

No. 13937

FEDERAL REPUBLIC OF GERMANY
and
AUSTRALIA

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes (with protocol). Signed at Melbourne on 24 November 1972

Authentic texts: German and English.

Registered by the Federal Republic of Germany on 5 May 1975.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
AUSTRALIE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu ou sur la fortune et d'autres impôts (avec protocole). Signée à Melbourne le 24 novembre 1972

Textes authentiques : allemand et anglais.

Enregistré par la République fédérale d'Allemagne le 5 mai 1975.

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE COMMONWEALTH OF AUSTRALIA FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME
AND CAPITAL AND TO CERTAIN OTHER TAXES

The Federal Republic of Germany and 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 and capital and to certain other taxes,

Have agreed as follows:

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

Article 2. (1) The taxes to which this Agreement shall apply 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 the Federal Republic of Germany:

- the *Einkommensteuer* (income tax) including the *Ergänzungsabgabe* (surcharge) thereon;
- the *Körperschaftsteuer* (corporation tax) including the *Ergänzungsabgabe* (surcharge) thereon;
- the *Vermögensteuer* (capital tax); and
- the *Gewerbsteuer* (trade tax).

(2) This Agreement shall also apply to any identical or substantially similar taxes, on income or capital, which are subsequently imposed under the law of the Commonwealth of Australia or the law of the Federal Republic of Germany in addition to, or in place of, the existing taxes.

(3) The provisions of this Agreement in respect of taxation of income or capital shall, subject to Article 22, likewise apply to the German trade tax, computed on a basis other than income or capital.

Article 3. (1) In this Agreement, unless the context otherwise requires—

(a) The term “Australia”, when used in a geographical sense, means the whole of the Commonwealth of Australia, and 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;
- (v) the Coral Seal Islands Territory; and

¹ Came into force on 15 February 1975, i.e., the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Bonn on 16 January 1975, in accordance with article 28(2).

(vi) any area adjacent to the Commonwealth or to any of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of the Commonwealth or of a State or Territory of the Commonwealth dealing with the exploitation of any of the natural resources of the sea-bed and sub-soil of the continental shelf;

(b) The term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea-bed and sub-soil and their natural resources, as a domestic area for tax purposes;

(c) The terms "Contracting State" and "the other Contracting State" mean Australia or the Federal Republic of Germany, as the context requires;

(d) The term "person" means an individual, a company and any other entity subject to tax;

(e) The term "company" means any body corporate or any entity which is assimilated to a body corporate for tax purposes;

(f) The term "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an industrial or commercial enterprise carried on by a resident of Australia or an industrial or commercial enterprise carried on by a resident of the Federal Republic of Germany, as the context requires;

(g) The term "tax" means Australian tax or German tax, as the context requires;

(h) The term "Australian tax" means tax imposed under the law of the Commonwealth of Australia, being tax to which this Agreement applies by virtue of Article 2;

(i) The term "German tax" means tax imposed under the law of the Federal Republic of Germany, being tax to which this Agreement applies by virtue of Article 2;

(j) The term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of the Federal Republic of Germany, the Federal Minister of Finance.

(2) As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies.

Article 4. (1) For the purposes of this Agreement, a person is a resident of a Contracting State if —

(a) where Australia is the Contracting State, the person is a resident of Australia for the purposes of Australian tax and is not —

(i) by reason of his place of residence, not subject to Australian tax; or

(ii) by that reason so subject only in relation to income from sources in Australia;

(b) where the Federal Republic of Germany is the Contracting State, the person is subject to unlimited tax liability in the Federal Republic of Germany.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him;
- (b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode, or where he has such habitual abode in both Contracting States, or if he does not have such habitual abode in either of them, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. (1) For the purposes of this Agreement the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term “permanent establishment” shall include especially—

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

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

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

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

(b) if in so acting goods or merchandise belonging to the enterprise are manufactured or processed by him in that State for the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

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

(6) 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.

Article 6. Income from real property situated in a Contracting State, including royalties or similar payments in respect of the exploitation of mines, quarries or other natural resources so situated, may be taxed in that State.

Article 7. (1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In the determination of such profits there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(3) 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.

(4) For the purposes of this Article, except as provided in the Articles referred to in this paragraph, the profits of an enterprise do not include income or profits dealt with in Articles 6, 8, 10, 11, 12, 13, 15 and 16.

Article 8. (1) A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft.

