

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

CONVENTION

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR

THE AVOIDANCE OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME

AND

THE PREVENTION OF FISCAL EVASION

Not yet in force

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CONVENTION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE REPUBLIC OF TURKEY FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE
PREVENTION OF FISCAL EVASION

The Government of Australia and the Government of the Republic of Turkey,

Desiring to conclude a Convention for the avoidance of double taxation with respect to
taxes on income and the prevention of fiscal evasion,

Have agreed as follows:

ARTICLE 1

Persons Covered

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

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

(a) in Australia:

the income tax, including the resource rent tax in respect of offshore
projects relating to exploration for or exploitation of petroleum resources,
imposed under the federal law of Australia;

(b) in Turkey:

- (i) the income tax; and
- (ii) the corporation tax.

2. This Convention shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of Turkey after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the law of their respective States relating to the taxes to which this Convention applies within a reasonable period of time after those changes.

3. For the purposes of Article 26, the taxes to which this Convention shall apply are:

- (a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and
- (b) in the case of Turkey, taxes of every kind and description imposed under the tax laws administered by Ministry of Finance.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, 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 seabed and subsoil of the continental shelf;

- (b) the term "Turkey" means the Turkish territory, as well as the (maritime) areas over which it has jurisdiction or sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and subsoil of the continental shelf in accordance with international law;
- (c) the term "Australian tax" means tax imposed by Australia, being tax to which this Convention applies by virtue of paragraphs 1 or 2 of Article 2, but does not include any penalty or interest imposed under the law of Australia relating to its tax;
- (d) the term "Turkish tax" means tax imposed by Turkey, being tax to which this Convention applies by virtue of paragraphs 1 or 2 of Article 2, but does not include any penalty or interest imposed under the law of Turkey relating to its tax;
- (e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (f) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Turkey, the Minister of Finance or an authorised representative of the Minister;
- (g) the terms "a Contracting State" and "other Contracting State" mean Australia or Turkey, as the context requires;
- (h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;
- (j) the term "Turkish company" means a company which, under the law of Turkey relating to Turkish tax, is a resident of Turkey, and which is not, under the law of Australia relating to Australian tax, a resident of Australia;
- (k) the term "Australian company" means a company which, under the law of Australia relating to Australian tax, is a resident of Australia, and which is not, under the law of Turkey relating to Turkish tax, a resident of Turkey;
- (l) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing nationality or citizenship of that Contracting State; and
 - (ii) any company or legal person deriving its status as such from the laws in force in that Contracting State;
- (m) the term "person" includes an individual, a company and any other body of persons.

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

ARTICLE 4

Resident

1. For the purposes of this Convention, a person is a resident of a Contracting State:
 - (a) in the case of Australia, if the person is:

- (i) an Australian company; or
 - (ii) any other person (except a company) who, under the law of Australia relating to Australian tax, is a resident of Australia;
- (b) in the case of Turkey, if the person is:
- (i) a Turkish company; or
 - (ii) any other person (except a company) who, under the law of Turkey relating to Turkish tax, is a resident of Turkey.

2. The term "resident of a Contracting State" also includes that State and any political subdivision or local authority of that State.

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

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

- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;
- (c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
 - (g) a building site or construction, installation or assembly project which exists for more than 6 months.
3. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:
 - (a) it carries on supervisory activities in that State for more than 6 months in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that State;
 - (b) substantial equipment is operated in that State by the enterprise for more than 6 months in any 12 month period.
4. An enterprise shall not be deemed to have a permanent establishment merely by reason of:

- (a) the use of facilities solely for the purpose of storage, display or irregular delivery of goods or merchandise belonging to the enterprise; or
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or irregular delivery; or
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise; or
- (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

5. Notwithstanding the provisions of paragraph 1, 2, and 3, where an enterprise of a Contracting State performs professional services in the other Contracting State for a period or periods exceeding 183 days in any twelve month period, and these services are performed through one or more individuals who are present and performing such services in that other State, the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) in so acting, manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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

