1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

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EXHIBIT G

General outline

The main purpose of this Bill is to give the force of law in Australia to comprehensive double taxation agreements between Australia and the United States of America (a revised convention), Ireland, the Republic of Italy, the Republic of Korea and the Kingdom of Norway, and to an agreement limited to the taxation of profits from international air transport with the Republic of India. These agreements were signed as follows:

- revised convention with the U.S.A. signed in Sydney on 6 August 1982;
- agreement with Ireland signed in Canberra on 31 May 1983;
- convention with Italy signed in Canberra on 14 December 1982;
- convention with Korea signed in Canberra on 12 July 1982;
- convention with Norway signed in Canberra on 6 May 1982;
- airline profits agreement with India signed in Canberra on 31 May 1983.

The Bill also specifies that interest and royalties derived by residents of Australia, in respect of which, under the above-mentioned comprehensive agreements, the countries concerned are required to limit their tax to 10 per cent (15 per cent in the case of Korea) will not, by reason of the payment of that limited tax, be exempt from Australian tax. Australia will instead allow credit for the limited tax against the Australian tax on that income.

As a transitional measure, because the agreements with Italy, Korea and Norway will have effect from dates prior to their signature, provision is made to the effect that Australian residents deriving interest or royalties from these countries will not be disadvantaged by the application of the agreements, and of the credit rather than the exemption method of double taxation relief, in respect of such income derived up to and including the date of signature of the relevant agreement.

The comprehensive agreements set out the basis on which, and the extent to which, income derived in one country by residents of the other is to be taxed in each country and the basis on which relief from double taxation is to be effected where income may be taxed by both countries.

The airline profits agreement with India provides that the right to tax profits from the operation of aircraft in international traffic is granted solely to the country in which the airline operator has its place of effective management. The practical effect of this

agreement is that Qantas will be exempt from Indian income taxes on its profits from international traffic, and Air India will be exempt from Australian tax on such income. This agreement corresponds with similar agreements Australia has with France, Italy, and Greece.

Main features

The main features of the comprehensive agreements are as follows:

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

- Dividends, interest and royalties may be subjected to tax in the country of source, but there are general limits on the tax that that country may charge on such income flowing to residents of the other country. These limits are 15 per cent for dividends and 10 per cent for interest and royalties, except for the agreement with Korea, where the source country's tax upon interest and royalties is limited to 15 per cent.

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

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

- Income from independent personal services will be taxed only in the country of residence of the recipient unless the income is attributable to activities performed from a fixed base of the recipient in the other country, in which case the income may be taxed in the other country. Under the agreements with the United States and Norway, income from the performance of services in the country other than the country of residence may also be taxed in that other country if the recipient is present there for a period or periods exceeding 183 days in aggregate in a year of income (United States convention) or 183 days in aggregate over any two consecutive years of income (Norwegian

agreement). However, because, under Norwegian law, income derived by a resident of Norway from the performance of independent personal services outside Norway may be exempt from Norwegian tax, the Norwegian agreement provides that, to the extent that such income is exempt from tax in the country of residence, it may be taxed in the other country.

- Income from dependent personal services, that is , employees' remuneration, will generally be taxable in the country where the services are performed.

  However, where the services are performed during a short visit to one country by a resident of the other country, and the remuneration is not an expense borne by a resident of, or a permanent establishment in, the country visited, the income will be exempt in the country visited. As in the case of income from independent personal services, the Norwegian agreement also provides that exemption of this income from tax in the country visited will only apply to the extent that the income is subject to tax in the country of residence of the recipient.

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

- Directors' fees will generally be taxed in the country of residence of the paying company. In the case of the United States agreement, directors' fees are treated as income from dependent personal services.

- Income derived by public entertainers from their activities as such are generally to be taxed by the country in which the activities are performed. In the case of the United States agreement, the income of a public entertainer from his activities as such will only be taxed in the country in which the activities are performed when the gross income, including expenses, exceeds ten thousand United States dollars (US$10,000) in the year of income.

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

- Remuneration derived by professors or teachers during visits of up to two years duration for the sole purpose of teaching or

research will, under the agreements with Ireland, Italy and Korea, generally be taxed only in the country of residence. The United States and Norwegian agreements do not contain provisions dealing specifically with professors and teachers and such persons will be subject to tax in accordance with general provisions in those agreements covering income for services rendered.

- Students resident in one country who are temporarily present in the other country solely for the purpose of their education will be exempt from tax in the country visited in respect of payments made from abroad for the purposes of their maintenance or education. In the case of Korea, these provisions also extend to trainees.

- Dual residents (i.e. residents of both countries party to an agreement) are, in accordance with specified criteria, generally to be treated for the purposes of the relevant agreement as being residents of only one country. However, in the agreement with the United States dual resident companies are not considered to be residents of Australia or the United States, and the agreement does not apply to them.

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

- Income derived from offshore activities, i.e., those connected with the exploration or exploitation of the sea-bed and subsoil and their natural resources, including income from an employment connected with such activities, will, under a special article in the Norwegian agreement, generally be taxed by the country in whose offshore area the activities or employment giving rise to the income are performed, except in relation to activities or employment of short duration. General provisions in the other comprehensive agreements are to a broadly similar effect.

- Capital represented by real property owned by an Australian resident and situated in Norway, and movable property which forms part of the business property of a permanent establishment or fixed base that an Australian resident has in Norway, may be

taxed in that country. As Australia does not impose any comparable taxes, the article has no application in this country.

- A non-discrimination article, provisions comparable to which are not included in any of Australia's other double taxation agreements, has been included in the revised United States agreement. The article, which was included specifically at the request of the United States, will not be given the force of law in Australia, and will not be able to be called in aid by a taxpayer in an objection against a taxation assessment. It does, however, provide for consultation between the Governments of both countries where any taxation measures are considered to infringe the principles of the particular article. It expresses each country's best intentions that, in enacting taxation measures, it will not treat citizens or residents of the other country, and enterprises or companies wholly or partly owned by them, in a less favourable way than it treats its own citizens or residents, enterprises or companies. The article will not affect any existing Australian taxation law or any future law that is substantially similar in general purpose or intent to existing laws. Nor will it affect laws designed to prevent the avoidance or evasion of taxes.

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

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

  - in Australia, by allowance of a credit against Australian tax for the other country's tax on interest and royalties, where that tax is subject to a limit expressed in the relevant agreement, and on dividends received by individuals. Dividends received by Australian companies from the other countries concerned are effectively freed from Australian tax by the inter-corporate dividend rebate, and all other categories of income received by Australian residents from, and taxed in,

those countries are exempt from Australian tax by the operation of provisions in Australian tax law;

In the case of Korea, Australia will also grant a "tax sparing" credit for Korean tax forgone under agreed incentive legislation of that country.

- in the other countries concerned, generally by the allowance of a credit against the other country's tax for the Australian tax paid on income derived by residents of that country from sources in Australia.

Notes on the clauses of the Bill are given below and these are followed by explanations of the articles of the comprehensive agreements and the airline profits agreement with India.

Clause 1 : Short title, etc.

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

Clause 2 : Commencement

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

Clause 3 : Interpretation

Section 3 of the Principal Act contains a number of definitions for the more convenient interpretation of the Act. Paragraphs (a) and (b) of clause 3 will effect drafting amendments consequential on those proposed by paragraphs (c), (d) and (e) which will insert in sub-section 3(1) definitions referring to the comprehensive agreements with Ireland, Italy, Korea and Norway and the airline profits agreement with India. Those agreements are, by clause 14 of the Bill, being incorporated as Schedules 20, 21, 22, 23 and 19 respectively, to the Principal Act. Paragraph (f) of clause 3 inserts a definition of the previous United States convention (being the convention signed at Washington on 14 May 1953) which will be replaced by the revised convention to be given the force of law in Australia by this Bill.

Clause 4 : Convention with United States of America

This clause proposes that section 6 of the Principal Act, which gave the force of law in Australia to the previous convention with the United States which was signed in 1953, be repealed and that a new section 6 be substituted to provide for the force of law in Australia to be given to the provisions of Articles 1 to 22 (inclusive) and Articles 24 to 29 (inclusive) of the revised convention with the United States with effect from the dates indicated in Article 28 of the convention. Article 23, entitled "non-discrimination", is, in effect, a government to government expression of intent in relation to the future enactment of taxation measures. It does not, and was not intended to, give rise to private justiciable rights and so is not being given the force of law.

By sub-section (1) of proposed new section 6, when the revised convention enters into force, the relevant provisions will have effect in relation to Australian tax -

(a) in respect of dividends, interest or royalties derived on or after the first day of the second month following the month in which the convention enters into force; and

(b) in respect of other income, for any year of income commencing on or after the first day of the second month following the month in which the convention enters into force. By reason of the reference, in Article 28(2)(b) of the convention, to the taxpayer's years of income, the commencement of the year of income referred to in this paragraph will, when a taxpayer has adopted a substituted accounting period, mean the commencement of that substituted year.

Sub-section (2) of proposed section 6 provides for the date on which the convention enters into force to be notified in the Gazette as soon as practicable thereafter. This will provide a readily available and authoritative source from which persons may ascertain the fact and date of entry into force of the convention. Because, under the terms of the convention, it will enter into force upon the exchange of instruments of ratification, it is not possible to indicate in this Bill the date of entry into force.

Sub-section (3) of proposed section 6 ensures that, notwithstanding the repeal by this clause of the section which gave the force of law to the provisions of that convention, so far as they affect Australian tax, continue to have the force of law in relation to tax in respect of income derived before the dates from which the revised convention becomes effective.

Clause 5 : Agreement with Singapore

This clause proposes an amendment to section 7 of the Principal Act, which provided for the force of law to be given to the agreement with Singapore. Sub-paragraph (a) of paragraph (3) of Article 18 of the Singapore agreement provides for the allowance of a special tax credit in respect of income which is subject to an exemption from or reduction of taxation under parts V and VI of the Economic Expansion Incentives (Relief from Income Tax) Act, 1967, of Singapore or subsequently enacted provisions which are agreed by each Government in Notes exchanged for this purpose to be of a substantially similar character. Sub-clause (1) proposes the insertion in section 7 of a new sub-section (3) providing for particulars of any provisions so agreed by the Governments to be of a substantially similar character to be published in the Gazette, while sub-clause (2) formally establishes that the amendment effected by sub-clause (1) does not apply retrospectively. No additional provisions have been agreed so far.

Clause 6 : Airline profits agreement with Italy

The existing limited agreement with Italy relating to airline profits, which was given force of law by section 10 of the Principal Act, will, by this clause, now be referred to as the "Italian airline profits agreement", to clearly distinguish that agreement from the comprehensive convention with Italy being given the force of law by clause 7.

Clause 7 : Convention with Italy

Sub-clause (1) of clause 7 will insert a new section - section 10A - in the Principal Act which will give the force of law in Australia to the comprehensive convention with Italy with effect from the dates indicated in Article 29 of the convention.

By sub-section (1) of proposed section 10A, the Italian convention, when it enters into force, will have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax that are derived on or after 1 July 1976; and

(b) in respect of other income, for any year of income commencing on or after 1 July 1976.

Sub-section (2), which provides for the date of entry into force of the Italian convention to be notified in the Gazette as soon as practicable thereafter, corresponds with sub-section (2) of section 6 to be inserted by clause 4 - see notes on that clause.

Sub-clause (2) of clause 7 will empower the Commissioner to amend assessments for the purpose of giving effect to the Italian convention. It is necessary to give the Commissioner this power because, although the convention will not enter into force until instruments of ratification are exchanged, its provisions will have effect from dates as early as 1 July 1976 (refer section 10A) in relation to income in respect of which assessments will have already been made.

