3 A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after the expiration of 10 years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, wilful default or, in the case of Australia, gross negligence, or, in the case of the Federal Republic of Germany, negligence, or where, within that period of 10 years, an audit into the profits of an enterprise has been initiated by either State.

ARTICLE 10

Dividends

1 Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2 However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends, if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 10 per cent of the voting power of the company paying the dividends throughout a 6 month period that includes the day of payment of the dividend;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

In the case of dividends paid by a German Real Estate Aktiengesellschaft with listed share capital, only subparagraph (b) applies. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3 Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company (other than a partnership) that is a resident of the other Contracting State that has held directly shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:

- (a) has its principal class of shares listed on a recognised stock exchange specified in sub-subparagraph 1(m)(i) or (ii) of Article 3 and regularly traded on one or more recognised stock exchanges;
- (b) is owned directly or indirectly by one or more companies (provided that where the beneficial owner company is so owned indirectly, each intermediate company is a resident of a Contracting State or a company referred to in sub-subparagraph (ii)):
 - (i) whose principal class of shares is listed on a recognised stock exchange specified in sub-subparagraph 1(m)(i) or (ii) of Article 3 and regularly traded on one or more recognised stock exchanges; or
 - (ii) each of which, if it directly held the shares in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the State of which that company is a resident and the Contracting State of which the company paying the dividends is a resident; or
- (c) does not meet the requirements of subparagraphs (a) or (b) of this paragraph but the competent authority of the first-mentioned Contracting State determines that the conditions of paragraph 2 of Article 23 are not met. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Agreement under this subparagraph.

4 The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax, and shall include, in the case of the Federal Republic of Germany, distributions on certificates of a German collective investment vehicle.

5 The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6 Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company — being dividends beneficially owned by a person who is not a resident of the other Contracting State — except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7 Notwithstanding paragraph 6, dividends paid by a company that is deemed to be a resident only of one Contracting State pursuant to paragraph 3 of Article 4 may be taxed in the other Contracting State, but only to the extent that the underlying profits arising in that State out of which the dividends are paid are not subject to tax at the corporate level. Where such dividends are beneficially owned by a resident of the first-mentioned State, paragraph 2 of this Article shall apply as if the company paying the dividends were a resident only of the other State.

ARTICLE 11

Interest

1 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3 Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if:

- (a) the interest is derived by a Contracting State or by a political or administrative subdivision or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or
- (b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

4 Notwithstanding paragraph 3, interest referred to in subparagraph (b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5 The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, interest from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

6 The provisions of paragraphs 1 and 2, subparagraph (b) of paragraph 3 and paragraph 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with that permanent establishment. In such case the provisions of Article 7 shall apply.

7 Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a

Contracting State or outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then the interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

ARTICLE 12

Royalties

1 Royalties arising in a Contracting State and paid or credited to a resident of the other Contracting State may be taxed in that other State.

2 However, those royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3 The term "royalties" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- (b) the supply of scientific, technical, industrial or commercial knowledge or information;
- (c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any

such property or right as is mentioned in subparagraph (a) or any such knowledge or information as is mentioned in subparagraph (b);

- (d) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;
- (e) the use of, or the right to use, some or all of a radio frequency spectrum or band as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State; or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4 The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the property or right in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5 Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6 Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might reasonably have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments or credits shall remain taxable

according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Alienation of Property