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

9. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

ARTICLE 6

Income from Real Property

1. Income from real property (including income from agricultural, pastoral or forestry activities on that real property) may be taxed in the Contracting State in which the real property is situated.
2. In this Article, the term "real property":
 - (a) in the case of Australia, has the meaning which it has under the law of Australia and includes:

- (i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources;
- (b) in the case of Turkey, means property which according to the laws of Turkey is immovable property, and includes:
- (i) property accessory to immovable property;
 - (ii) livestock and equipment used in agriculture and forestry (including the breeding and cultivation of fish);
 - (iii) rights to which the provisions of general law respecting landed property apply; and
 - (iv) usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources;
- (c) does not include ships, boats and aircraft.

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

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

5. The provisions of paragraphs 1, 3, and 4 shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be reasonably expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

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

7. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. Where:

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

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

ARTICLE 8

Shipping and Aircraft Operations

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

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.

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

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

ARTICLE 9

Associated Enterprises

1. Where:

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

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

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

3. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might reasonably have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might reasonably have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged therein on those profits, if it agrees with the adjustment made by the other Contracting State. In determining such adjustment, due regard shall be had to the other provisions of this Convention and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

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

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

- (a) (i) in the case of dividends paid by a company that is a resident of Australia, 5 per cent of the gross amount of the dividends, where those dividends are paid to a company (other than a partnership) which holds directly at least 10 per cent of the voting power in the company paying the dividends; and
- (ii) in the case of dividends paid by a company that is a resident of Turkey, 5 per cent of the gross amount of the dividends which are paid out of profits which have been subjected to the full rate of corporation tax in Turkey, where those dividends are paid to a company (other

than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; and

- (b) 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either Contracting State at the date of signature of this Convention is varied, otherwise than in minor respects so as to not affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident.

4. Profits of a company which is a resident of a Contracting State and which carries on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed in accordance with Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with the law of that State, but the tax so charged shall not exceed:

- (a) 5 per cent of the remaining amount where profits of the company are subject to the full rate of corporation tax in that State; and
- (b) 15 per cent of the remaining amount in all other cases.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Subject to paragraph 4, where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such

dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, that interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is a resident of the other State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Interest derived from the investment of official reserve assets by the Government of a Contracting State, its central bank or a bank performing central banking functions in that State shall be exempt from tax in the other Contracting State.
4. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness and all other income subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, those royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the beneficial owner of the royalties is a resident of the other State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" in this Article means credits or payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
 - (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or

- (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or
- (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (e) the use of, or the right to use:
 - (i) motion picture films; or
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting; or
- (f) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence; or
- (g) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with

which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the first-mentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than real property) pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Income, profit or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests deriving more than 50 per cent of the

value directly or indirectly from real property situated in the other Contracting State may be taxed in that other State.

5. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

6. Notwithstanding the provisions of paragraph 5, gains of a capital nature derived by a resident of Australia from the alienation of shares or similar rights in a Turkish company or bonds issued by a resident of Turkey may be taxed in Turkey, if the period between acquisition and alienation of such shares, rights or bonds does not exceed 2 years.

ARTICLE 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and:

- (a) the individual has a fixed base regularly available in that other State for the purposes of performing those services or activities; or
- (b) the individual is present in that other State for the purpose of performing those services or activities for a period or periods exceed in the aggregate 183 days in any 12 month period commencing or ending in the year of income of that other State.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed in that other State, as the case may be, may be taxed in that other State.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other State.