(2) Notwithstanding the provisions of paragraph (1), a resident of a Contracting State may be taxed in the other Contracting State on profits from operations of ships or aircraft confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency.

(4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that State or, in the case of Australia, at a place in the Territory of Papua or the Trust Territory of New Guinea are profits from operations confined solely to places in that State.

(5) The amount which shall be charged to tax in a Contracting State as profits from the operation of ships or aircraft in respect of which a resident of the other Contracting State may be taxed in the first-mentioned State under paragraph (2) or (3) shall not exceed 5 per cent of the amount paid or payable (net of rebates) in respect of carriage in such operations.

(6) Paragraph (5) shall not apply to profits derived from the operation of ships or aircraft by a resident of a Contracting State whose principal place of business is in the other Contracting State, nor shall it apply to profits derived from the operation of ships or aircraft by a resident of a Contracting State if those profits are derived otherwise than from the carriage of passengers, livestock, mails, goods or merchandise. In such cases, the provisions of Article 7 shall apply but there shall be excluded from the profits on which any such person is charged to Australian tax any amount of profits taxed in the Territory of Papua or the Trust Territory of New Guinea.

Article 9. 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 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 wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10. (1) Dividends paid by a company which is a resident of Australia for purposes of Australian tax to a resident of the Federal Republic of Germany may be taxed in Australia, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) Dividends paid by a company which is subject to unlimited tax liability in the Federal Republic of Germany to a resident of Australia may be taxed in the Federal Republic of Germany, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident, and shall include, in the case of paragraph (2), the income of a sleeping partner (*stiller Gesellschafter*) from his participation as such.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends has in the Contracting State of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of

which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

Article 11. (1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(2) 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, and interest from any other form of indebtedness as well as all other income assimilated to interest by the taxation law of the Contracting State in which the income arises.

(3) The provisions of paragraph (1) shall not apply if the recipient of the interest has in the Contracting State in which the interest arises a permanent establishment with which the indebtedness from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

(4) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a State or a *Land* of that Contracting State or a political subdivision or local authority of that Contracting State or a person who is a resident of that Contracting State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by the permanent establishment, then the interest shall be deemed to arise in the State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient 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 have been expected to have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

Article 12. (1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(2) The term "royalties" in this Article means payments, whether periodical or not, and however described and computed, to the extent to which they are paid as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance connected with the supply of such knowledge or information, and includes any payments to the extent to which they are paid as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

(3) The provisions of paragraph (1) shall not apply if the recipient of the royalties has in the Contracting State in which the royalties arise a permanent establishment with which the asset giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

(4) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a State or a *Land* of that Contracting State or a political subdivision or local authority of that Contracting State or a person who is a resident of that Contracting State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

Article 13. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that 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, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

Article 14. (1) Subject to the provisions of Articles 15, 17, 18 and 19, 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, if—

(a) the period, or the aggregate of the periods, for which the recipient is present in the other State in the year of income or the assessment period, as the case may be, of the other State during which the employment is exercised does not exceed 183 days;

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State,

be taxable only in the first-mentioned State.

(3) Notwithstanding the preceding provisions 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 State.

Article 15. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16. (1) Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers (such as theatrical, motion picture, radio or television artists and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Notwithstanding anything contained in this Agreement, where the services of a public entertainer mentioned in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State if the public entertainer performing the services controls, directly or indirectly, that enterprise.

Article 17. (1) Remuneration (other than a pension or annuity) paid by the Commonwealth of Australia, a State of the Commonwealth or a political subdivision or local authority of the Commonwealth or of a State to any individual in respect of an employment shall be taxable only in Australia. If, however, the employment is exercised in the Federal Republic of Germany by an individual who is a German citizen or is subject to unlimited tax liability in the Federal Republic of Germany such remuneration shall be taxable only in the Federal Republic of Germany.

(2) Remuneration (other than a pension or annuity) paid by the Federal Republic of Germany, a *Land* or a political subdivision or local authority thereof to any individual in respect of an employment shall be taxable only in the Federal Republic of Germany. If, however, the employment is exercised in Australia by an individual who is an Australian citizen or is ordinarily resident in Australia such remuneration shall be taxable only in Australia.

(3) This Article shall not apply to remuneration in respect of an employment exercised in connection with any trade or business carried on by a Government, a political subdivision or an authority referred to in paragraphs (1) or (2).

Article 18. Pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State.

Article 19. (1) Remuneration which a professor or teacher who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or of teaching at a university, college, school or other educational institution receives for those activities shall not be taxed in that other State.