- 1 Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
- 2 Income, profits or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
- 3 Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of movable property pertaining to the operation of those ships or aircraft, shall be taxable only in that State.
- 4 Income, profits or gains derived by a resident of a Contracting State from the alienation of shares or comparable interests may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
- 5 Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.
- 6 Where an individual was a resident of the Federal Republic of Germany for a period of at least 5 years and who, at the time of giving up residence in the Federal Republic of Germany, has become a resident of Australia, paragraph 5 shall not affect the right of the Federal Republic of Germany to treat the individual as having alienated shares or comparable interests at the time of the change of residence. If the individual is so taxed in the Federal Republic of Germany, Australia shall, in the event of an alienation of shares or comparable interests after the change of residence,

calculate the capital gain on the basis of the value which the Federal Republic of Germany applied at the time of the change of residence unless the shares derived more than 50 per cent of their value directly or indirectly from immovable property situated in Australia to which paragraph 4 applies. In the case of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in Australia to which paragraph 4 applies, the German tax shall be reduced pursuant to subparagraph 2(c) of Article 22 by the amount of Australian tax which would have been payable under the applicable Australian law if the shares or comparable interests had been sold at the value which the Federal Republic of Germany applied at the time of the change of residence.

7 The provisions of paragraph 5 shall not affect the right of Australia to tax, in accordance with its laws, gains of a capital nature from the alienation of any movable property derived by an individual who is a resident of Australia at any time during the year of income in which the property is alienated, or was a resident at any time during the preceding 5 years. However, where that individual is a resident of the Federal Republic of Germany at the time of alienation, the amount of the gain that may be taxed by Australia shall not exceed the amount that would have been derived had the individual alienated the property at the time the individual ceased to be a resident of Australia unless the movable property consists of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in Australia to which paragraph 4 applies. If the individual is so taxed in Australia, the Federal Republic of Germany shall, in the event of an alienation of movable property after the change of residence, calculate the capital gain on the basis of the value which Australia applied at the time of the change of residence unless the movable property consists of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the Federal Republic of Germany to which paragraph 4 applies.

ARTICLE 14

Income from Employment

1 Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

2 Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in that other State.

3 Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

4 Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States, the fringe benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Agreement in respect of salary, wages or other similar remuneration from the employment to which the fringe benefit relates. A Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary, wages or other similar remuneration from the relevant employment is allocated to that State in accordance with this Agreement and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

ARTICLE 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Entertainers and Sportspersons

1 Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2 Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3 The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or mainly supported by public funds of the other Contracting State or, in the case of the Federal Republic of Germany, of its States (Länder), or political subdivisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State in which the entertainer or sportsperson is a resident.

ARTICLE 17

Pensions, Annuities and Similar Payments

1 Subject to the provisions of paragraph 2 of Article 18, pensions, payments made under the social security legislation and annuities paid to a resident of a Contracting State shall be taxable only in that State.

2 Notwithstanding the provisions of paragraph 1 but subject to the provisions of paragraph 3, such a pension or annuity arising in a Contracting State which is attributable in whole or in part to contributions which, for more than 15 years in that State,

- (a) did not form part of the taxable income from employment,
- (b) were tax-deductible, or

- (c) in the case of a pension or annuity arising in the Federal Republic of Germany, were afforded some other form of beneficial treatment by the Federal Republic of Germany

may also be taxed in that State provided the pension or annuity was first paid after 31 December 2016. This paragraph shall not apply if the tax relief or other form of beneficial treatment was clawed back for any reason, or if the 15 year condition is fulfilled in both Contracting States.

3 Notwithstanding the provisions of paragraphs 1 and 2, benefits paid under the social security legislation of a Contracting State may also be taxed in that State but the tax so charged shall not exceed 15 per cent of the gross amount of the benefit. However, this paragraph shall not apply if the benefits were first paid before 1 January 2017.

4 Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by a Contracting State or, in the case of the Federal Republic of Germany, its States (Länder), or a political subdivision or local authority thereof, being payments which are exempt from tax in that State and which are paid to a resident of the other Contracting State as compensation for political persecution (including restitution payments) or for injustice or damage sustained as a result of war or for damage as a result of military or civil alternative service or of a crime, a vaccination or for similar reasons shall be exempt from tax in that other State.

5 Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first mentioned State.