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

ARTICLE 16

Directors' Fees

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

ARTICLE 17

Entertainers

1. Notwithstanding the provisions of Articles 14 and 15, income derived by residents of a Contracting State as entertainers (such as theatrical, motion picture, radio or television artistes and musicians and sportspersons) from their personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer who is a resident of a Contracting State, from the entertainer's personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned State if the activities in the other State are supported wholly or substantially from the public funds of the first-mentioned State, including any of its political subdivisions or a local authorities.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and similar periodic remuneration, paid to a resident of a Contracting State shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Subject to the provisions of paragraph 2 of Article 19, lump sums in lieu of the right to receive a pension, annuity or other similar periodic remuneration, paid to a

resident of a Contracting State shall be taxable only in that State. However, such lump sums (other than an amount paid under a pension scheme to a member of that scheme who is aged 60 years or more) may also be taxed in the other State if they arise in that other State.

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

ARTICLE 19

Government Service

1. Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or a local authority of that State to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- (a) is a national of that State; or
- (b) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions, annuities or lump sum retirement benefits paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority of that State to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, a pension or annuity referred to in subparagraph (a) shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with any trade or business

carried on by a Contracting State or a political subdivision or a local authority of that State.

ARTICLE 20

Teachers and Students

1. Where a student who is a resident of a Contracting State or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present therein solely for the purpose of the student's education, receives payments from sources outside that other State for the purpose of the student's maintenance or education, those payments shall not be taxed in that other State.
2. Where a professor or teacher who is a resident of one of the Contracting States visits the other Contracting State for a period not exceeding 2 years for the purpose of teaching, or carrying out advanced study or research, at a university, college, school or other educational institution therein, any remuneration the person receives for such teaching, advanced study or research shall not be taxed in that other State to the extent to which that remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.
3. Paragraph 2 of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State where that income is effectively connected with a permanent

establishment or fixed base situated therein. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

ARTICLE 22

Source of Income

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8, 10 to 17 and 19, may be taxed in the other Contracting State shall, for the purposes of the law of that other Contracting State relating to its tax, be deemed to arise from sources in that other Contracting State.

2. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8, 10 to 17 and 19, may be taxed in the other Contracting State shall, for the purposes of Article 23 and of the law of the first-mentioned Contracting State relating to its tax, be deemed to arise from sources in the other Contracting State.

ARTICLE 23

Methods of Elimination of Double Taxation

1. Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), Turkish tax paid under the law of Turkey and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Turkey shall be allowed as a credit against Australian tax payable in respect of that income.

2. Subject to the provisions of the law of Turkey from time to time in force which relate to the allowance of a credit against Turkish tax paid in a country outside Turkey (which shall not affect the general principle of this Article), Australian tax paid under the law of Australia and in accordance with this Convention in respect of income derived by a resident of Turkey from sources within Australia shall be allowed as a deduction from the Turkish tax on such income. Such deduction shall not, however, exceed that part of the Turkish tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia.

3. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. Subject to the provisions of paragraph 4 of Article 10 of this Convention, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 of this Convention apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

6. This Article shall not apply to any provision of the laws of a Contracting State which:

- (a) is designed to prevent the avoidance or evasion of taxes;
- (b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;
- (c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that Australian companies that are owned directly or indirectly by residents of Turkey can access such consolidation treatment on the same terms and conditions as other Australian companies;
- (d) provides deductions to eligible taxpayers for expenditure on research and development; or
- (e) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Government of Australia and the Government of the Republic of Turkey.

7. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:

- (a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

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

8. The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Convention, the person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which this Convention applies, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with this Convention.
2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. The agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States. However, in the case of Turkey, the taxpayer must claim the refund resulting from such mutual agreement within a period of 1 year after the tax administration has notified the taxpayer of the result of the mutual agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention. When it seems advisable in order to reach a solution to have an oral exchange of opinions, such exchange may take place through a meeting of representatives of the competent authorities of the Contracting States.