Clause 8 : Agreement with Malaysia

This clause proposes an amendment to section 11F of the Principal Act, which provided for the force of law to be given to the Malaysian agreement, similar to that proposed by clause 5 in relation to the Singapore agreement. Sub-paragraph (a)(ii) of paragraph 5 of Article 23 of the Malaysian agreement provides for the allowance of a special tax credit in respect of income which has been either wholly or partly relieved from taxation under provisions of Malaysian law which are agreed by the Governments of Malaysia and Australia in an Exchange of Letters to be of a substantially similar character to the provisions contained in Schedule 7A of the Malaysian Income Tax Act 1967 or sections 21, 22, 26 or 30Q of the Investment Incentives Act 1968 of Malaysia. Sub-clause (1) proposes the insertion in section 11F of a new sub-section (5) providing for particulars of any provisions so agreed by the Governments to be of a substantially similar character to be published in the Gazette. Sub-clause (2) formally establishes that the amendment effected by sub-clause (1) does not apply retrospectively. No additional provisions have been agreed so far.

Clause 9 : Airline profits agreement with the Republic of India, Agreement with Ireland, Convention with the Republic of Korea and Convention with the Kingdom of Norway

Sub-clause (1) of clause 9 proposes the insertion in the Principal Act of four sections - sections 11J, 11K, 11L and 11M - which, respectively, will give the force of law in Australia to the airline profits agreement with India and the comprehensive double taxation agreements with Ireland, Korea and Norway. Each agreement will be given the force of law with effect from the dates set out in the agreements (see explanations of Article 4 of the Indian agreement, Article 29 of the Irish agreement, Article 28 of the Korean convention and Article 29 of the Norwegian convention).

By proposed section 11J(1), the Indian airline profits agreement, when it enters into force, will have effect as regards Australian tax in relation to income derived from 1 April 1975.

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

(a) in respect of dividends or interest subject to withholding tax that are derived on or after 1 July in the calendar year immediately following that in which the agreement enters into force; and

(b) in respect of other income, for any year of income beginning on or after 1 July in the calendar year immediately following that in which the agreement enters into force.

By proposed section 11L(1), the Korean convention will, when it enters into force, have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax derived on or after 1 January 1982; and

(b) in respect of other income, for any year of income commencing on or after 1 July 1982.

By proposed section 11M(1), the Norwegian convention, when it enters into force, will have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax derived on or after 1 July 1982; and

(b) in respect of other income, for any year of income beginning on or after 1 July 1982.

Like the corresponding provisions in relation to the United States and Italian conventions in clauses 4 and 7 (see notes on these clauses) sub-section (2) of each of the proposed sections 11J to 11M provides for the dates on which the relevant agreements enter into force to be notified in the Gazette as soon as practicable thereafter.

Sub-section (3) of the proposed section 11L will have a similar effect, in relation to the Korean convention, to the amendments proposed by clauses 5 and 8 in relation to the Singapore and Malaysian agreements. It provides for the publication in the Gazette of particulars of those provisions of the laws of Korea relating to Korean tax that are agreed in an exchange of letters between the Minister of Finance of Korea and the Treasurer of Australia to fall within the definition of the term "the relevant legislation" for the purposes of the allowance of a special

tax credit under sub-paragraph (3)(a) of Article 24 where interest or royalty income derived by a resident of Australia from sources in Korea has been wholly or partly exempted from Korean tax.

Sub-section (4) of the proposed section 11L provides for publication in the Gazette of a notice specifying any date agreed by the Governments of both countries in letters exchanged in accordance with paragraph (5) of Article 24 of the Korean convention. That paragraph provides that the special tax credit provisions referred to in the notes on sub-section (3) shall not apply after 30 June 1987 unless the two Governments agree on a later date. It is this later date which is referred to in sub-section (4).

By sub-section (3) of the proposed section 11M, provision is made for publication in the Gazette of a notice specifying the date of confirmation of receipt of a note forwarded by the Norwegian Government through the diplomatic channel requesting the replacement of paragraph (2) of Article 25 (which relates to the method of eliminating double taxation by Norway) of the Norwegian convention with the provision set out in sub-paragraph (2)(b) of the protocol that forms part of the convention.

Sub-clauses (2), (3) and (4) of clause 9 will empower the Commissioner to amend assessments for the purpose of giving effect to the Indian airline profits agreement and to the Korean and Norwegian conventions. It is necessary to give the Commissioner this power because, although the agreements will not enter into force until exchanges of diplomatic notes have been made, their provisions will have effect - pursuant to proposed sub-sections 11J(1), 11L(1) and 11M(1) - in relation to income in respect of which assessments may have already been made.

Clause 10 : Provisions relating to certain income derived from sources in certain countries

The primary purpose of this clause is to apply the credit method of relief of double taxation to interest and royalties that are derived by residents of Australia from the United States, Ireland, Italy, Korea and Norway and in respect of which, under the agreements with those countries, the source country's rate of tax is limited. Section 12 of the Principal Act, which is to be amended by this clause, already achieves a corresponding result for interest and royalties derived by residents of Australia from countries with which Australia has concluded comprehensive double taxation agreements and in which the rate of foreign tax on such income is limited.

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

By clause 10, this policy will apply, as was indicated when signature of the agreements concerned was announced, to interest and royalties derived by Australian residents from the United States, Ireland, Italy, Korea or Norway after the dates identified in the provisions being inserted by the clause. The relevant credit articles in the agreements are:

United States	- Article 22;
Ireland	- Article 25;
Italy	- Article 24;
Korea	- Article 24; and
Norway	- Article 25.

As Norway does not generally tax interest or royalties derived by residents of other countries, the "not exempt from tax" condition of section 23(q) is not met, and such interest and royalties derived by Australian residents are, and will remain, fully taxable by Australia. However, should Norwegian tax be imposed on such income in the future, the convention would apply to limit the Norwegian tax to 10 per cent and Australia would allow a credit against the Australian tax on the income in respect of this amount of Norwegian tax.

Paragraph (a) of clause 10(1) will affect a formal drafting amendment consequent upon the addition to section 12(1) of the Principal Act of five new paragraphs, (ao) to (as).

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

The new paragraph (ao) will ensure that interest and royalties derived by a resident of Australia from the United States, the United States tax on which is expressly limited to 10 per cent of the gross amount of the relevant income, will not be exempt from Australian tax. Paragraph (ao) will apply to such income derived on or after the first day of the second month following the month in which the convention enters into force.

The new paragraphs (ap), (aq), (ar) and (as) will serve similar purposes in relation to interest and royalties derived by a resident of Australia from Ireland, Italy, Korea and Norway respectively. Paragraph (ap) will have effect in relation to interest and royalties derived in income years commencing on or after 1 July in the calendar year immediately following that in which the Irish agreement enters into force where, under that agreement, Irish tax is limited to 10 per cent of the gross amount of the relevant income.

Paragraph (aq) will have effect in relation to interest and royalties derived in income years which commence on or after 1 July 1976 where, under the Italian convention, Italian tax is limited to 10 per cent of the gross amount of the relevant income.

Paragraph (ar) will have effect in relation to interest and royalties derived in income years which commence on or after 1 July 1982 where, under the Korean convention, Korean tax is limited to 15 per cent of the gross amount of the relevant income.

Paragraph (as) will have effect in relation to interest and royalties derived in income years which commence on or after 1 July 1982 where, under the Norwegian convention, Norwegian tax is limited to 10 per cent of the gross amount of the relevant income.

Sub-clauses (2), (3) and (4) of clause 10 are designed to avoid any retrospective increase in the overall tax liability of Australian residents that might result from the application of the credit method of double taxation relief in relation to interest and royalty income derived from Italy, Korea or Norway to which the new paragraphs (aq), (ar) and (as) of section 12 apply, but which was derived on or before the dates of signature and announcement of the conventions. These dates were: Italy, 14 December 1982; Korea, 12 July 1982; and Norway, 6 May 1982. The sub clauses will have the effect that any increase in the Australian tax payable in respect of such interest or royalty income, resulting from the change from

the exemption system to the credit system, is not to exceed the amount by which the tax of the other country concerned on the income is reduced by reason of the conventions.

Sub-clauses (5), (6) and (7) of clause 10 empower the Commissioner to amend assessments that have already issued in order to apply the credit method of double taxation relief as regards interest and royalties derived from Italy, Korea and Norway respectively.

Clause 11 : Repeal of section 19A

Section 19A of the Principal Act was introduced in 1963 to ensure that United States residents who came to Australia to perform certain defence-related contracts for the United States Government the income from which, it was agreed, would be taxed only by the United States, would not lose the benefit of the reduced rate of Australian tax, conferred by Article VII of the previous United States convention on dividends they received from Australian companies, merely by establishing a permanent establishment in Australia for the sole purpose of performing those contracts.

In accordance with Article VII of the previous United States convention, such a United States resident would, but for section 19A, have been liable to full Australian taxation on any dividends received from Australian companies even though the dividends were not connected with the permanent establishment in any way.

Under the revised United States convention, a United States resident who maintains a permanent establishment in Australia will receive the benefit of the reduced rate of Australian tax on such "unconnected" dividends. Dividends effectively connected with a permanent establishment, like interest and royalties so connected, will be taxed under the revised convention as they are under Australia's other double taxation agreements, by assessment at ordinary rates of tax. Provisions similar to those contained in section 19A of the Principal Act are, accordingly, unnecessary in relation to income to which the revised United States convention applies and sub-clause (1) of clause 11 will repeal that section.

Sub-clause (2) ensures that the provisions of section 19A will, however, continue to have effect in relation to tax in respect of income in relation to which the previous United States convention remains effective.

Clause 12 : Collection of tax due to the United States of America

This clause will amend section 20 of the Principal Act which was inserted to enable Australia to give effect to its obligation under Article XVI of the previous United States convention to collect and remit United States tax, on behalf of the United States, where a person has obtained a benefit under that convention to which he was not entitled. Paragraph (5) of Article 25 of the revised United States convention places a similar obligation on Australia in relation to taxation benefits under that convention, and sub-clause (1) of clause 12 will amend sub-section (1) of section 20 by omitting the reference to Article XVI of the previous United States convention and substituting a reference to paragraph (5) of Article 25 of the revised convention.

Sub-clauses (2) and (3) will ensure that the existing provisions of section 20 continue to apply in relation to tax in respect of income in relation to which the previous convention remains effective.

Clause 13 : Schedule 2

This clause will repeal Schedule 2 to the Principal Act (the previous United States convention) and substitute the schedule set out in Schedule 1 to this Bill (the new United States convention).

Clause 14 : Addition of Schedules

This clause will add the agreements with India, Ireland, Italy, Korea and Norway as Schedules 19 to 23 respectively to the Principal Act.

EXHIBIT G

CONVENTION WITH THE UNITED STATES OF AMERICA

This is a revised convention replacing the convention between Australia and the United States of America which was signed in 1953. The revised convention accords, in substantial practical effect, with other agreements recently concluded by Australia. Like them, the convention allocates the right to tax certain categories of income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed by both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

The convention will apply to persons (which term includes companies) who are residents of either Australia or the United States. The situation of persons, other than companies, who are dual residents (i.e. residents of both countries), is dealt with in Article 4.

Paragraph (2) is broadly to the same effect as Article XX(a) of the previous convention. It provides that the convention is not to restrict specified benefits accorded from time to time by the domestic law of either country or under any other agreements between Australia and the United States.

Each country, by paragraph (3), retains the right to tax its residents (as determined under Article 4), and, relating to provisions of United States laws, individuals electing under its domestic law to be taxed as residents and its citizens, as if the convention had not entered into force.

This provision, which is a standard feature in United States agreements, was included at its request to remove any suggestion that the convention might prevent the application of a country's domestic laws, especially anti-tax-avoidance provisions, to its own residents.

Notwithstanding the provisions of paragraph (3), the application by each country to its residents of certain articles of the convention is preserved by paragraph (4). The articles, which are specified in sub-paragraphs (a) and (b) of paragraph (4) are basically those to which each country has agreed to relieve its residents from double taxation.

Article 2 - Taxes Covered

This article specifies the existing taxes to which the convention applies. These are, in broad terms, the Australian income tax and the United States federal income taxes as imposed by the Internal Revenue Code. The article will automatically extend the application of the convention to any identical or substantially similar taxes which may be imposed by either country in addition to, or in place of, the existing taxes.

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the convention. Some other terms are defined in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. "Australia" as defined in the previous convention with the United States did not include the continental shelf, the area of which had not been specified when that convention was negotiated. By reason of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities on its continental shelf. The definition is also relevant to the taxation by Australia of shipping and airline profits in accordance with Article 8 of the convention.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the convention. Residential status is one of the criteria for determining each country's taxing rights and the provision of relief under the convention. Residence according to each country's taxation law provides the basic test.