6 The term "annuities" means a stated sum payable periodically at stated times, for life or for 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 18

Government Service

- 1 (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or, in the case of the Federal Republic of Germany, by its States (Länder), or a political subdivision or local authority thereof

to an individual in respect of services rendered to that State or subdivision or local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

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

2 (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3 The provisions of paragraphs 1 and 2 shall also apply to salaries, wages and pensions paid to an individual in respect of services rendered to the Deutsche Bundesbank (Federal Central Bank) and the Association of Chambers of Industry and Commerce for the promotion of Foreign Economic Relations through the Network of Foreign Chambers of Commerce, or to other comparable institutions mutually agreed in an Exchange of Notes between the Contracting States.

4 The provisions of Articles 14, 15, 16 or 17, as the case may be, shall apply to salaries, wages and other similar remuneration, or to pensions, in respect of services rendered in connection with any business carried on by a Contracting State or, in the case of the Federal Republic of Germany, by its States (Länder), or a political subdivision or a local authority thereof.

ARTICLE 19

Professors, Teachers and Students

1 Remuneration which a professor or teacher who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years

for the purpose of carrying out advanced study or research, or of teaching, at a university, college, school or other educational institution receives for those activities shall not be taxed in that other State, provided that such remuneration is wholly or mainly supported by public funds of the first-mentioned Contracting State or by a tax exempt charitable or benevolent organisation and such remuneration is exempt from taxation in the first-mentioned State.

2 Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 20

Other Income

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

2 The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply. Where, however, the income comprises dividends paid by a company which is a resident of the first-mentioned State, or interest or royalties arising in that State, the income may be taxed in that State at the rates provided in paragraphs 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12 respectively.

3 Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement from sources in the other Contracting State may also be taxed in the other Contracting State.

ARTICLE 21

Capital

1 Capital represented by immovable property referred to in Article 6, owned by a resident of Australia and situated in the Federal Republic of Germany, may be taxed in the Federal Republic of Germany.

2 Capital represented by movable property forming part of the business property of a permanent establishment which an Australian enterprise has in the Federal Republic of Germany may be taxed in the Federal Republic of Germany.

3 Capital represented by ships and aircraft operated by an Australian enterprise in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall not be taxed in the Federal Republic of Germany.

4 All other elements of capital of a resident of Australia shall not be taxed in the Federal Republic of Germany.

ARTICLE 22

Methods of Elimination of Double Taxation

1 Subject to the provisions of the laws of Australia 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 of this Article), German tax paid under the laws of the Federal Republic of Germany and in accordance with this Agreement, in respect of income derived by a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income.

2 Where a resident of the Federal Republic of Germany derives income, profits or gains which, in accordance with the provisions of this Agreement, may be taxed in Australia or is exempt from Australian tax under paragraph 3 of Article 10, German tax shall be determined as follows:

- (a) Except as provided in subparagraph (c), the income, profits or gains shall be excluded from the basis upon which German tax is imposed. In the

case of dividends, this applies only to such dividends as are paid to a company (not including a partnership) resident in the Federal Republic of Germany by a company resident in Australia at least 10 percent of the voting power of which is owned directly by the company resident in the Federal Republic of Germany. The exemption from the basis provided by the first sentence of this subparagraph shall not apply to dividends paid by a tax exempt company or to dividends that the distributing company may deduct for Australian tax purposes or for dividends that are attributed under the law of the Federal Republic of Germany to a person that is not a company resident in the Federal Republic of Germany.

- (b) The Federal Republic of Germany retains the right to take into account in the determination of its rate of tax the items of income, profits or gains which under the provisions of this Agreement are exempted from German tax.
- (c) With respect to the following items of income, there shall be allowed as a credit against German tax on income, subject to the provisions of German tax law regarding credit for foreign tax, the Australian tax paid in accordance with Australian law and with the provisions of this Agreement on the following items of income:
 - (i) dividends within the meaning of Article 10 to which subparagraph (a) does not apply;
 - (ii) interest;
 - (iii) royalties;
 - (iv) income, profits or gains to which paragraph 4 of Article 13 applies;
 - (v) income to which Articles 15 and 16 apply;
 - (vi) income to which paragraphs 2 and 3 of Article 17 apply;
 - (vii) income to which paragraph 3 of Article 20 applies.