(2) Payments which a student who is, or immediately before was, a resident of a Contracting State and who is temporarily present in the other Contracting State solely for the purpose of his education receives from sources outside that other State for the purpose of his maintenance or education shall not be taxed in that other State.

Article 20. Where a person, who by reason of the provisions of paragraph (1) of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraphs (2) or (3) of Article 4 is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income —

(a) from sources in that Contracting State; or

(b) from sources outside both Contracting States,

that income shall be taxable only in that Contracting State.

Article 21. (1) Capital represented by real property may be taxed in the Contracting State in which the property is situated.

(2) Capital represented by property, other than real property, forming part of the business property of a permanent establishment of an enterprise, or by property, other than real property, pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Capital represented by ships and aircraft operated in international traffic by a resident of a Contracting State or by property, other than real property, pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

Article 22. (1) Subject to any provisions of the law of Australia from time to time in force regulating the allowance of a credit against Australian tax of tax paid in a country outside Australia, German tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in the Federal Republic of Germany (not including, 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) German tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- (a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income from sources within Australia, and any item of capital falling under paragraphs (1) and (2) of Article 21 and situated within Australia, which, according to this Agreement, may be taxed in Australia. In the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany will, however, take into account the items of income and capital so excluded. The first sentence of this sub-paragraph shall, in the case of income from dividends, apply only to such dividends as are paid to a company which is a resident of the Federal Republic of Germany by a company which is a resident of Australia of which at least 25 per cent of the voting shares or of the total shares issued are owned by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends on which if paid would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.
- (b) Subject to the provisions of German tax law regulating credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the Australian tax paid in accordance with this Agreement on those items of income, namely—
- (i) dividends to which sub-paragraph (a) does not apply;
 - (ii) profits from the operation of ships or aircraft which may be taxed in Australia according to Article 8 and do not fall under paragraph (6) of that Article;
 - (iii) interest to which paragraph (1) of Article 11 applies;
 - (iv) royalties to which paragraph (1) of Article 12 applies;
 - (v) remuneration to which Article 15 applies;
 - (vi) profits to which paragraph (2) of Article 16 applies;
 - (vii) any item of income not dealt with in the foregoing Articles of this Agreement.

Article 23. (1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation

not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall together endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.

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

Article 24. (1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities (including a court) other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement, or the determination of appeals or the prosecution of offences in relation thereto.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation —

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

Article 25. (1) Nothing in this Agreement shall affect diplomatic or consular privileges under the general rules of international law or under the provisions of special international agreements.

(2) Insofar as, due to such privileges granted to a person under the general rules of international law or under the provisions of special international agreements, income or capital is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

Article 26. This Agreement shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Commonwealth of Australia within three months from the date of entry into force of this Agreement.

Article 27. (1) This Agreement may be extended, either in its entirety or with modifications, to any Territory for whose international relations Australia is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Agreement, and any such extension shall take effect from such date and subject to such modifications and conditions (including condi-

tions as to termination) as may be specified and agreed between the Contracting States in Letters to be exchanged through diplomatic channels for this purpose.

(2) The termination of this Agreement under Article 29 shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Agreement to any Territory to which it has been extended under this Article.

Article 28. (1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.

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

- (a) in both Contracting States, as respects any withholding tax on dividends, interest and royalties derived on or after 1 July 1971;
- (b) in Australia, as respects tax on income of any year of income beginning on or after 1 July 1971;
- (c) in the Federal Republic of Germany, as respects taxes which are levied for the assessment period 1971 and for subsequent assessment periods.

Article 29. This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year, give to the other Contracting State, through diplomatic channels, written notice of termination and, in that event, this Agreement shall cease to be effective—

- (a) in both Contracting States, as respects any withholding tax on dividends, interest and royalties derived on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (b) in Australia, as respects tax on income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (c) in the Federal Republic of Germany, as respects taxes which are levied for the assessment period next following that in which the notice of termination is given, and for subsequent assessment periods.

ZU URKUND DESSEN haben die hierzu von ihren Regierungen gehörig befugten Unterzeichneten dieses Abkommen unterschrieben.

GESCHEHEN zu Melbourne am 24sten November 1972 in vier Urschriften, je zwei in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

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

DONE at Melbourne this twenty-fourth day of November 1972, in four originals, two in the English language and two in the German language, all texts being equally authentic.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:

HEINZ VOIGT

Für den Australischen Bund:
For the Commonwealth of Australia:

B. M. SNEDDEN

PROTOCOL

The Federal Republic of Germany and the Commonwealth of Australia

Have agreed at the signing of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes upon the following provisions which shall form an integral part of the said Agreement.