Unlike the previous United States convention, the article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer, other than a company, is regarded as a resident under the domestic laws of both countries. In the case of a company which is a resident of both countries under their respective domestic laws, the convention provides no such rules. As the

definition of an Australian or a United States corporation, contained in sub-paragraph (1)(g) of Article 3, effectively excludes a company which is a resident of both countries, such a company cannot, under Article 4, be treated as a resident of either Australia or the United States for the purposes of the convention. Consequently, a dual resident company will not be entitled to benefits granted by either country under the convention to residents of the other country.

Article 5 - Permanent Establishment

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

The primary meaning of the defined term is expressed in paragraph (1) as being a fixed place of business through which the business of an enterprise is wholly or partly carried on. Other paragraphs of the article elaborate on the meaning of the term by giving examples of what may constitute a "permanent establishment" - such as an office, a mine or an agricultural property - and by specifying the circumstances in which a resident of one country shall, or shall not, be deemed to have a "permanent establishment" in the other country.

Article 6 - Income from Real Property

By this article, income from real property, including income from the rights to exploit or to explore for natural resources may be taxed in the country in which the property or natural resources are situated. Income from a leasehold interest in land is, in accordance with sub-paragraph (2)(i), to be regarded as income from real property situated where the land to which the interest relates is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (6) of that article) and is therefore taxable in the country of source regardless of whether or not the recipient has a "permanent establishment" in that country.

While the article, unlike the corresponding provisions of the previous United States convention, does not provide for an Australian recipient of real property income from the United States to elect to be taxed by assessment on net income rather than by withholding on the basis of gross income (such an election is not necessary in the reverse situation) an election is provided in the relevant provisions relating to taxation of real property income in United States domestic laws.

Article 7 - Business Profits

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

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

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

Paragraph (7) of the article specifically allows the application of provisions of the source country's domestic law (e.g. the revised Australian Division 13) where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing, while paragraph (8) empowers each country to continue to apply any special provisions in its domestic law relating to the taxation of any person who carries on the business of any form of insurance.

Article 8 - Shipping and Air Transport

Under this article, the right to tax profits from the operation of ships or aircraft in international traffic, including profits received through participation in a pool service, in a joint transport operating

organisation or in an international operating agency, is reserved to the country of residence of the operator. The article differs significantly from the corresponding provisions in the previous convention under which income derived by a resident of one country from the operation of ships and aircraft (not only in international traffic) was exempt in the other country only if the ships or aircraft were registered in the first mentioned country.

Sub-paragraphs (a) and (b) of paragraph (1) extend, for the purposes of this article, the definition of profits from the operation in international traffic of ships or aircraft to include:

(a) profits from the lease on a full basis, that is, fully equiped, manned and supplied, of ships or aircraft operated in international traffic by the lessee, provided that the lessor either operates ships or aircraft otherwise than solely between places in the country other than of its residence, or regularly leases ships or aircraft on a full basis; and

(b) profits from the lease of ships or aircraft on a bare boat basis, or of containers and related equipment, if they are operated or used in international traffic by the lessee, and provided that any such lease is merely incidental to the operation of ships or aircraft in international traffic by the lessor.

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

Article 9 - Associated Enterprises

This article, like the corresponding article in the previous United States convention, authorises the re-allocation of profits between related enterprises in Australia and the United States on an arm's length basis where the commercial or financial arrangements between the enterprises differ from those that might be expected to operate between independent enterprises dealing at arm's length with one another.

Where a re-allocation of profits is effected under paragraph (1), so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (2) requires the other country concerned to make an appropriate adjustment to the amount of tax charged on the profits involved with a view to relieving any such double taxation.

By virtue of paragraph (3), each country retains the right to apply its domestic law (e.g. the revised Australian Division 13) in determining the tax liability of an enterprise, including determinations in cases where the available information is inadequate to determine the income to be attributed to the enterprise, provided that such provisions are applied, so far as it is practicable to do so, in accordance with the principles of the article.

Article 10 - Dividends

This article, which is basically to the same effect as the corresponding provisions in the previous United States convention, in general limits the tax that the country of source may impose on dividends payable to beneficial owners resident in the other country to 15 per cent of the gross amount of the dividends. Under this article, both countries will reduce their rates of withholding tax on dividends paid to residents of the other country from 30 per cent to 15 per cent.

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

The purpose of paragraph (5) of this article is to ensure, broadly, that one country will not tax dividends paid by a company resident solely in the other country. However, there are three exceptions to this rule. These are, firstly, where the person deriving the dividend is a resident of the first country. Secondly, where the holding giving rise to the dividends is effectively connected with a "permanent establishment" or "fixed base" in that country. The third exception, applicable only in the United States, is where that country does not impose a branch profits tax, at least 50 per cent of the gross

income of the company paying the dividends is attributable to one or more "permanent establishments" of the company in that country, and the dividends are paid out of the profits of such permanent establishments. Where only this third exception applies, any tax so imposed is limited to a maximum of 15 per cent of the dividends.

Paragraph (6) preserves the right of Australia to impose the "branch profits" tax provided for in its domestic law. It also provides that, for the purpose of calculating undistributed profits tax, the branch profits tax will not be taken into account, but the company will be deemed to have paid dividends of such amount that tax equal to the amount of the branch profits tax would have been payable under the article.

Article 11 - Interest

This article, provisions comparable to which were not included in the previous United States convention, requires the country of source generally to limit its tax on interest derived by residents of the other country to 10 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by United States residents which is already imposed at the rate of 10 per cent under Australian domestic law.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the income of that establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (3) of Article 11 requires that the 10 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (4)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Paragraph (6) provides that a country may only tax interest paid by a resident of the other country where the interest has its source in the first-mentioned country, where a resident of that country is beneficially entitled to the interest or where the interest is effectively connected with a "permanent establishment" or "fixed base" of the beneficial owner in that country.

Article 12 - Royalties

In the absence of provisions to the contrary in a double taxation agreement, Australia generally taxes royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties) as reduced by allowable expenses, at ordinary rates of tax.

While the previous United States convention exempted, in specified circumstances, certain cultural royalties from source country taxation, and provided for an election for natural resources royalties to be taxed on a net basis, it did not include any specific provisions relating to other royalties.

This article, in general, limits to 10 per cent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country. The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed.

As in the case of dividends and interest, it is specified in paragraph (3) that the 10 per cent limitation of tax in the country of source is not to apply to royalties effectively connected with a "permanent establishment" or "fixed base" in that country.

By paragraph (5), if royalties flow between related persons, the 10 per cent limitation will apply to the royalties only to the extent that they do not exceed the amount that might be expected to be agreed upon by independent persons acting at arm's length.

Paragraph (6) outlines the source rules for royalties. However, where a royalty is considered, in accordance with sub-paragraph (6)(a), not to have a source in either country but it relates to the use of or the right to use, in one of the countries, any property or right described in the definition of "royalties" in paragraph (4), then the royalty is, by sub-paragraph (6)(b) considered to have its source in that country where the property is used or where the right to use it is exercised.

The effect of this sub-paragraph which, of course, applies bilaterally, may be illustrated by the following example of an Australian company licensing a patent to a third country company, which in turn sub-licenses the patent for use in the United States. In this case the United States would tax the sub-license payment by the

United States user to the third country company in accordance with United States law, or with the provisions of the a United States treaty with that country, if applicable, and would also tax the license payment by the third country company to the Australian resident, subject to the limitation in paragraph (2). Third country residents cannot obtain the rate reduction provided in paragraph (2), since this article applies only to royalties derived by residents of a Contracting State.

Article 13 - Alienation of Property

Under this article, income or gains from the alienation or disposition of real property may be taxed in the country in which the property is situated.

Real property, in the case of Australia, is defined for the purposes of the article as including a leasehold interest in land and rights to exploit, or to explore for, natural resources. An interest in a company, partnership, trust or deceased estate, the assets of which consist wholly or principally of real property situated in Australia are also considered to be real property for purposes of the article. In the case of the United States, real property includes a United States real property interest, as defined under the Foreign Investment in Real Property Tax Act, and real property referred to in Article 6 that is situated in the United States.

Paragraph (3) specifies that income derived by an enterprise of one country from the disposal of ships, aircraft or containers operated or used by it in international traffic shall be taxable only in that country, except to the extent that the enterprise has been allowed depreciation on those ships, aircraft or containers in the other country. This paragraph also makes it clear that income from the sale of certain property that is treated as a royalty in accordance with sub-paragraph (4)(c) of Article 12 is to be taxable only in accordance with the provisions of that article.

Article 14 - Independent Personal Services

A provision corresponding to this article was not included in the previous United States convention, which treated independent personal services in the same way as dependent personal services.

The purpose of this article is to ensure that income derived by an individual who is a resident of Australia or the United States from the performance of personal services in an independent capacity in the other country will be

taxed in the country in which the services are performed if the recipient is present in that country for a period or periods aggregating more than 183 days in the year of income (or taxable year) of the country visited or that person has a "fixed base" regularly available in that country for the purpose of performing his or her activities, and the income is attributable to activities exercised from that base. If neither of these tests are met, the income will be taxed only in the country of residence.

Article 15 - Dependent Personal Services

Article 15 provides the basis upon which the remuneration derived by employees and company directors are to be taxed. Generally, salaries, wages, directors' fees, etc. derived by a resident of one country from an employment exercised or services performed as a director of a company in the other country will be taxed in that other country. However, subject to specified conditions, there is a provision for exemption from tax in the country being visited where visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in the year of income of the country visited, that the remuneration is paid by, or on behalf of, an employer or company who is not a resident of the country being visited and that the remuneration is not deductible in determining taxable profits of a "permanent establishment", "fixed base" or a trade or business which the employer or company has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed only in the country of residence.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the operator.

Article 16 - Limitation on Benefits

This article is designed to prevent persons who are not residents of either Australia or the United States from using companies or other entities as conduits to inappropriately secure benefits conferred by the convention.

By paragraph (1), a person (other than an individual) which is a resident of one country is not entitled to relief under the convention from taxation in the other country unless one or more of the following three conditions are met. The first condition is that more than 75 per cent of the beneficial interest in that person must

be owned, directly or indirectly, by or by any combination of individuals who are residents of Australia or the United States, citizens of the United States, the two countries themselves, or companies whose principal class of shares are traded on a recognised stock exchange in either country. Secondly, if the person is a company, it will not be entitled to the abovementioned relief unless there is substantial and regular trading in its principal class of shares on a recognised stock exchange of either country (which, by paragraph (2), includes the NASDAQ System in the United States). Thirdly, the person will not be entitled to relief if the establishment, acquisition and maintenance of that person and the conduct of its operations had, as one of its principal purposes, the purpose of obtaining benefits under the convention.

Paragraph (3) provides that the convention does not apply in relation to income derived by a trustee which, under the convention, is treated as income of a resident of one of the countries if the trustee derived the income in connection with a scheme a principal purpose of which was to obtain a benefit provided by the convention.

Article 17 - Entertainers

A provision corresponding to this article was not included in the previous United States convention, income of entertainers being dealt with under general provisions of the convention, in particular that dealing with personal services.

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will be taxed in the country in which the activities are exercised, irrespective of the duration of the visit. However, where the gross receipts derived by the entertainer from those activities, including expenses reimbursed to him or borne on his behalf, do not exceed U.S. $10,000 or its equivalent in Australian dollars in the year of income, the income will be subject to tax in accordance with Article 14 or 15, dealing respectively with independent or dependent personal services, as the case may be.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g. a separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that other person has a "permanent establishment" or "fixed base" in that country. However, if it is established that neither the

entertainer nor any person related to him participates in any profits of that other person in any manner, the relevant income accruing to that other person shall be taxed in accordance with the provisions of Articles 7, 14 or 15, dealing respectively with business profits and income from independent or dependent services, as the case may be.

Article 18 - Pensions, Annuities, Alimony and Child Support

Under this article, pensions and annuities (other than government pensions referred to in Article 19) are to be taxed only in the country of residence of the recipient. However, by paragraph (2), social security payments and other public pensions paid by one country to a resident of the other or to a United States citizen are to be taxable only in the country from which they are made.