For the purposes of application of this subparagraph (c), items of income of a resident of the Federal Republic of Germany that, under this

Agreement, may be taxed in Australia shall be deemed to be income from sources within Australia.

- (d) The provisions of subparagraph (a) are to be applied to profits within the meaning of Article 7, dividends within the meaning of Article 10 and to income, profits or gains from the alienation of property within the meaning of paragraph 2 of Article 13 only to the extent that the items of income, profits or gains were derived from the production, processing, working or assembling of goods and merchandise, the exploration and extraction of natural resources, banking and insurance, trade or the rendering of services or if the items of income, profits or gains are economically attributable to these activities. This applies only if a business undertaking that is adequately equipped for its business purpose exists, except where profits may be taxed in Australia pursuant to paragraph 6 of Article 7. If subparagraph (a) is not to be applied, double taxation shall be eliminated by means of a tax credit as provided for in subparagraph (c).
- (e) Notwithstanding subparagraph (a), double taxation shall be eliminated by a tax credit as provided for in subparagraph (c), if
 - (i) Australia may, under the provisions of the Agreement, tax items of income, profits or gains, or elements thereof, but does not actually do so;
 - (ii) after consultation, the Federal Republic of Germany notifies Australia through diplomatic channels of items of income, profits or gains, or elements thereof, to which it intends to apply the provisions on tax credit under subparagraph (c). Double taxation is then eliminated for the notified items of income, profits or gains, or elements thereof, by allowing a tax credit from the first day of the calendar year following that in which the notification was made.

3 If in the Contracting States items of income, profits or gains, or elements thereof,

- (a) are placed, due to differences in their domestic laws, under different provisions of this Agreement and if, as a consequence of this different placement such income, profits or gains would be subject to double

taxation and this conflict cannot be resolved by a procedure pursuant to paragraphs 2 or 3 of Article 25, the State of which the person is a resident shall avoid such double taxation by allowing a tax credit following the procedures laid down in this Article;

- (b) are placed under different provisions of this Agreement and if, as a consequence of this different placement such income, profits or gains would be subject to non-taxation or lower taxation than without this conflict, the State of which the person is a resident shall not be obliged to exempt such income, profits or gains, or, in the case of lower taxation only, that State shall allow a tax credit, following the procedures laid down in this Article in respect of such income, profits or gains.

ARTICLE 23

Limitation of Benefits

1 Where an item of income, profits or gains derived by an individual is exempt from tax in a Contracting State by reason only of the status of that individual as a temporary resident under any applicable taxation laws of that State, no relief shall be available under this Agreement in the other Contracting State in respect of that item of income, profits or gains.

2 Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income, or, in the case of the Federal Republic of Germany, of capital, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

3 Nothing in this Agreement shall prevent the application of any provision of the laws of a Contracting State which is designed to prevent the evasion or avoidance of taxes. Where double taxation arises as a result of the application of any such provision, the competent authorities shall consult for the elimination of such double taxation in accordance with paragraph 3 of Article 25.

ARTICLE 24

Non-discrimination

1 Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2 The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3 Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a German enterprise to a resident of Australia shall, for the purpose of determining the taxable capital of that enterprise, be deductible under the same conditions as if they had been contracted to a resident of the Federal Republic of Germany.

4 Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.

