No. 11388

JAPAN
and
AUSTRALIA

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Canberra on 20 March 1969

Authentic texts: Japanese and English.
Registered by Japan on 4 November 1971.

JAPON
et
AUSTRALIE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Canberra le 20 mars 1969

Textes authentiques : japonais et anglais.
Enregistrée par le Japon le 4 novembre 1971.

AGREEMENT[1] BETWEEN JAPAN AND THE COMMONWEALTH OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the Commonwealth of Australia,

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

Have agreed as follows:

Article 1

(1) The taxes to which this Agreement applies are —

(*a*) in Australia:

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

(*b*) in Japan:

the income tax and the corporation tax.

(2) This Agreement applies also to any identical or substantially similar taxes which may be subsequently imposed by Japan or the Commonwealth in addition to, or in place of, the taxes referred to in the preceding paragraph.

(3) In this Agreement, "Australian tax" means tax of the Commonwealth to which this Agreement applies; 'Japanese tax' means tax of Japan to which this Agreement applies.

(4) With respect to paragraph (2) of Article 6 only, this Agreement shall also apply to the taxes referred to in that paragraph.

[1] Came into force on 4 July 1970, the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Tokyo on 4 June 1970, in accordance with article 22.

Article 2

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

(*a*) "the Commonwealth" means the Commonwealth of Australia;

(*b*) "Australia" means the Commonwealth and, when used in a geographical sense, includes —

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

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

(iv) the Territory of Ashmore and Cartier Islands; and

(v) any territory which, subsequent to the date of signature of this Agreement, becomes a Territory of the Commonwealth;

(*c*) "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

(*d*) "Contracting State", "one of the Contracting States" and "other Contracting State" mean Japan or Australia, as the context requires;

(*e*) "resident in Japan" means a person who is resident in Japan under the law of Japan relating to Japanese tax; "resident of Australia" means a person who is a resident of Australia under the law in force in Australia relating to Australian tax;

(*f*) "Australian resident" means a person who is a resident of Australia and is not resident in Japan; "Japanese resident" means a person who is resident in Japan and is not a resident of Australia;

(*g*) "resident of one of the Contracting States", "resident of the other Contracting State" and "resident of that other Contracting State" mean a Japanese resident or an Australian resident, as the context requires;

(*h*) "person" includes a company and any other body of persons;

(*i*) "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an industrial or commercial enterprise carried on by a Japanese resident or an Australian resident, as the context requires;

(*j*) "company" includes any body or association corporate or unincorporate which is treated as a company or body corporate for tax purposes;

(*k*) "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorised representative, and in the case of Japan, the Minister of Finance or his authorised representative;

(*l*) "tax" means Japanese tax or Australian tax, as the context requires.

(2) "Japanese tax" and "Australian tax" do not include any amount which represents a penalty or interest imposed under the law in force in Japan or Australia relating to the taxes to which this Agreement applies.

(3) Where under this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

(4) Unless the context otherwise requires, any term of this Agreement not otherwise defined shall have, in a Contracting State, the meaning which it has under the laws in force in that Contracting State relating to the taxes to which this Agreement applies.

Article 3

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

(2) "Permanent establishment" includes —

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

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

(*g*) land used for agricultural, pastoral or forestry purposes; and

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

(3) "Permanent establishment" shall not be deemed to include —

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) the maintenance of a fixed place of trade or business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or

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

(4) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State.

(5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (6) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State —

(*a*) if he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(*b*) if in so acting he manufactures or processes in that first-mentioned Contracting State any goods for the enterprise.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on trade or business in that other Contracting State through a broker, a general commission agent or any other agent of independent

status, where such a person is acting in the ordinary course of his business as a broker, a general commission agent or any other agent of independent status.

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

(8) Where an enterprise of one of the Contracting States sells to a resident of the other Contracting State goods manufactured, assembled, processed, packed or distributed in that other Contracting State by an industrial or commercial enterprise for, or at, or to the order of, that first-mentioned enterprise and —

(*a*) either enterprise participates, directly or indirectly in the management, control or capital of the other enterprise; or

(*b*) the same persons participate directly or indirectly in the management, control or capital of both enterprises,

then, for the purposes of this Agreement, that first-mentioned enterprise shall be deemed to have a permanent establishment in that other Contracting State and to carry on trade or business in that other Contracting State through that permanent establishment.