In order to avoid a form of double taxation which could occur from the different bases of taxing alimony and maintenance payments in the two countries, paragraph (6) of the article provides that such payments arising in one country and paid to a resident of the other shall be taxable only in the country in which they arise.

Article 19 - Governmental Remuneration

Article 19 provides that remuneration (including pensions) paid in respect of labour or personal services performed as an employee of a government (including a State or local government) of one of the countries in the discharge of governmental functions to a citizen of that country will be taxable only in that country.

Article 20 - Students

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

Article 21 - Income Not Expressly Mentioned

This article provides rules for the allocation between the two countries of taxing rights in relation to items of income not expressly mentioned in the preceding articles of the convention, for example, income arising in a third country.

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

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

Article 22 - Relief from Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the convention provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this convention.

By paragraph (2) of the article, and subject to paragraph (4), Australia will relieve double taxation by allowing a credit against its own tax for United States tax, other than United States tax imposed solely by reason of citizenship or by an election by an individual under United States domestic law to be taxed as a resident of the United States, on income derived by a resident of Australia from sources in the United States. This credit method of relief will apply in respect of dividends derived by individuals from the United States, and in respect of interest and royalties derived by individuals and companies in respect of which the United States tax is limited by Article 11 or 12. The amount of the credit to be allowed in Australia is restricted to the lesser of the Australian tax payable on the income or any class thereof, or on income from sources outside Australia.

As indicated in paragraph (3), dividends derived from the United States by Australian resident companies are currently free from tax by the operation of section 46 of the Income Tax Assessment Act. However, this paragraph provides that if section 46 were to be amended so that the rebate was no longer allowable, Australia would allow a credit, in accordance with paragraph (2), to Australian companies that own at least 10 per cent of the voting power of the United States corporation paying the dividends, for the underlying United States tax paid on the profits out of which those dividends are paid as well as for the United States tax paid on those dividends.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in the United States. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part, the United States will allow a credit against United States tax to residents or citizens of the United States for the income tax paid to Australia on their Australian source income. In addition, in the case of a United States corporation owning at least 10 per cent of the voting stock of an Australian resident company from which it derives dividends, the United States will also allow a credit against its tax to the United States corporation for the underlying Australian company tax paid in respect of the profits of the Australian company out of which the dividends are paid.

Paragraph (4) contains a provision for avoiding double taxation of a United States citizen who is a resident of Australia. In such a case, the United States will allow as a credit against its tax the Australian tax paid after taking into account credit allowable by Australia in accordance with paragraph (2) of this article. To avoid a circular operation of these provisions, paragraph (4) states that the credit allowed by the United States under this paragraph is not to reduce the part of United States tax that is creditable against Australian tax under paragraph (2).

Article 23 - Non-Discrimination

This is the first Australian double taxation agreement to contain an article dealing with "Non-Discrimination". This article, which was included specifically at the request of the United States, represents, in effect, a government to government assurance of each country's intentions that in enacting taxation legislation, citizens or residents of the other country, and enterprises or companies wholly or partly owned by them, will not be treated in a less favourable way than that in which each country treats its own citizens,

residents, enterprises or companies. The article was included on the basis that it does not create private rights of appeal and so would not be given the force of law in Australia.

Not only that, paragraph (2) of the article expressly states that the article will not affect the operation of any taxation law of Australia or the United States in force on the date of signature of the convention (6 August 1982) or such laws introduced after the date of signature that are substantially similar in general purpose or intent to provisions in force on that date or reasonably designed to prevent the avoidance or evasion of taxes, with the proviso that laws introduced after the date of signature of the convention do not discriminate between citizens or residents of the other country and those of any third state.

It is further made clear, by paragraph (3), that except to the extent expressly so provided, nothing in the article prevents a country from distinguishing in its taxation laws between residents and non-residents solely on the grounds of their residence.

As a means of addressing instances where one country considers that the taxation measures of the other country result in discrimination contrary to this article, paragraph (4) provides for consultation between the countries to attempt to resolve the matter.

Article 24 - Mutual Agreement Procedure

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

The other main object of the article is to authorise consultation between the taxation authorities of the two countries for the purpose of seeking to resolve any difficulties or doubts regarding the application or interpretation of the convention.

Article 25 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the convention or for the prevention of fraud or for the administration of domestic laws concerning the taxes to which the convention applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

The exchange of information which would be contrary to public policy is not permitted by the article and any information which is exchanged in accordance with the article is to be treated as secret.

By paragraph (5), the taxing authorities of both countries agree to endeavour to collect taxes on behalf of the other country to the extent necessary to ensure that any exemption or reduction in the rate of tax provided for in the convention is not enjoyed by persons who are not entitled to the benefits of the convention (See notes on clause 12 of the Bill).

Article 26 - Diplomatic and Consular Privileges

The purpose of this article is to ensure that the provisions of the convention do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 27 - Miscellaneous

One of the purposes of this article is to provide source rules for income derived by residents of both countries.

Sub-paragraph (1)(a) provides that income derived by a United States resident which, under the convention, may be taxed in Australia, will be deemed to have its source in Australia for purposes of the convention and the Australian income tax law. This provision will obviate any question of income not having, by domestic law rules, a source in Australia when Australia is, by the convention, entitled to tax that income in the hands of a resident of the United States.

By sub-paragraph (1)(b), an Australian resident who derives income which, under this convention, may be taxed in the United States (other than solely by reason of citizenship or because the individual elected under United States domestic law to be taxed as a resident of the United States) will be deemed to have its source in the United States for the purposes of the allowance of a credit by Australia (under paragraph (2) of Article 22 of the convention) for United States tax and for the purposes of the Australian income tax law.

Sub-paragraph (1)(c) is designed to overcome a limitation that the United States would otherwise experience under its domestic law in giving effect to the provisions of paragraph (4) of Article 22. The United States taxes its citizens, even if they are residents of Australia, on a worldwide income basis and allows credit for foreign taxes paid on income that does not have a source in the United States. In the absence of provisions to the contrary, the United States would be unable to allow credit to a United States citizen who is also a resident of Australia for Australian tax imposed on income which has a source in the United States (e.g. interest and royalty income paid to a resident of Australia by a resident of the United States). To avoid this situation, this sub-paragraph will deem such income to have a source in Australia to the extent necessary to enable the United States to provide its citizens with a credit in accordance with paragraph (4) of Article 22.

Paragraph (2) of the article is designed to ensure that the convention does not result in income escaping tax in both countries. It provides that exemptions from tax provided by Articles 14, 15, 17 or 19 will be inapplicable to the extent that such income is not taxed by the country of residence.

Article 28 - Entry into Force

This article provides for the entry into force of the convention. This will be on the date on which instruments of ratification are exchanged and this exchange will take place at Washington, D.C.

Once it enters into force, the convention will have effect in both countries in respect of dividends, interest and royalties paid, credited or otherwise derived on or after the first day of the second month following the month in which the convention enters into force and, with respect to all other income of a taxpayer, for years of income commencing on or after the first day of the second month following the month in which the convention enters into force (See notes on clause (4) of the Bill which provides for the convention to have the force of law in Australia).

Paragraphs (3) and (4) make provision for the previous convention to cease to have effect with respect to taxes with respect to which this convention comes into effect in accordance with the above provisions, and for the previous convention to terminate on the expiration of the last date on which it has effect.

Article 29 - Termination

By this article the convention will remain in force indefinitely unless terminated by one of the countries. Either country may terminate the convention at any time after five years from the date on which it enters into force provided it gives at least six months prior notice of termination through the diplomatic channel. In that event, the convention would cease to be effective in both countries in respect of dividends, interest and royalties paid, credited or otherwise derived on or after the first day of January following the expiration of the six month period and, with respect to all other income of a taxpayer, for years of income commencing on or after the first day of January following the expiration of the six month period.

Notwithstanding these general rules, the provisions of paragraph (2) of Article 18 of the convention, providing for social security payments and other public pensions to be taxable only in the country making the payments, may be terminated by either country at any time after the convention enters into force by giving prior notice to the other country through the diplomatic channel.

EXHIBIT G

AGREEMENT WITH THE REPUBLIC OF INDIA

This agreement is limited to the taxation of profits derived by an enterprise of Australia or by an enterprise of India from the operation of aircraft in international traffic.

Article 1 : Taxes Covered

This article specifies the existing taxes to which the agreement will apply. The article will automatically extend the application of the agreement to any identical or substantially similar taxes subsequently imposed by either country in addition to, or in place of, the existing taxes.

Article 2 : Definitions

This article provides definitions for a number of the terms used in the agreement. An important term defined in this article is the "operation of aircraft in international traffic". By sub-paragraph (1)(h), that term is defined to mean, in broad effect, the operation of aircraft in the carriage of persons, livestock, goods or mail by an Indian enterprise other than between places within Australia and by an Australian enterprise other than between places within India (i.e. carriage other than internal carriage within one of the contracting countries). The term also includes, in relation to an enterprise that operates aircraft in international traffic, the sale of tickets and the provision of services in connection with international traffic either on behalf of the enterprise itself or on behalf of another enterprise that also operates aircraft internationally.

Article 3 : Exemption of Profits

Paragraph (1) of this article is the operative provision of the agreement. It confers reciprocal exemptions from tax on income derived by an enterprise of Australia or India from the operation of aircraft in international traffic. It also confirms that income derived by an airline from the operation of aircraft in its own country (and so not falling within the term "operation of aircraft in international traffic") will not be taxed by the other country. Paragraph (3) provides that, for the purposes of paragraph (1), income from the operation of aircraft in international traffic shall include interest on funds connected with the operation of aircraft in such traffic derived by an enterprise of Australia or India engaged in such operations.

EXHIBIT G

Article 4 : Commencement

This article provides that the agreement will enter into force on the thirtieth day after the date on which the Australian and Indian governments exchange notes at New Delhi advising the completion of all procedures necessary to give the agreement the force of law in each country. On entering into force the agreement will have effect in Australia and in India in respect of income derived on or after 1 April 1975, that is, from the commencement of the year when the first steps towards negotiation of the agreement took place.

Article 5 : Termination

The agreement is to continue in effect indefinitely. However, either country may give the other country written notice of termination on or before 30 June in any calendar year after 1986. In that event, the agreement would cease to be effective in respect of income derived on or after 1 April in the calendar year next following the year in which the notice of termination is given.

AGREEMENT WITH IRELAND

The agreement with Ireland accords in substantial practical effect with other comprehensive double taxation agreements to which Australia is a party. Like them, the agreement allocates the right to tax some income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed in both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

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

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

Article 2 - Taxes Covered

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

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the agreement. Some other terms are defined in the articles to which they relate and terms not defined in the agreement are to have the meaning which they have under the taxation law of the country applying the agreement.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. By reason of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities on its continental shelf. The definition is also relevant to the taxation by Australia of shipping and airline profits in accordance with Article 9 of the agreement.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the agreement. Residential status is one of the criteria for determining each country's taxing rights under the agreement. The concepts of residence under Australian tax law, or liability to tax by reason of domicile, residence or similar criteria under Irish law, provide the basic tests. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the agreement where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under the domestic laws of both countries.

Article 5 - Permanent Establishment

Application of various provisions of the agreement (principally Article 8) is dependent upon whether a person resident of one country has a "permanent establishment" in the other, and if so, whether income derived by the person in the other country is effectively connected with that "permanent establishment". The definition of the term "permanent establishment" which this article embodies corresponds closely with definitions of the term in Australia's other double taxation agreements.

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

Article 6 - Limitation of Relief

This article is designed to ensure that the provisions of the agreement, together with a country's domestic laws do not have the effect of wholly or partly freeing income from tax in both countries. The article identifies circumstances in which one of the countries under its domestic law may allow whole or partial exemption of certain income and establishes that any relief from tax in the other country that would otherwise be applicable under the agreement will be granted only to so much of the income that is not freed from tax in the first-mentioned country.