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

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic law concerning taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

ARTICLE 27

Members of Diplomatic Missions and Consular Posts

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

ARTICLE 28

Entry into Force

1. The Government of Australia and the Government of the Republic of Turkey shall notify each other in writing through the diplomatic channel of the completion of their respective statutory and constitutional procedures required for the entry into force of this Convention. This Convention shall enter into force on the date of the last notification.
2. This Convention shall have effect:
 - (a) in Australia:
 - (i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 January in the calendar year next following that in which the Convention enters into force;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following that in which the Convention enters into force;
 - (b) in Turkey:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January next following the date upon which this Convention enters into force;
 - (ii) with regard to other taxes, in respect of taxable years beginning on or after 1 January next following the date upon which this Convention enters into force.

ARTICLE 29

Termination

1. This Convention shall continue in effect indefinitely, but either of the Government of Australia and the Government of the Republic of Turkey may terminate the Convention, through the diplomatic channel, by giving written notice of termination at least 6 months before the end of any calendar year beginning after the expiration of 5 years from the date of its entry into force.

2. This Convention shall cease to be effective:

(a) in Australia:

- (i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following that in which the notice of termination is given;

(b) in Turkey:

- (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given;
- (ii) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

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

DONE at _____, this _____ day of _____ 2010,
in duplicate in the English and Turkish languages, both texts being equally authentic.

**For the Government of
Australia**

**For the Government of the
Republic of Turkey**

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PROTOCOL
TO
THE CONVENTION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE REPUBLIC OF TURKEY FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of the Republic of Turkey,

Having regard to the Convention between the Government of Australia and the Government of the Republic of Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today at [] (the Convention),

Have agreed as follows:

1. In respect of paragraph 3 of Article 7, no account shall be taken in the determination of the profits of a permanent establishment, of amounts paid or charged, (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent by or to the head office of the enterprise or any of its other offices.
2. In respect of paragraphs 3 and 5 of Article 5,
 - (a) The duration of activities will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

- (b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.
- (c) Under Article 5, an enterprise shall be deemed to be associated with another enterprise if:
 - (i) one is controlled directly or indirectly by the other; or
 - (ii) both are controlled directly or indirectly by the same person or persons.

3. In respect of paragraph 5 of Article 5, it is understood that where an enterprise of a Contracting State undertakes to perform professional services in the other Contracting State and subcontracts all or part of those services to another enterprise, the period during which such services are performed in that other State by that other enterprise shall be regarded as time spent by the first-mentioned enterprise.

4. In respect of Article 8, and for the avoidance of doubt, it is understood that the operation of ships or aircraft referred to in that Article includes non-transport activities, such as dredging, fishing, and surveying and that such activities conducted in a place or places in a Contracting State are to be treated as ship or aircraft operations confined solely to places in that State.

5. For the purposes of Articles 10, 11 and 12, it is understood that dividends, interest or royalties are paid to a resident of a Contracting State where that person is the beneficial owner of such dividends, interest or royalties.

6. In respect of Article 10,

- (a) Notwithstanding the rate limit specified in subparagraph (a)(ii) of paragraph 2, Turkey may impose tax on dividends to which that provision applies at a rate not exceeding that specified in subparagraph (b) of that paragraph if such dividends are subject to tax in Australia.
- (b) Notwithstanding the rate limit specified in subparagraph (a) of paragraph 4, Turkey may impose tax on amounts to which that provision applies at a rate not exceeding that specified in subparagraph (b) of that paragraph if the

profits attributable to a permanent establishment situated in Turkey are subject to tax in Australia.

7. In respect of paragraph 3 of Article 10, it is understood that dividends in the case of Turkey shall include income from "jouissance" shares, "jouissance" rights or founder's shares and income derived from an investment fund or investment trust.

8. In respect of paragraph 3 of Article 18, it is understood that in the case of payments arising in Australia, the term "lump sums in lieu of the right to receive a pension, annuity or other similar periodic remuneration" does not include a departing Australia superannuation payment made to a person who has worked in Australia while visiting on an eligible temporary resident visa.

This Protocol shall form an integral part of the Convention.

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

DONE at this day of 2010, in duplicate
in the English and Turkish languages, both texts being equally authentic.

**For the Government of
Australia**

**For the Government of the
Republic of Turkey**

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