5 The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25

Mutual Agreement Procedure

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

2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4 The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5 Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. However, this paragraph shall not apply to an unresolved issue to the extent it involves the application of paragraph 2 of Article 23 or a provision designed to prevent the evasion or avoidance of taxes referred to in paragraph 3 of Article 23. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

6 For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services of 15 April 1994, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

ARTICLE 26

Exchange of Information

1 The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States and, in the case of the Federal Republic of Germany, on behalf of its States (Länder), or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2 Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the

enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3 In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4 If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5 In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

Assistance in the Collection of Taxes

1 The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2 The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States and, in the case of the Federal Republic of Germany, on behalf of its States (Länder) or one of its political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3 When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4 When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5 Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue

claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6 Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7 Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8 In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- (e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

ARTICLE 28

Procedural Rules for Taxation at Source

1 If in one of the Contracting States the taxes on dividends, interest, royalties, or other items of income derived by a resident of the other Contracting State are levied by withholding tax at source, then the right to initially collect the withholding tax at a higher rate provided for under the domestic law of the first-mentioned State is not affected by the provisions of this Agreement.

2 The tax so withheld at source shall be refunded on the taxpayer's application to the extent that its levying is limited or eliminated by this Agreement. The period for application for a refund is four years from the end of the calendar year in which the dividends, interest, royalties, or other items of income have been received.

3 The Contracting State in which the income arises may require the taxpayer to provide an administrative certification by the Contracting State of which the taxpayer is a resident, with respect to residence for tax purposes in that State.

4 The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

ARTICLE 29

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special international agreements.

ARTICLE 30

Protection of Personal Information

Where personal information is exchanged under this Agreement, the following additional provisions shall apply:

- (a) The receiving agency may use such information in compliance with paragraph 2 of Article 26.
- (b) The supplying agency shall be obliged to exercise vigilance as to the accuracy of the information to be supplied and its foreseeable relevance within the meaning of paragraph 1 of Article 26 and the proportionality to the purpose for which it is supplied. If it emerges that inaccurate information or information which should not have been supplied has been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such information without delay.
- (c) The receiving agency shall on request inform the supplying agency on a case-by-case basis about the use of the supplied information and the results achieved thereby.
- (d) Upon application the person concerned shall be informed of the supplied information relating to that person and of the use to which such information is to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing information relating to that person shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- (e) The receiving agency shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage in connection with the supply of information under the exchange of information pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.

- (f) Where the domestic law of the supplying agency contains special deadlines for the deletion of the personal information supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal information shall be erased in accordance with the domestic law or administrative practice of the receiving agency, once such information is no longer required for the purpose for which it was supplied.
- (g) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal information.
- (h) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal information supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

ARTICLE 31

Protocol

The attached Protocol shall be an integral part of this Agreement.

ARTICLE 32

Entry into Force

- 1 This Agreement shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
- 2 The Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall thereupon have effect:
 - (a) in the case of Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January next following the date on which this Agreement enters into force;

- (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which this Agreement enters into force;
 - (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which this Agreement enters into force;
- (b) in the case of the Federal Republic of Germany:
- (i) in respect of taxes withheld at source, in relation to amounts paid or credited on or after 1 January next following the date on which this Agreement enters into force;
 - (ii) in respect of taxes on income, for the taxes levied on income derived during the periods of time beginning on or after 1 January next following the date on which this Agreement enters into force;
 - (iii) in respect of the tax on capital, for the tax levied for periods beginning on or after 1 January next following the year in which this Agreement enters into force.

3 The Agreement between the Commonwealth of Australia and the Federal Republic of Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes, signed at Melbourne on 24 November 1972 and the Protocol to that Agreement, also signed at Melbourne on 24 November 1972, shall terminate upon the entry into force of this Agreement. However, the provisions of the first-mentioned Agreement and the Protocol shall continue to have effect for taxable years and periods which expired before the time at which the provisions of this Agreement shall be effective.