Article 4

(1) An enterprise of one of the Contracting States shall not be subject to tax in the other Contracting State in respect of its industrial or commercial profits unless it carries on trade or business in that other Contracting State through a permanent establishment therein. If it carries on trade or business as aforesaid, the enterprise may be subject to tax in that other Contracting State on those profits but only on so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of one of the Contracting States carries on trade or business in the other Contracting State through a permanent establishment in that other Contracting State, there shall be attributed to that permanent establishment the industrial or commercial profits which that permanent establishment might be expected to derive in that other Contracting State if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent estab-

lishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.

(3) In determining the industrial or commercial profits attributable to a permanent establishment in one of the Contracting States, there shall be allowed as deductions all expenses of the enterprise, including ordinary executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise and which are reasonably allocable to the permanent establishment, 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) In this Article "industrial or commercial profits" means profits derived by an enterprise from the conduct of a trade or business, but does not include —

(*a*) dividends, interest, rents or royalties (including those payments which come within the meaning of "royalties" for the purposes of Article 9) other than those that are effectively connected with a trade or business carried on through a permanent establishment in one of the Contracting States by an enterprise of the other Contracting State;

(*b*) income from operating ships or aircraft; or

(*c*) remuneration for personal (including professional) services.

Article 5

(1) Where —

(*a*) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and, in either case, conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another, then, if by reason of those circumstances profits

which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which might have been expected so to accrue to it if it were an independent enterprise engaged in the same or similar activities and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

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

Article 6

(1) A resident of one of the Contracting States shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than operations confined solely to places in that other Contracting State.

(2) An Australian resident shall, in respect of the operation of ships or aircraft mentioned in paragraph (1) of this Article, be exempt from the enterprise tax in Japan to the extent that the basis of the tax is profits, and a Japanese resident shall, in respect of such operation, be exempt from any tax corresponding in nature to the enterprise tax which may hereafter be imposed by the Commonwealth, to the extent that the basis of the tax is profits.

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

(4) For the purposes of this Article and Article 17, the carriage by ships or aircraft of passengers, livestock, mails or goods shipped in one of the Contracting States for discharge at another place in that Contracting State shall be deemed to be an operation of a ship or aircraft confined solely to places in that Contracting State.

Article 7

(1) The Australian tax on dividends, being dividends paid by a company which is a resident of Australia, derived and beneficially owned by a Japanese

resident, shall not exceed 15 per centum of the gross amount of the dividends.

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

(3) Paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through that permanent establishment.

(4) Dividends paid by a company which is a Japanese resident, derived and beneficially owned by a person who is not a resident of Australia, shall be exempt from Australian tax.

(5) Dividends paid by a company which is an Australian resident, derived and beneficially owned by a person who is not resident in Japan, shall be exempt from Japanese tax.

Article 8

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

(2) The Japanese tax on interest, derived and beneficially owned by an Australian resident, shall not exceed 10 per centum of the gross amount of the interest.

(3) Paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with a trade or business carried on through that permanent establishment.

(4) Where, owing to 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 exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

Article 9

(1) The Australian tax on royalties, derived and beneficially owned by a Japanese resident, shall not exceed 10 per centum of the gross amount of the royalties.

(2) The Japanese tax on royalties, derived and beneficially owned by an Australian resident, shall not exceed 10 per centum of the gross amount of the royalties.

(3) In this Article "royalties" means payments of any kind to the extent to which they are received as consideration for —

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

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

(ii) industrial, commercial or scientific equipment;

(iii) motion picture films; or

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

(*b*) the supply of scientific, technical, industrial or commercial knowledge, or assistance,

but does not include royalties or other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource.

(4) Paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the knowledge, information, assistance, right or property giving rise to the royalties is effectively connected with a trade or business carried on through that permanent establishment.

(5) Where, owing to 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 exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

Article 10

Remuneration derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be subjected to tax only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base shall be deemed to have a source in, and may be taxed in, that other Contracting State.