The article applies particularly in the case of income derived by residents of Ireland from sources in Australia, paragraph (a) referring to certain taxation concessions granted under Irish laws and paragraph (b) to the Irish "remittance" basis of taxing certain income. Broadly, the latter results in only that part of the relevant overseas earnings that is remitted to or received in Ireland by a resident of Ireland being subject to Irish tax. To prevent unremitted earnings of Irish residents from sources in Australia being free from tax in both countries, this article requires that any relief from Australian tax under the agreement is not to extend to amounts that are not subject to Irish tax.

Article 7 - Income from Real Property

By this article, income from real property, including income from the direct use, letting or use in any other form of any land or interest therein, and royalties and other payments in respect of the working of or the right to work mines, oil or gas wells, quarries or other places of extraction or exploitation of natural resources, may be taxed in the country in which the land, mine, quarry or natural resource is situated.

Income to which this article applies is specifically excluded from the scope of Article 8 (by paragraph (6) of that article) and is therefore taxable in the country of source regardless of whether or not the recipient has a "permanent establishment" in that country.

Article 8 - Business Profits

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

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

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

Paragraph (5) of the article allows the application of provisions of the source country's domestic law (e.g. the revised Australian Division 13) where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing.

Paragraph (7) preserves to each country the right to continue to apply any special provisions in its domestic law relating to the taxation of any person who carries on a business of any form of insurance.

Article 9 - Shipping and Air Transport

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

Any profits derived by a resident of one country from internal traffic in the other country may be taxed in that other country. By reason of the definition of "Australia" contained in Article 3 and the terms of paragraph (4) of Article 9, any shipments by air or sea from a place in Australia to another place in Australia, its continental shelf or external territories are treated as forming part of internal traffic.

Article 10 - Associated Enterprises

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

By virtue of paragraphs (2) and (3) of the article, each country retains the right to apply its domestic law (e.g. the revised Australian Division 13) to its own enterprises, provided that such provisions are applied, so far as it is practicable to do so, in accordance with the principles of this article.

Where a re-allocation of profits is effected under paragraphs (1), (2) or (3), so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continue to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (4) requires the other country concerned, subject to the six year time limit incorporated in it, to make an appropriate adjustment to the amount of tax charged on the profits involved with a view to relieving any such double taxation.

Article 11 - Dividends

The broad scheme of this article is to impose a limit on the tax which may be imposed by the country of source on dividends paid by companies which are resident in that country to shareholders who are beneficially entitled to the dividends and who are resident in the other country.

Under paragraph (1) of this article, Australia will reduce its rate of withholding tax on dividends paid to residents of Ireland from 30 per cent to 15 per cent.

Paragraphs (2), (3) and (4) deal with residents of Australia in receipt of dividends from companies resident in Ireland. Ireland has what is known as an imputation system of corporation tax. Under this system, a dividend or similar distribution paid by an Irish company entitles the recipient to a tax credit which represents part of the tax paid by the company. Where an individual receives such a dividend, the income subject to tax is the aggregate of the distribution and the appropriate tax credit. The individual's liability will be calculated on this gross amount and he will be entitled to deduct from the resulting tax liability the tax credit attaching to the distribution. Except in certain circumstances, the tax credit is not available to resident corporate shareholders as a dividend received by an Irish corporation from another resident corporation is not liable for corporation tax.

Paragraph (3) extends the Irish imputation tax credit to Australian residents (except in the case of certain companies). Ireland will impose a withholding tax on the aggregate amount of the dividends and tax credit received by the Australian resident at a rate not exceeding 15 per cent. The aggregate amount of the dividends and the tax credit is assessable in Australia but Australia will give a credit for the withholding tax paid in Ireland.

By paragraph (4), Ireland will not extend the tax credit to Australian companies which either alone or with other associated companies control directly or indirectly 10 per cent or more of the voting power of the company paying the dividends. However, in such cases, Ireland will not impose any dividend withholding tax.

Paragraph (6) is an anti-abuse provision designed to ensure that Australian residents do not secure the benefits provided by this article by acquiring for that purpose, shares in an Irish company.

Paragraph (7) ensures that the country of source will remain free to impose its normal rate of tax where the holding giving rise to the dividends is effectively connected with a "permanent establishment" that the recipient has in that country. In such a case the provisions of Article 8 or Article 15 as the case may be, shall apply.

The purpose of paragraph (8) is to ensure, broadly, that one country will not tax dividends paid by a company resident solely in the other country unless the person deriving the dividends is a resident of the first country or the holding giving rise to the dividends is effectively connected with a "permanent establishment" or "fixed base" in that country.

Article 12 - Interest

This article requires the country of source generally to limit its tax on interest derived by residents of the other country to 10 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by Irish residents which is already imposed at the rate of 10 per cent under Australia's domestic law.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that establishment or "fixed base" and be subject to the provisions of Article 8 or Article 15. Accordingly, paragraph (4) of Article 12 requires that the 10 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (6)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Article 13 - Royalties

This article in general limits to 10 percent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country.

The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 7, are to remain taxable in the country of source without limitation on the tax that may be imposed.

In the absence of a double taxation agreement, Australia generally taxes royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax.

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

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

Article 14 - Alienation of Property

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

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

Paragraph (4) specifies that income derived by an enterprise of one country from the disposal of ships or aircraft operated in international traffic while owned by that enterprise shall be taxable only in that country.

Article 15 - Independent Personal Services

The purpose of this article is to ensure that income derived by an individual resident in Australia or Ireland from the performance of professional services or similar independent activities in the other country will continue to be taxed in the country in which the services are performed if the recipient has a "fixed base" regularly available in that country for the purpose of performing his or her activities, and the income is attributable to activities exercised from that base. If these tests are not met, the income will be taxed only in the country of residence.

Remuneration derived as an employee and income derived by public entertainers are the subject of other articles of the agreement and are not covered by this article.

Article 16 - Dependent Personal Services

Article 16 provides the basis upon which the remuneration of visiting employees is to be taxed. Generally, salaries, wages, etc. derived by a resident of one country from an employment exercised in the other country will be taxed in that other country. However, subject to specified conditions, there is a conventional provision for exemption from tax in the country being visited where only visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in the year of income of the country visited, that the remuneration is paid by, or on behalf of, an employer who is not a resident of the country being visited and that the remuneration is not deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed in the country of residence.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the operator.

Article 17 - Directors' Fees

Under this article, remuneration derived by a resident of one country in the capacity of a director of a company which is a resident of the other country is to be taxed in the country where the company is resident.

Article 18 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, irrespective of the duration of the visit.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g., a separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that other person has a "permanent establishment" or "fixed base" in that country.

Article 19 - Pensions and Annuities

Under this article pensions and annuities, including government pensions, are to be taxed only by the country of residence of the recipient.

In order to avoid a form of double taxation which could occur from the different bases of taxing alimony and maintenance payments in the two countries, paragraph (3) of the article provides that such payments arising in one country and paid to a resident of the other shall be taxed only in the country in which they arise.

Article 20 - Government Service

Paragraph (1) of this article provides that remuneration other than pensions and annuities, in respect of services rendered to a government (including a State or local government) of one of the countries will be taxed only in that country. However, such remuneration is to be taxable only in the other country if the services are rendered in that country and the recipient is a citizen of, or ordinarily resides in, that country.

Paragraph (2) provides, in effect, that paragraph (1) does not apply where the services are rendered in connection with a trade or business carried on by a government. In such a case, the provisions of Articles 16 or 17 apply.

Article 21 - Professors and Teachers

This article applies to professors or teachers who are residents of one country and who visit the other country for a period of not more than two years solely for the purpose of teaching, carrying out advanced study or research at an educational institution. In these circumstances, the remuneration for such teaching or research is to be taxed only in the country of residence of the professor or teacher. The exemption provided by the article does not apply to remuneration received for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 22 - Students

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

Article 23 - Income Not Expressly Mentioned

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

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

However, the first mentioned exclusive taxing right of the country of residence does not apply where the income is effectively connected with a "permanent establishment" or "fixed base" which a resident of one country has in the other. In such cases the provisions of Article 8 or Article 15, as the case may be, will apply.

Article 24 - Source of Income

Article 24 specifies the source of various classes of income, for the purposes of ensuring that each country is empowered to exercise the taxing rights allocated to it by the agreement over residents of the other country and that, as intended by the agreement, double taxation relief will be given by the country of residence in respect of tax levied by the country of source in accordance with the taxing rights allocated to it under the agreement. The provision obviates any question of income not having, by domestic law rules, a source in the country that is, by the agreement, entitled to tax that income in the hands of a resident of the other country.

Article 25 - Methods of Elimiation of Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the agreement provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this agreement.

By paragraph (1) of the article Australia will relieve double taxation by allowing a credit against its own tax for Irish tax on income derived by a resident of Australia from sources in Ireland. Credit will be allowed by Australia for the Irish tax on dividends derived from Ireland by individuals and on interest and royalties derived from Ireland by individuals and companies in respect of which the tax of that country is limited by the agreement to 10 per cent. Dividends derived from Ireland by Australian resident companies will continue to remain free from tax under the provisions of section 46 of the Income Tax Assessment Act.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in Ireland. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part, Ireland will include in assessable income, profits, income or chargeable gains that are subject to Australian tax under the law of Australia and in accordance with the agreement and will allow its residents a credit against the Irish tax computed, the Australian tax payable. Where a dividend is paid by an Australian resident company to an Irish resident company which controls 10 per cent or more of the voting power of the Australian company, the credit allowed by Ireland shall also take into account the Australian tax payable by the company in respect of the profits out of which the dividend is paid.

This article also contains a provision (sub-paragraph (1)(b)) that should Australia cease to allow a rebate under section 46 of the Income Tax Assessment Act upon dividends received by an Australian company from an Irish company, Australia and Ireland will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on such dividends.

Article 26 - Mutual Agreement Procedure

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

The article also authorises consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the agreement and to give effect to it.

Article 27 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the agreement or of domestic laws concerning the taxes to which the agreement applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

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

Article 28 - Diplomatic and Consular Officials

The purpose of this article is to ensure that the provisions of the agreement do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 29 - Entry into Force

This article provides for the entry into force of the agreement. This will be on the date on which notes are exchanged through the diplomatic channel notifying that the last of all such constitutional processes has been completed in Australia and Ireland as is necessary to bring the agreement into force in both countries.

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

respect of taxes on income or on capital for any year of assessment beginning on or after 6 April in the calendar year immediately following that in which the agreement enters into force and in respect of corporation tax, for any financial year beginning on or after 1 January in that year.

Article 30 - Termination

By this article the agreement is to continue in effect indefinitely. However, either country may give written notice of termination on or before 30 June in any calendar year after the expiration of five years from the date of its entry into force. In that event, the agreement would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 July in the calendar year immediately following that in which the notice of termination is given and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given. It would cease to be effective in Ireland in respect of taxes on income or on capital for any year of assessment beginning on or after 6 April in the calendar year immediately following that in which the notice of termination is given , and for corporation tax, for any financial year beginning on or after 1 January in the calendar year immedately following that in which the notice of termination is given.

CONVENTION WITH THE REPUBLIC OF ITALY

The convention with Italy accords in substantial practical effect with other comprehensive double taxation agreements to which Australia is a party. Like them, the convention allocates the right to tax some income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed in both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

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

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

Article 2 - Taxes Covered

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

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the convention. Some other terms are defined in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. By reason of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities in its continental shelf. The definition is also relevant to the taxation by Australia of shipping and airline profits in accordance with Article 8 of the convention.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the convention. Residential status is one of the criteria for determining each country's taxing rights and is a necessary condition for the provision of relief under the convention. Residence according to each country's taxation law provides the basic test. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under the domestic laws of both countries.

Article 5 - Permanent Establishment

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

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

Article 6 - Income from Real Property

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

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (6) of that article) and is therefore taxable in the country of source regardless of whether the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

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

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

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

Paragraph (5) preserves to each country the right to continue to apply any special provisions in its domestic law relating to the taxation of income from insurance with non-residents.

It is customary for the article dealing with business profits to provide that each country retains the right to apply its domestic law where there is insufficient information available to allow the determination of the profits to be attributed to an enterprise. A provision to this effect is contained at paragraph (1) of the Protocol to this convention.

Article 8 - Shipping and Aircraft

Under this article the right to tax profits from the operation of ships in international traffic, including profits derived from participation in a pool service, a joint transport operating organization or an international operating agency, is reserved to the country of residence of the operator where the place of effective management of the shipping enterprise is situated in that country.