ARTICLE 33

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year

beginning after the expiration of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- (a) in Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the notice of termination is given;
 - (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

- (b) in the Federal Republic of Germany:
 - (i) in respect of taxes withheld at source, in relation to amounts paid or credited on or after 1 January of the calendar year following the year in which the notice of termination is given;
 - (ii) in respect of taxes on income, for the taxes levied on income derived during the periods of time beginning on or after 1 January of the calendar year following the year in which the notice of termination is given;
 - (iii) in respect of the tax on capital, for the tax levied for periods beginning on or after 1 January of the calendar year following the year in which the notice of termination is given.

Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

DONE at _____, this _____ day of _____, _____,
in duplicate in the English and German languages, both texts being equally authentic.

FOR AUSTRALIA

FOR THE FEDERAL
REPUBLIC OF GERMANY

PROTOCOL TO THE AGREEMENT BETWEEN AUSTRALIA AND
THE FEDERAL REPUBLIC OF GERMANY FOR THE ELIMINATION OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL AND THE PREVENTION OF FISCAL EVASION AND AVOIDANCE

Australia and the Federal Republic of Germany have in addition to the Agreement of _____ for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance agreed on the following provisions, which shall form an integral part of the Agreement:

- 1 With reference generally to the application of the Agreement
 - (a) Income, profits or gains derived by a resident of the Federal Republic of Germany which, under any one or more of Articles 6 to 8 and 10 to 18, may be taxed in Australia shall for the purposes of the law of Australia relating to its tax be deemed to arise from sources in Australia.
 - (b) This Agreement shall not be interpreted as preventing the Federal Republic of Germany from imposing German tax on amounts included in the income of a resident of the Federal Republic of Germany under parts 4, 5, and 7 of the German External Tax Relations Act (Außensteuergesetz).

- 2 With reference to paragraph 2 of Article 1

If, in accordance with paragraph 2 of Article 1, income is taxed in a Contracting State in the hands of an entity or arrangement that is treated as wholly or partly fiscally transparent under the laws of the other Contracting State and is also taxed in the hands of a resident of that other State as a participant in such entity or arrangement, and this results in double taxation, the competent authorities of the Contracting States shall consult each other pursuant to Article 25 to find an appropriate solution.

- 3 With reference to paragraph 2 of Article 1 and Article 10

It is understood that where dividends derived by or through a fiscally transparent entity or arrangement are treated, for the purposes of taxation by a Contracting State, as the income, profits or gains of a resident of that State, Article 10 shall apply as if that resident had derived the dividends directly.

4 With reference to paragraph 3 of Article 7

For the purposes of paragraph 3 of Article 7, only those expenses which would be deductible if the permanent establishment were an independent entity which paid those expenses will be regarded as having been incurred for the purposes of the permanent establishment.

5 With reference to paragraph 2 of Article 9

The reference to the conditions which "would have been made between independent enterprises" shall be construed to mean conditions which would have been made if the enterprises had been dealing wholly independently with one another.

6 With reference to Article 10 and 11

Notwithstanding the provisions of Article 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State, if they

- (a) are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner ("stiller Gesellschafter") from that partner's participation as such, or income from loans with an interest rate linked to the borrower's profit ("partiarische Darlehen") or profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of the Federal Republic of Germany, and
- (b) are deductible in the determination of profits of the payer of such dividends or interest.

7 With reference to paragraph 3 of Article 23 and paragraph 5 of Article 25

(1) For the purposes of paragraph 3 of Article 23 and paragraph 5 of Article 25, provisions of the laws of a Contracting State which are designed to prevent evasion or avoidance of taxes include:

- (a) measures designed to prevent improper use of the provisions of tax agreements;
- (b) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

- (c) in the case of Australia, controlled foreign company, transferor trusts and foreign investment fund rules; and
- (d) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

(2) If the application of the foregoing provisions results in double taxation, the competent authorities of the Contracting States shall consult each other pursuant to Article 25 to find an appropriate solution.

8 With reference to paragraph 4 of Article 24

It is understood that paragraph 4 of Article 24 shall not be construed as obligating a Contracting State to permit cross-border consolidation of income between enterprises.