Article 11

(1) Subject to Articles 13, 14 and 15, salaries, wages and other similar remuneration (other than pensions) derived by a resident of one of the Contracting States in respect of an employment shall be subject to tax only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom shall be deemed to have a source in, and may be taxed in, that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article, remuneration derived by a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be exempt from tax in that other Contracting State if —

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

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

(*c*) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

(4) The preceding provisions of this Article apply in relation to remuneration of a director of a company derived from the company as if the remuneration were remuneration of an employee in respect of an employment and as if references to employers were references to the company.

Article 12

(1) Notwithstanding anything contained in Articles 10 and 11, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such shall be deemed to have a source in, and may be taxed in, the Contracting State in which these activities are exercised.

(2) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if in the course of carrying on business it provides the services of public entertainers or athletes referred to in paragraph (1) of this Article in that other Contracting State and the public entertainer or athlete controls, directly or indirectly, such enterprise.

Article 13

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

(2) "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 consideration of money paid or money's worth.

(3) This Article shall not apply to a pension paid to an individual in respect of services rendered to the Government of Japan or the Government of the Commonwealth in the discharge of governmental functions.

Article 14

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth or of any State of the Commonwealth or by a local governing body in Australia to any individual for services rendered to that Government or body in the discharge of governmental functions shall be exempt from Japanese tax unless the individual is a national of Japan or is admitted to Japan for permanent residence therein.

(2) Remuneration (other than pensions) paid by the Government of Japan or by a local governing body in Japan to any individual for services rendered to that Government or body in the discharge of governmental functions shall be exempt from Australian tax unless the individual is an Australian citizen or ordinarily resident in Australia.

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

Article 15

Where a professor or teacher, who is a resident of one of the Contracting States, is temporarily present in the other Contracting State for the purpose of teaching or conducting research during a period not exceeding two years at a university, college, school or other educational institution in that other Contracting State, remuneration derived by him for so teaching or conducting research for that period shall be exempt from tax in that other Contracting State.

Article 16

A student who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education shall not be taxed in that first-mentioned Contracting State on payments which he receives for the purpose of his maintenance or education, provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 17

(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, Japanese tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Japan (excluding in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

(2) Subject to the provisions of the law of Japan from time to time in force which relate to the allowance of a credit against Japanese tax of tax paid in a country outside Japan, Australian tax paid, whether directly or by deduction, in respect of income derived by a person who is resident in Japan from sources in Australia shall be allowed as a credit against Japanese tax payable in respect of that income. Where such income is a dividend paid by a company which is an Australian resident to a company which is a Japanese resident and which owns not less than 10 per centum of the voting shares

of the first-mentioned company or of the total shares issued by that company, the credit shall take into account the Australian tax paid by the first-mentioned company in respect of its profits.

(3) For the purposes of this Article —

(*a*) dividends paid by a company which is a resident of one of the Contracting States shall be treated as having a source in that Contracting State;

(*b*) an amount of interest or royalties (including those payments which come within the meaning of "royalties" for the purposes of Article 9) derived by a resident of one of the Contracting States shall be treated as having a source in the other Contracting State where the amount —

(i) is paid by a Government in that other Contracting State or by a resident of that other Contracting State and is not incurred by the payer in carrying on a trade or business through a permanent establishment of the payer in a country outside that other Contracting State; or

(ii) is paid by a person who is not a resident of that other Contracting State and is incurred by the payer in carrying on trade or business through a permanent establishment of the payer in that other Contracting State;

(*c*) remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States shall be treated as having a source in that Contracting State;

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

(4) Where profits, on which an enterprise of one of the Contracting States has been charged to tax in that Contracting State, are also included, by virtue of this Agreement, in the profits of an enterprise of the other Contracting State as being profits which, because of the circumstances existing between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting State, the profits so included shall be treated for the purposes of this Article as profits of the enterprise of the first-mentioned Contracting State from a source in that other Contracting State and relief shall be given in accordance with this Article in respect of

the extra tax chargeable in that other Contracting State as a result of the inclusion of such profits.

(5) For the purposes of sub-paragraph (*b*) of paragraph (3) of this Article "a Government in that other Contracting State" means in relation to Japan the Government of Japan or a local governing body in Japan and in relation to Australia means the Government of the Commonwealth or of a State of the Commonwealth or a local governing body in Australia.

Article 18

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

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes to which this Agreement applies, or the judicial determination of appeals in relation thereto.