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

In cases where the effective management of a shipping enterprise is conducted aboard a ship, paragraph (5) establishes rules for determining, for the purpose of paragraph (1), the country in which the place of effective management shall be deemed to be situated.

Paragraph (6) ensures that this convention does not affect the operation of the airline profits agreement between Australia and Italy which was signed in Canberra on 13 April 1972, but paragraph (2) of the Protocol updates the list of taxes to which that convention applies to reflect changes in Italian taxes since the convention was signed.

Article 9 - Associated Enterprises

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

It is customary for the article dealing with associated enterprises to provide that each country retains the right to apply its domestic law where there is insufficient information available to allow the determination of the profits to be attributed to an enterprise. A provision to this effect is contained at paragraph (1) of the Protocol to this convention.

Paragraph (3) of the Protocol also affects this article. It provides that, inter alia, Australia retains the right to apply the revised Australian Division 13 to Australian enterprises notwithstanding the provisions of this article.

Article 10 - Dividends

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

per cent, while Italy will reduce its withholding tax on dividends paid to Australian residents from the general rate of 30 per cent to 15 per cent.

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

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

Article 11 - Interest

This article requires the country of source generally to limit its tax on interest derived by residents of the other country to 10 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by Italian residents which is already imposed at the rate of 10 per cent under Australia's domestic law.

Paragraph (3) requires each country to exempt interest derived by the Government of, or any other body exercising governmental functions in, the other country, or by a bank performing central banking functions in the other country.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (5) of Article 11 requires that the 10 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (7)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Article 12 - Royalties

This article in general limits to 10 per cent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country. Paragraph (3) of the article, together with paragraph (4) of the Protocol, provides definitions of the term royalties.

The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed.

In the absence of a double taxation agreement, Australia generally taxes royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax.

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

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

Article 13 - Alienation of Property

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

Paragraph (3) provides that gains from the disposal of shares or corporate rights in an Italian company derived by an individual who is a resident of Australia may be taxed in Italy.

Article 14 - Independent Personal Services

The purpose of this article is to ensure that income derived by an individual resident in Australia or Italy from the performance of professional services or similar independent activities in the other country will continue to be taxed in the country in which the services are performed if the recipient has a "fixed base" regularly available in that country for the purpose of performing his or her activities, and the income is attributable to activities exercised from that base. If these tests are not met, the income will be taxed only in the country of residence.

Remuneration derived as an employee and income derived by public entertainers are the subject of other articles of the convention and are not covered by this article.

Article 15 - Dependent Personal Services

Article 15 provides the basis upon which the remuneration of visiting employees is to be taxed. Generally, salaries, wages, etc. derived by a resident of one country from an employment exercised in the other country will be taxed in that other country. However, subject to specified conditions, there is a conventional provision for exemption from tax in the country being visited where only visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in the year of income of the country visited, that the remuneration is paid by, or on behalf of, an employer who is not a resident of the country being visited and that the remuneration is not deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed in the country of residence.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the recipient.

Article 16 - Directors' Fees

Under this article, remuneration derived by a resident of one country in the capacity of a director of a company which is a resident of the other country is to be taxed in the country where the company is resident.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, irrespective of the duration of the visit.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g., a separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that other person has a "permanent establishment" or "fixed base" in that country.

Article 18 - Pensions and Annuities

Under this article pensions and annuities, including government pensions, are to be taxed only by the country of residence of the recipient.

In order to avoid a form of double taxation which could occur from the different bases of taxing alimony and maintenance payments in the two countries, paragraph (3) of the article provides that such payments arising in one country and paid to a resident of the other shall be taxed only in the country in which they arise.

Article 19 - Government Service

Paragraph (1) of this article provides that remuneration, other than pensions and annuities, in respect of services rendered to a government (including a State or local government) of one of the countries will be taxed only in that country. However, such remuneration is to be taxable only in the other country if the services are rendered in that country and the recipient is a citizen of, or ordinarily resides in, that other country.

Paragraph (2) provides, in effect, that paragraph (1) does not apply where the services are rendered in connection with a trade or business carried on by a government. In such a case, the provisions of Articles 15 and 16 apply.

Article 20 - Professors and Teachers

This article applies to professors or teachers who visit a country for a period of not more than two years for the purpose of teaching or carrying out advanced study or research at an educational institution and who, immediately before the visit, were resident in the other country. In these circumstances the remuneration of the professor or teacher for his or her teaching, study or research work are to be exempt from tax in the country visited provided it is subject to tax in the other country.

Article 21 - Students

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

Article 22 - Income of Dual Resident

This article relates to individuals and companies resident in both Australia and Italy under the domestic income tax laws of the two countries.

For the purposes of the convention, such a person is to be treated by application of the rules set out in Article 4 as a resident of only one of the countries, and Article 22 reserves to the country to which the person's residence is so allotted the sole right to tax income from sources in that country or from a third country.

Article 23 - Source of Income

Article 23 specifies the source of various classes of income, for the purposes of ensuring that each country is empowered to exercise the taxing rights allocated to it by the convention over residents of the other country and that, as intended by the convention, double taxation relief will be given by the country of residence in respect of tax levied by the country of source in accordance with the taxing rights allocated to it under the convention. The

provision obviates any question of income not having, by domestic law rules, a source in the country that is, by the convention, entitled to tax that income in the hands of a resident of the other country.

Article 24 - Methods of Elimination of Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the convention provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this convention.

By paragraph (1) of the article Australia will relieve double taxation by allowing a credit against its own tax for Italian tax on income derived by a resident of Australia from sources in Italy. Credit will be allowed by Australia for the Italian tax on dividends derived from Italy by individuals and on interest and royalties derived from Italy by individuals and companies in respect of which the tax of that country is limited by the convention to 10 per cent. Dividends derived from Italy by Australian resident companies will continue to remain free from tax under the provisions of section 46 of the Income Tax Assessment Act.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in Italy. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part, Italy will, broadly, allow a credit to Italian residents, in respect of taxes payable in Australia on their Australian source income, against Italian tax payable on that income. The amount of credit to be allowed in Italy is restricted to the lesser of the Australian tax payable and the Italian tax applicable to that income. However, a credit for taxes payable in Australia will not be granted if the item of income is subjected in Italy to a final withholding tax upon the request of the recipient in accordance with the Italian law.

Paragraph (5) of the Protocol makes it clear that the credit to be allowed by the country of residence for the source country's tax on dividends is not to include tax paid in respect of profits out of which the dividend is paid.

Article 25 - Mutual Agreement Procedure

One of the purposes of this article is to provide for consultation between the taxation authorities of the two countries with a view to reaching a satisfactory solution where a taxpayer is able to demonstrate actual or potential subjection to taxation contrary to the provisions of the convention. A taxpayer wishing to use this procedure must present a case within two years of the first notification of the action giving rise to the taxation not in accordance with the convention. (See, also, the notes on paragraph (6) of the Protocol).

Another purpose of the article is to authorise consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties or doubts regarding the application of the convention and to give effect to it.

Article 26 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the convention or of domestic laws concerning the taxes to which the convention applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

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

Article 27 - Diplomatic and Consular Officials

The purpose of this article is to ensure that the provisions of the convention do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 28 - Refunds

This article sets out the procedure to be followed to claim a refund where the amount of tax withheld at source exceeds the limit specified in the convention. The refund may be claimed by the taxpayer, or by the country of which he is a resident.

Claims for refund should be lodged within the time limit fixed by the law of the country which is required to give the refund and should be accompanied by an official certificate of the country of which the taxpayer is a resident certifying that all conditions necessary for entitlement to the refund have been met. (See also notes on paragraph (7) of the Protocol).

Article 29 - Entry into Force

This article provides for the entry into force of the convention. This will be on the date on which instruments of ratification are exchanged in Rome.

Once it enters into force, the convention will have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 July 1976, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July 1976. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July 1976 will be the date from which the convention will take effect. In Italy, the convention will have effect in respect of income assessable for taxable periods beginning on or after 1 July 1976.

In recognition of the fact that the convention will have effect from dates in 1976, paragraph (3) provides that any claim for a refund or credit arising under the convention in respect of a period prior to the entry into force of the convention may be lodged within three years of the date of entry into force or the date the tax was charged, whichever date is the later.

Article 30 - Termination

By this article the convention is to continue in effect indefinitely. However, either country may give notice of termination not less than six months before the end of any calendar year after the expiration of five years from the date of the entry into force of the convention. In that event, the convention would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination is given and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given. It would cease to be effective in Italy in respect of income assessable for taxable periods beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

Protocol to the Convention with the Republic of Italy

The Protocol contains a number of provisions varying or extending parts of the main body of the convention. The Protocol itself provides that its provisions are to form an integral part of the convention.

Paragraph 1 of the Protocol allows the application of provisions of each country's domestic law (e.g. the Australian Division 13) where there is insufficient information available to determine profits of an enterprise for purposes of Articles 7 and 9 of the convention by application of the arm's length basis of allocation.

Paragraph 2 of the Protocol provides that the Italian taxes to which the airline profits agreement with Italy signed on 13 April 1972 shall apply, are the individual income tax, the corporate income tax and the local income tax.

If, in Australia, a tax (not being Australian tax referred to in Article 1 of the airline profits agreement) were subsequently to be imposed on profits derived by an Italian enterprise from the operation of aircraft in international traffic, the taxes to which the airline profits agreement shall apply in Italy shall not include the local income tax.

Paragraph 3 of the Protocol provides that, notwithstanding the provisions of Article 9 (which deals with associated enterprises), each country retains the right to apply its domestic law (e.g. the revised Australian Division 13) to its own enterprises, provided that such provisions are applied, so far as it is practicable to do so, in accordance with the principles applicable under that Article.

Paragraph 4 of the Protocol extends the meaning of the term "payments" as used in Article 12 (which deals with royalties) to include any amounts credited. The term "royalties" is also extended to include payments or credits for total or partial forbearance in respect of the use of a property or right.

Paragraph 5 of the Protocol provides that the tax paid on dividends in one country that is to be allowed as a credit, in accordance with Article 24, against tax payable in respect of those dividends in the other country, shall not include tax paid in respect of the profits out of which the dividend is paid.

Paragraph 6 of the Protocol makes it clear that the expression "notwithstanding the remedies provided by the national laws", as used in paragraph (1) of Article 25, does not relieve an Italian resident from using the national contentious proceedings when the claim is related to an assessment of Italian tax not in accordance with this convention.

Paragraph 7 of the Protocol provides that the provisions of paragraph (3) of Article 28, which states that the taxation authorities in Australia and Italy shall settle the procedures for allowing refunds under that article, shall not prevent either country from carrying out other practices for the allowance of the taxation reductions provided for in this convention.

Paragraph 8 of the Protocol requires that if, at some future time, Australia enters into an agreement with a country which, at 14 December 1982, is a member of the O.E.C.D., whereby Australia agrees to limit its tax on dividends, interest or royalties to rates less than those prescribed in the Italian convention, Australia is to enter into negotiations with Italy for the purpose of reviewing those rates in the Italian convention.

EXHIBIT G

CONVENTION WITH THE REPUBLIC OF KOREA

Subject to some differences that reflect the position of the Republic of Korea as a developing country, the convention accords in substantial practical effect with other comprehensive double taxation agreements to which Australia is a party. Like them, the convention allocates the right to tax some income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed in both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

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

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

Article 2 - Taxes Covered

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

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the convention. Some other terms are defined in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. By reason of this definition, Australia retains taxing rights in

relation to mineral exploration and mining activities on its continental shelf. The definition is also relevant to the taxation by Australia of shipping and airline profits in accordance with Article 8 of the convention.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the convention. Residential status is one of the criteria for determining each country's taxing rights and is a necessary condition for the provision of relief under the convention. Residence according to each country's taxation law provides the basic test. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under the domestic laws of both countries.

