

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

AGREEMENT BETWEEN  
THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE COOK ISLANDS

ON

THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF  
INDIVIDUALS

AND

TO ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER  
PRICING ADJUSTMENTS

(Rarotonga, 27 October 2009)

Not yet in force

[2009] ATNIF 31

The Government of Australia and the Government of the Cook Islands (“the Contracting Parties”),

*Recognising* that the Contracting Parties have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

*Desiring* to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

## **ARTICLE 1 PERSONS COVERED**

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

## **ARTICLE 2 TAXES COVERED**

1 The existing taxes to which this Agreement shall apply are:

(a) in Australia, the income tax imposed under the federal law of Australia;

(hereinafter referred to as "Australian tax").

(b) in the Cook Islands, the income tax;

(hereinafter referred to as "Cook Islands tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting Party.

### **ARTICLE 3**

#### **DEFINITIONS**

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

(a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

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

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

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

(b) the term "the Cook Islands" means the territory of the Cook Islands;

(c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and in the case of the Cook Islands, the Collector of Inland Revenue or an authorised representative of the Collector;

(d) the term "Contracting Party" means Australia or the Cook Islands, as the context requires;

(e) the term "person" includes an individual, a company and any other body of persons;

- (f) the term "tax" means Australian tax or Cook Islands tax, as the context requires; and
- (g) the term "transfer pricing adjustment" means an adjustment made by the competent authority of a Contracting Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Contracting Party regarding transfer pricing.

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

#### **ARTICLE 4**

#### **RESIDENT**

1 For the purposes of this Agreement, the term "resident of a Contracting Party" means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of the Cook Islands, a person who is a resident of the Cook Islands for the purposes of Cook Islands tax.

2 A person is not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Contracting Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Contracting Party with which the individual's personal and economic relations are closer (centre of vital interests);

- (b) if the Contracting Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Contracting Party in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Contracting Parties, or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

4 Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

## **ARTICLE 5**

### **PENSIONS AND RETIREMENT ANNUITIES**

1 Pensions (including government pensions) and retirement annuities paid to an individual who is a resident of a Contracting Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Contracting Party may be taxed in that Party where such income is not subject to tax in the other Contracting Party.

2 The term "retirement annuity" means:

- (a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;
- (b) in the case of the Cook Islands, an annuity payment that is not an approved annuity within the meaning of the taxation laws of the Cook Islands; and
- (c) any other similar periodic payment agreed upon by the competent authorities.

## **ARTICLE 6**

### **GOVERNMENT SERVICE**

1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting Party or a political subdivision or a local authority

thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.

- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:
- (i) is a national or citizen of that Contracting Party; or
  - (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party.

## **ARTICLE 7 STUDENTS**

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

## **ARTICLE 8 MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS**

1 Where a resident of a Contracting Party considers the actions of the other Contracting Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within 3 years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Contracting Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

## **ARTICLE 9**

### **EXCHANGE OF INFORMATION**

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Contracting Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

## **ARTICLE 10**

### **ENTRY INTO FORCE**

The Contracting Parties shall notify each other, in writing, through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement on the Exchange of Information with Respect to Taxes is in force between the Contracting Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force;  
and
- (b) in respect of Cook Islands tax, for any year of income beginning on or after 1 January in the calendar year following the date on which this Agreement enters into force.

**ARTICLE 11**  
**TERMINATION**

1 This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may give to the other Contracting Party written notice of termination.

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given; and
- (b) in respect of Cook Islands tax, in the year of income beginning on or after 1 January in the calendar year following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement on the Exchange of Information with Respect to Taxes between the Contracting Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Rarotonga on this twenty seventh day of October 2009,  
in duplicate.

FOR THE GOVERNMENT OF  
AUSTRALIA:

Senator Nick Sherry  
Assistant Treasurer

FOR THE GOVERNMENT OF THE  
COOK ISLANDS:

Sir Terepai Maoate  
Prime Minister