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

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

Article 19

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

Article 20

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

Article 21

(1) This Agreement may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations Australia is responsible, which imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

(2) Unless otherwise agreed by both Contracting States, the termination of this Agreement under Article 23 shall terminate, in the manner provided for in that Article, the application of this Agreement to any territory to which it has been extended under this Article.

Article 22

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

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

(*a*) in Australia —

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July in the calendar year in which this Agreement enters into force;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year in which this Agreement enters into force;

(*b*) in Japan —

in respect of income or profits for the taxable years beginning on or after 1 January in the calendar year in which this Agreement enters into force.

Article 23

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30 June in any calendar year beginning after the expiration of three years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination, and, in such event, this Agreement shall cease to be effective —

(*a*) in Australia —

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after the commencement of the financial year beginning on 1 July in the calendar year next following that in which the notice of termination is given;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(*b*) in Japan —

in respect of income or profits for the taxable years beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra on the twentieth day of March, one thousand nine hundred and sixty-nine, in the Japanese and English languages, each text being equally authentic.

For the Government of Japan :

FUMIHIKO KAI

For the Government of the Commonwealth of Australia:

WILLIAM MCMAHON

PROTOCOL

The Government of Japan and the Government of the Commonwealth of Australia have agreed at the signing at Canberra on the twentieth day of March, one thousand nine hundred and sixty-nine of the Agreement between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

1. Nothing in Article 4 shall affect the operation of Divisions 14 and 15 of Part III of the Income Tax Assessment Act 1936-1968 of the Commonwealth or that Act as amended from time to time, relating to a film business controlled abroad and insurance with non-residents or the corresponding provisions of a statute substituted for that Act. For the purposes of Article 17, an amount included under the provisions of the Divisions in taxable income shall be deemed to be income derived from sources in Australia.

2. In so far as it is customary in a Contracting State in determining the industrial or commercial profits derived by an enterprise from within the Contracting State to use methods of apportionment of the total profits of the enterprise to its various parts, including, in the case where profits derived from the sale by an enterprise of goods manufactured by it outside the Contracting State but sold by the enterprise in the Contracting State are being determined, a method which involves deducting from the sale price of the goods so sold in the Contracting State the amount for which goods of the same nature and quality could be purchased, at the date of shipment to the Contracting State, by a wholesaler in the country of manufacture and the expenses incurred in transporting them to and selling them in the Contracting State, those methods may be adopted for the purpose of the application of Article 4, provided that any such method shall be applied in such a way that the result accords with the principles stated in that Article.

3. Nothing in Articles 4 and 5 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of an enterprise in cases where the information available to the competent authority of that Contracting State is inadequate to determine the profits for the purposes of Article 4 and paragraph (1) of Article 5, provided that that

law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles stated in Articles 4 and 5.

4. For the purposes of Article 6 and Article 17, the carriage by ships or aircraft of passengers, livestock, mails or goods shipped in a place in Australia for discharge in the Territory of Papua or the Trust Territory of New Guinea shall be treated as an operation of a ship or aircraft confined solely to places in Australia.

5. Without prejudice to the position of the Government of Japan concerning the status in international law of the continental shelf, the Government of Japan agrees that the Government of the Commonwealth may, on income derived by a Japanese resident from or in connection with —

(*a*) the exploration for petroleum, of an area adjacent to Australia as specified in the Second Schedule to the Petroleum (Submerged Lands) Act 1967-1968, of the Commonwealth; or

(*b*) the exploitation of petroleum of such an area,

levy tax in accordance with the provisions of the Agreement as if that area were part of Australia as defined in the Agreement and each Contracting State shall apply the provisions of the Agreement accordingly. Provided that this paragraph shall only apply if Australian tax law is in force in relation to the area.

6. The Government of Japan agrees to the Government of the Commonwealth providing in its legislation giving the force of law to the Agreement that words in the Agreement in the singular include the plural and words therein in the plural include the singular, unless the context of the Agreement otherwise requires.

DONE in duplicate at Canberra on the twentieth day of March, one thousand nine hundred and sixty-nine, in the Japanese and English languages, each text being equally authentic.

For the Government of Japan:

FUMIHIKO KAI

For the Government of the Commonwealth of Australia:

WILLIAM MCMAHON