Article 5 - Permanent Establishment

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

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

Article 6 - Income from Real Property

By this article, income from real property, including royalties and other payments in respect of the operation of mines or quarries or from the exploitation of any natural resource may be taxed in the country in which the property is situated. Income from a lease of land and income from any other direct interest in or over land are,

in accordance with paragraph (2), to be regarded as income from real property situated where the land to which the lease or other interest relates is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (6) of that article) and is therefore taxable in the country of source regardless of whether the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

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

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

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

Paragraph (5) of the article allows the application of provisions of the source country's domestic law (e.g. the new Australian Division 13) where the correct amount of profits attributable to a "permanent establishment" is incapable of determination or the ascertainment thereof presents exceptional difficulties, for example, where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing.

Article 8 - Ships and Aircraft

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

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

Article 9 - Associated Enterprises

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

By virtue of paragraph (4) of the article, each country retains the right to apply its domestic law (e.g. the revised Australian Division 13) to its own enterprises, provided that such provisions are applied, so far as it is practicable to do so, in accordance with the principles of this article.

Where a re-allocation of profits is effected under this article or, by virtue of paragraph (4), under domestic law, so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (5) requires the other country concerned to make an appropriate adjustment to the amount of tax charged on the profits involved with a view to relieving any such double taxation.

Article 10 - Dividends

This article in general limits the tax that the country of source may impose on dividends payable to beneficial owners resident in the other country to 15 per cent of the gross amount of dividends. Under this article, Australia will reduce its rate of withholding tax on dividends paid to residents of Korea from 30 per cent to 15 per cent, while Korea will reduce its withholding tax on dividends paid to Australian residents from 25 per cent to 15 per cent.

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

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

Paragraph (6) preserves the right of Australia to impose the "branch profits" tax provided for in its domestic law. It also provides that, for the purpose of calculating undistributed profits tax, the branch profits tax will not be taken into account, but the company will be deemed to have paid dividends of such amount that tax equal to the amount of the branch profits tax would have been payable under the article.

Article 11 - Interest

This article requires the country of source generally to limit its tax on interest derived by residents of the other country to 15 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by Korean residents which will continue to be imposed at the rate of 10 per cent under Australia's domestic law.

Paragraph (3) requires each country to exempt interest derived by the Government of, or any other body exercising governmental functions in, the other country, or by a bank performing central banking functions in the other country.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (5) of Article 11 requires that the 15 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (7)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 15 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Article 12 - Royalties

This article in general limits to 15 per cent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country.

The 15 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed.

In the absence of a double taxation agreement, Australia generally taxes royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax.

As in the case of the dividends and interest, it is specified in paragraph (4) that the 15 per cent limitation of tax in the country of origin is not to apply to royalties effectively connected with a "permanent establishment" or "fixed base" in that country.

By paragraph (6), if royalties flow between related persons, the 15 per cent limitation will apply only to the extent that the royalties are not excessive.

Article 13 - Alienation of Property

Under this article, income from the alienation of real property may be taxed in the country in which that property is situated.

Real property is defined for the purposes of the article as including a lease of land or other direct interest in or over land and rights to exploit, or to explore for, natural resources. Shares or comparable interests in a company the assets of which consist wholly or principally of direct interests in or over land in one of the countries, or of rights to exploit or explore for natural resources in one of the countries, are also for these purposes deemed to be real property.

Paragraph (3) specifies that income derived by an enterprise of one country from the disposal of ships or aircraft operated in international traffic while owned by that enterprise, or personal property associated with such operations, shall be taxable only in that country.

Article 14 - Independent Personal Services

The purpose of this article is to ensure that income derived by an individual resident in Australia or Korea from the performance of professional services or similar independent activities in the other country (which may now be taxed in the country in which the services or activities are performed), will continue to be taxed in the country in which the services are performed if the recipient has a "fixed base" regularly available in that country for the purpose of performing his or her activities, and the income is attributable to activities exercised from that base. If these tests are not met, the income will be taxed only in the country of residence.

Remuneration derived as an employee and income derived by public entertainers are the subject of other articles of the convention and are not covered by this article.

Article 15 - Dependent Personal Services

Article 15 provides the basis upon which the remuneration of visiting employees is to be taxed. Generally, salaries, wages, etc. derived by a resident of one country from an employment exercised in the other country will be taxed in that other country. However, subject to specified conditions, there is a conventional provision for exemption from tax in the country being visited where only visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in the year of income of the country visited, that the remuneration is paid by, or on behalf of, an employer who is not a resident of the country being visited and that the remuneration is not deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed in the country of residence.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the operator.

Article 16 - Directors' Fees

Under this article, remuneration derived by a resident of one country in the capacity of a director of a company which is a resident of the other country is to be taxed in the country where the company is resident.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, irrespective of the duration of the visit.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g., a separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that other person has a "permanent establishment" or "fixed base" in that country.

Paragraphs (3) and (4) provide, broadly, that income derived by an entertainer visiting one of the countries, or by another person in relation to such a visit, is to be exempt from tax in that country if the visit, or that other person, is supported substanstially from public funds of the other country, or if the other person is a non-profit organisation of the other country.

Article 18 - Pensions and Annuities

Under this article pensions and annuities (other than government pensions referred to in Article 19) are to be taxed only by the country of residence of the recipient.

Article 19 - Government Service

Paragraph (1) of this article provides that remuneration in respect of services rendered to a government (including a State or local government) of one of the countries will be taxed only in that country. However, such remuneration is to be taxable only in the other country if the services are rendered in that country and the recipient is a citizen of, or ordinarily resides in, that country.

Paragraph (2) provides that any pension paid by the government (including State and local government) of one country in respect of services rendered to that government may be taxed only in that country, unless the recipient is a resident of, and a national or citizen of, the other country, in which case the pension is to be taxed only in the other country.

Paragraph (3) provides, in effect, that paragraphs (1) and (2) do not apply where the services are rendered in connection with a trade or business carried on by a government. In such a case, the provisions of Articles 15, 16 or 18 apply. By paragraph (4), however, the provisions of paragraphs (1) and (2) also apply to remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea and the Korea Trade Promotion Corporation and, in the case of Australia, by the Reserve Bank of Australia.

Article 20 - Professors and Teachers

This article applies to individuals who are residents of one country and who, at the invitation of a recognised educational institution in the other country, visit that country for a period of not more than two years solely for the purpose of teaching or research or both at that educational institution. In these circumstances, the remuneration for such teaching or research is to be taxed only in the country of residence of the visiting individuals.

Article 21 - Students and Trainees

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

Article 22 - Income Not Expressly Mentioned

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

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

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

Article 23 - Source of Income

Article 23 specifies the source of various classes of income, for the purposes of ensuring that each country is empowered to exercise the taxing rights allocated to it by the convention over residents of the other country and that, as intended by the convention, double taxation relief will be given by the country of residence in respect of tax levied by the country of source in accordance with the taxing rights allocated to it under the convention. The provision obviates any question of income not having, by domestic law rules, a source in the country that is, by the convention, entitled to tax that income in the hands of a resident of the other country.

Article 24 - Methods of Elimination of Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the convention provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this convention.

By paragraph (1) of the article Australia will relieve double taxation by allowing a credit against its own tax for Korean tax on income derived by a resident of Australia from sources in Korea. Credit will be allowed by Australia for the Korean tax on dividends derived from

Korea by individuals and on interest and royalties derived from Korea by individuals and companies in respect of which the tax of that country is limited by the convention to 15 per cent. Dividends derived from Korea by Australian resident companies will continue to remain free from tax under the provisions of section 46 of the Income Tax Assessment Act.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in Korea. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part the Republic of Korea will, broadly, allow a credit to Korean residents, in respect of taxes payable in Australia on their Australian source income, against the Korean tax payable on that income. The amount of credit to be allowed in Korea is restricted to the lesser of the Australian tax payable and the Korean tax applicable to the income.

The convention contains "tax sparing" provisions which are similar to those included in Australia's agreements with Singapore, the Philippines and Malaysia. Under these provisions, which are contained in paragraphs (3), (4) and (5) of Article 24, Australia will tax an Australian recipient of interest or royalties on which Korea - under agreed incentive measures - has forgone its tax as if Korean tax forgone had been paid.

Sub-paragraph (a) of paragraph (3) defines the term "Korean tax forgone" for the purposes of the tax sparing credit as Korean tax that, but for relevant Korean legislation, would have been payable on interest or royalties, and effectively limits the tax sparing credit for Korean tax to 10 per cent of the gross amount of such income. Sub-paragraph (b) will provide for the relevant Korean incentive legislation in respect of which tax sparing credits are to be allowed to be agreed in letters exchanged between the Korean Minister of Finance and the Australian Treasurer and proposed sub-section 11L(3) (see notes on clause 9 of the Bill) will provide for advice of any such agreement to be notified in the Gazette.

Paragraph (4) means that for the purposes of the tax sparing credit, Korean tax forgone as defined in paragraph (3) is to be treated as Korean tax paid. Sub-paragraph (b) of paragraph (4) has the effect that where a tax sparing credit is allowed, the Korean income concerned is to be grossed-up, for purposes of calculating the Australian tax thereon, by the amount of the tax

sparing credit. For example, in the case of interest and royalties received from Korea, in respect of which Korean tax has been forgone, the amount included in assessable income in Australia will be the amount received, plus 10 per cent of the amount.

By reason of paragraph (5), the tax sparing provisions outlined above will not apply after 30 June 1987 unless Australia and Korea agree to extend them beyond that date. Proposed sub-section 11L(4) (see notes on clause 9 of the Bill) will provide for advice of any such extension to be notified in the Gazette.

Article 25 - Mutual Agreement Procedure

One of the purposes of this article is to provide for consultation between the taxation authorities of the two countries with a view to reaching a satisfactory solution where a taxpayer is able to demonstrate actual or potential subjection to taxation contrary to the provisions of the convention. A taxpayer wishing to use this procedure must present a case within three years of the first notification of the action giving rise to the taxation not in accordance with the convention and if, on consideration, a solution is reached, it may be implemented irrespective of any time limits imposed by domestic tax laws of the relevant country.

The article also authorises consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the convention and to give effect to it.

Article 26 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the convention or of domestic laws concerning the taxes to which the convention applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

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

Article 27 - Diplomatic and Consular Officials

The purpose of this article is to ensure that the provisions of the convention do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 28 - Entry into Force

This article provides for the entry into force of the convention. This will be on the first day of the month second following the month in which an exchange of notes through the diplomatic channel notifying the completion of all procedures required by each country's law for bringing the convention into force has been completed.

Once it enters into force, the convention will have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 January 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July 1982. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July 1982 will be the date from which the convention will take effect in respect of tax other than withholding tax. In Korea, the convention will have effect, for purposes of withholding tax, in respect of income derived on or after 1 January 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 January 1982.

Article 29 - Termination

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

1 July in the calendar year next following that in which the notice of termination is given. It would cease to be effective in Korea for withholding tax purposes in respect of income derived on or after 1 January in the calendar year next following that in which the notice of termination is given, and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 January in the year next following that in which the notice of termination is given.

Protocol to the Convention with the Republic of Korea

The Protocol contains a number of provisions varying or extending parts of the main body of the convention. The protocol itself provides that its provisions are to form an integral part of the convention.

Paragraph 1 of the Protocol provides that the taxes covered, as outlined in Article 2, shall also include the Korean defence tax where it is charged by reference to the income tax or the corporation tax.

Paragraph 2 of the Protocol provides that the convention is not to apply to profits of an enterprise from carrying on a business of any form of insurance other than life insurance, and so preserves the application of the special provisions in each country's law relating to income from general insurance.

Paragraph 3 of the Protocol formally acknowledges that the additional tax referred to in paragraph (6) of Article 10 applicable at the date of signature of the convention is, in the case of Australia, the tax of 5 per cent levied on the reduced taxable income of non-resident companies in accordance with section 128T of the Income Tax Assessment Act.

Paragraph 4 of the Protocol acknowledges that dividends received by an Australian company from a Korean company are in effect freed from Australian tax by the rebate under section 46 of the Income Tax Assessment Act, and provides that if this rebate ceased to be allowed, Australia and Korea will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

Paragraph 5 of the Protocol provides for Australia and Korea to enter into negotiations in order to establish new provisions concerning the credit to be allowed by Korea against its tax on dividends, if subsequent to signature of the convention, Korea provides relief from its tax on

intercorporate dividends or, in a convention with a third country, agrees to give credit for the tax of that third country on profits out of which dividends are paid to a resident of Korea.

Paragraph 6 provides that if, in a subsequent convention between Australia and a third country, Australia agrees to reduce below 15 per cent its tax on dividends paid from Australia to a resident of that country, or includes in such a convention an article dealing with non-discrimination, Australia and Korea are to enter into negotiations with a view to providing comparable treatment in relation to Korea.

CONVENTION WITH NORWAY

The convention with Norway accords in substantial practical effect with other comprehensive double taxation agreements to which Australia is a party. Like them, the convention allocates the right to tax some income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed in both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

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

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

Article 2 - Taxes Covered

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

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the convention. Some other terms are defined in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

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

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the convention. Residential status is one of the criteria for determining each country's taxing rights and is a necessary condition for the provision of relief under the convention. Residence according to each country's taxation law provides the basic test. The concepts of residence under Australian tax law, or liability to tax by reason of domicile, residence or similar criteria under Norwegian law, provide the basic tests. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under the domestic laws of both countries.

Article 5 - Permanent Establishment

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

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

Article 6 - Income from Real Property

Under this article, income from real property, including income from the direct use, letting or use in any other form of any land or interest therein, and royalties and other payments in respect of the working of or the right to work mines, oil or gas wells, quarries or other places of extraction or exploitation of natural resources, may be taxed in the country in which the land, mine, quarry or natural resource is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (8) of that article) and is therefore taxable in the country of source regardless of whether or not the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

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

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

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

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

Paragraph (6) of the article allows the application of provisions of the source country's domestic law (e.g. the revised Australian Division 13) where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing, while paragraph (9) empowers each country to continue to apply any special provisions in its domestic law relating to the taxation of income from insurance with non-residents.

Article 8 - Shipping and Air Transport

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

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

Article 9 - Associated Enterprises

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

Paragraph (2) preserves to each country the right to apply its domestic law where there is insufficient information available to allow the determination of the profits to be attributed to an enterprise. However, so far as it is practical, this must be done in accordance with the principles of the article.

Where a re-allocation of profits is effected under paragraph (1) or (2), so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (3) requires the competent authorities of both countries to consult with each other with a view to relieving any such double taxation.

Article 10 - Dividends

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

15 per cent, while Norway will reduce its withholding tax on dividends paid to Australian residents from 25 per cent to 15 per cent.

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

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

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

Article 11 - Interest

This article requires the country of source generally to limit its tax on interest derived by residents of the other country to 10 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by Norwegian residents which is already imposed at the rate of 10 per cent under Australia's domestic law. Norway does not impose tax on interest paid to non-residents, unless, broadly, it is derived through a trade or business carried on in Norway. The 10 per cent limitation, therefore, does not have any practical application as regards Norwegian tax on interest paid to non-residents.

Paragraph (3) requires each country to exempt interest derived by the Government of, or any other body exercising governmental functions in, the other country, or by a bank performing central banking functions in the other country.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that

establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (5) of Article 11 requires that the 10 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (7)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Article 12 - Royalties

This article, in general, limits to 10 per cent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country.

The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed.

In the absence of a double taxation agreement, Australia generally taxes royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax. Norway does not, at present, impose tax on royalties paid to non-residents unless, broadly, the income is derived through a trade or business carried on in Norway.

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

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

Article 13 - Alienation of Property

Under this article, income from the alienation of real property or of an interest in or over land or of a right to exploit or explore for natural resources may be taxed in the country in which that property, land or natural resources are situated.

By paragraph (2), shares or comparable interests in a company the assets of which consist wholly or principally of real property or of interests in or over land in one of the countries, or of rights to exploit or explore for natural resources in one of the countries, are deemed for these purposes to be real property and to be situated in the country in which the land or resources are situated or the exploration takes place.

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

Paragraph (4) provides that gains from the disposal of shares in a Norwegian company derived by an individual who is a resident of Australia may be taxed in Norway.

Paragraph (5) specifies that gains from the disposal of ships or aircraft operated in international traffic, or associated movable property, shall be taxable only in the country of residence of the alienator.

Article 14 - Independent Personal Services

At present, an individual resident in Australia or in Norway may be taxed in the other country on income derived from the performance in that other country of professional services or other similar independent activities. By this article, such income will continue to be subject to tax in the country in which the services are performed in cases where the recipient has a "fixed base" regularly available in that country for the purposes of performing his or her activities and the income is attributable to activities exercised from that base, or where the income is derived during a period or periods exceeding 183 days in a year of income or in any two consecutive years of income, in which the recipient is present in that country.

If neither of the tests mentioned above are met, the income will be taxed only in the country of residence. Where, however, income which is thus taxable in the country of residence of the recipient is, or upon the application of this article will be, exempt from tax in that country, paragraph (2) provides that it may be taxed in the other country.

Article 15 - Dependent Personal Services

Article 15 provides the basis upon which the remuneration of visiting employees is to be taxed. Generally, salaries, wages, etc. derived by a resident of one country from an employment exercised in the other country will be taxed in that other country. However, subject to specified conditions, there is a conventional provision for exemption from tax in the country being visited where only visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in a year of income or in any two consecutive years of income, of the country visited, that the remuneration is paid by, or on behalf of, an employer who is a resident of the country of which the recipient is a resident and that the remuneration is not deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed in the country of residence. However, to the extent that the country of residence does not exercise this taxing right, the income may be taxed by the country in which the activities are performed.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the operator. It also reserves to Norway the sole right to tax its residents who are employed on aircraft operated in international traffic by the Scandinavian Airlines System consortium.

Article 16 - Directors' Fees

Under this article, remuneration derived by a resident of one country in the capacity of a director of a company which is a resident of the other country is to be taxed in the country where the company is resident.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, irrespective of the duration of the visit.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g., a

separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that other person has a "permanent establishment" or "fixed base" in that country.

Paragraph (3) provides, broadly, that income derived by entertainers visiting one of the countries is to be exempt from tax in that country if the visit is substantially supported or sponsored by the other country and the taxation authorities of that other country provide certification to this effect.

Article 18 - Pensions and Annuities

Under this article pensions and annuities, including government pensions and social security payments, are to be taxed only by the country of residence of the recipient.

In order to avoid a form of double taxation which could occur from the different bases of taxing alimony and maintenance payments in the two countries, paragraph (3) of the article provides that such payments arising in one country and paid to a resident of the other shall, if they are not allowable tax deductions to the payer, be taxed only in the country in which they arise.

Article 19 - Government Service

Paragraph (1) of this article provides that remuneration, other than a pension or annuity, in respect of services rendered to a government (including a State or local government) of one of the countries will be taxed only in that country. However, such remuneration is to be taxable only in the other country if the services are rendered in that country and the recipient is a citizen of, or ordinarily resides in, that country.

Paragraph (2) provides, in effect, that paragraph (1) does not apply where the services are rendered in connection with a trade or business carried on by a government. In such a case, the provisions of Articles 15 or 16 apply.

Article 20 - Students

This article applies to students temporarily present in a country solely for the purpose of their education who are, or immediately before the visit were, resident in the other country. In these circumstances, the

students will be exempt from tax in the country visited in respect of payments received from abroad for the purposes of their maintenance or education.

Article 21 - Income Not Expressly Mentioned

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

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

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

Article 22 - Offshore Activities

This article provides that, notwithstanding other provisions of the convention e.g. Articles 5, 7, 14 and 15, income derived by a resident of one country from activities carried on offshore in the other country in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources is to be treated, in effect, as having been derived from a business carried on through a "permanent establishment" or "fixed base" in that other country in cases where the activities are carried on for a period which exceeds 30 days in any 12 months period. For the purposes of this test, activities carried on by an enterprise which are substantially similar to the activities carried on by another enterprise with which it is associated are to be treated as having been carried on by that other enterprise.

Paragraph (4) provides, broadly, that salary, wages and similar remuneration derived by a resident of one country from employment connected with such activities in the other country shall, to the extent that the duties are performed offshore in the other country, be taxable only in that other country if the employment offshore is carried on for a period exceeding 30 days in the aggregate in any 12 months period.

Article 23 - Source of Income

Article 23 specifies the source of various classes of income, for the purposes of ensuring that each country is empowered to exercise the taxing rights allocated to it by the convention over residents of the other country and that, as intended by the convention, double taxation relief will be given by the country of residence in respect of tax levied by the country of source in accordance with the taxing rights allocated to it under the convention. The provision obviates any question of income not having, by domestic law rules, a source in the country that is, by the convention, entitled to tax that income in the hands of a resident of the other country.

Article 24 - Capital

Norway at present imposes municipal and national taxes on capital, and this article merely recognises Norway's right to impose these taxes on certain items of capital situated in Norway which are owned by residents of Australia. Since Australia does not impose any comparable taxes, the convention limits the taxes which may be imposed by Norway to those on capital represented by real property as defined in Article 6 situated in Norway, and movable property which forms part of the business property of a "permanent establishment" or "fixed base" that an Australian resident has in Norway. All other elements of capital of a resident of Australia are to be exempt from tax in Norway.

Article 25 - Methods of Elimination of Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the convention provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this convention.

By paragraph (1) of the article Australia will relieve double taxation by allowing a credit against its own tax for Norwegian tax on income derived by a resident of Australia from sources in Norway. Credit will be allowed by Australia for the Norwegian tax on dividends derived from Norway by individuals and on interest and royalties derived from Norway (should Norway in the future impose such a tax) by individuals and companies in respect of which the tax of that country is limited by the convention to 10 per cent. Dividends derived from Norway by Australian resident companies will continue to remain free from tax under the provisions of Section 46 of the Income Tax Assessment Act.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in Norway. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

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

Article 26 - Mutual Agreement Procedure

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

Another purpose of the article is to authorise consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the convention and to give effect to it.

Article 27 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the convention or of domestic laws concerning the taxes to which the convention applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

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

Article 28 - Diplomatic and Consular Officials

The purpose of this article is to ensure that the provisions of the convention do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 29 - Entry into Force

This article provides for the entry into force of the convention. This will be on the date on which notes are exchanged through the diplomatic channel notifying that the last of all such constitutional processes has been completed in Australia and Norway as is necessary to bring the convention into force in both countries.

Once it enters into force, the convention will have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 July 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July 1982. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July 1982 will be the date from which the

convention will take effect. In Norway, the convention will have effect in respect of taxes on income or on capital relating to the 1982 and subsequent calendar years, including accounting periods ending in those years.

Article 30 - Termination

By this article the convention is to continue in effect indefinitely. However, either country may give written notice of termination on or before 30 June in any calendar year after the expiration of five years from the date of its entry into force. In that event, the convention would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 July in the calendar year immediately following that in which the notice of termination is given and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given. It would cease to be effective in Norway in respect of taxes on income or on capital relating to the calendar year next following that in which the notice of termination is given and subsequent calendar years.

Protocol to the Convention with the Kingdom of Norway

The Protocol contains a number of provisions relating to the possible future variation of parts of the main body of the convention. The Protocol itself states that its provisions are to form an integral part of the convention.

Paragraph 1 of the Protocol requires that if, after 26 September 1980, Australia enters into a double taxation convention with a country which is a member of the O.E.C.D., in which Australia agrees to limit its tax on dividends, interest or royalties to rates which are less than those agreed for that income in the Norwegian convention, Australia is to enter into negotiatons with Norway for the purpose of reviewing those rates in the Norwegian convention.

Paragraph 2 of the Protocol requires that if, after 26 September 1980, Norway enters into a double taxation convention with another member country of the O.E.C.D., in which Norway agrees to give special relief from its tax on dividends paid by a company resident in that other country to a company resident in Norway, Norway is to inform Australia and enter into negotiations to review the provisions of Article 25 (Methods of Elimination

of Double Taxation) in order to provide the same relief in respect of dividends paid by Australian companies. The paragraph also provides that if, at some future time, Norway so requests, paragraph (2) of Article 25 shall be replaced with provisions to the effect that Norway will allow its residents a credit for the Australian tax paid in respect of income which, under the convention, may be taxed in Australia up to, but not exceeding, the Norwegian tax on the income.

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EXHIBIT G

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