(1) *With reference to Article 5*, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that 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 State.

(2) *With reference to Article 6*, income from real property shall be taken to include income from leases of land.

(3) *With reference to Articles 6 to 8 and 10 to 16*, income derived by a resident of the Federal Republic of Germany which, under Articles 6 to 8 and 10 to 16 of the Agreement, may be taxed in Australia may be deemed, for the purposes of the Commonwealth income tax law, to be income from sources in Australia.

(4) *With reference to Article 7*, (a) insofar as it is customary in a Contracting State, in determining the profits to be attributed to a permanent establishment, to do so on the basis of an apportionment of the total profits of the enterprise to its various parts, that method may be adopted for the purpose of the application of Article 7 of the Agreement, provided that it shall be applied in such a way that the result accords with the principles stated in that Article.

(b) Article 7 of the Agreement shall not apply to profits of an enterprise from carrying on a business of any form of insurance, other than life insurance.

(5) *With reference to Articles 7 and 9*, where the information available to the competent authority of a Contracting State is inadequate to determine the profits of an enterprise on which tax may be imposed in that State in accordance with Article 7 or Article 9 of the Agreement, nothing in those Articles shall prevent the application to that enterprise of any law of that State making provision for determining the tax liability of an enterprise in special circumstances, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles applicable under Articles 7 and 9.

(6) *With reference to Article 10*, notwithstanding the provisions of paragraph (2) of Article 10 of the Agreement German tax on dividends to which that paragraph applies paid to a company which is a resident of Australia by a company which is a resident of the Federal Republic of Germany, at least 25 per cent of the capital of which is held directly or indirectly by the Australian company itself, or by it together with other persons controlling it or being under common control with it, may be charged at a rate not exceeding 25.75 per cent of the gross amount of the dividends if the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 20 percentage points or more.

(7) *With reference to Articles 10 to 12*, the references in Articles 10 to 12 of the Agreement to dividends, interest or royalties paid to a resident of a Contracting State refer to dividends, interest or royalties to which a resident of the Federal Republic of Germany is beneficially entitled, and to dividends, interest or royalties to which a resident of Australia is entitled (*bezugsberechtigt*), being economically the owner (*wirtschaftlicher Eigentümer*) of the assets on which the dividends, interest or royalties are paid, as the case may be.

(8) *With reference to Articles 10 to 12 and 22*, for the purposes of Articles 10 to 12 and of paragraph (1) and sub-paragraph (b) of paragraph (2) of Article 22 of the Agreement the term “tax” does not include any amount which represents a penalty or interest relating to the taxes to which the Agreement applies, imposed under the law in force in Australia or in the Federal Republic of Germany.

(9) *With reference to Article 11*, interest derived by the Government of a Contracting State, or by any other body exercising governmental functions in, or in a part of, a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

(10) *With reference to Article 22*, (a) where income derived by a resident of a Contracting State may, under the provisions of Articles 6 to 8 and 10 to 16 of the Agreement, be taxed, even at a limited rate, in the other Contracting State, such income shall for the purposes of Article 22 of the Agreement be considered to be income from sources in that other State;

(b) For the purposes of paragraph (1) of Article 22 of the Agreement the term “German tax” shall include German trade tax only where it is levied on a basis other than capital or payroll;

(c) For the purposes of sub-paragraph (a) of paragraph (2) of Article 22 of the Agreement, the term “Australia” does not, in relation to an item of income derived by a resident of the Federal Republic of Germany from sources in a Territory or area referred to in sub-paragraph (a) (i) to (vi) of paragraph (1) of Article 3, include that area if Australian tax does not apply in relation to such income;

(d) Sub-paragraph (a) of paragraph (2) of Article 22 of the Agreement shall apply to the profits of a permanent establishment or to dividends paid by a company only if the profits of the permanent establishment or the income of the company are derived exclusively or almost exclusively —

- (i) from producing, manufacturing or processing goods or from similar activities, the exploration for or exploitation or treatment of minerals, quarrying, primary production, building, construction or assembly, transport, storage or communication, giving advice or rendering services, leasing or renting, banking, hire-purchase or money-lending or insurance, within Australia, selling goods or merchandise within or from Australia, or such other activities as may be agreed by the Contracting States in Letters to be exchanged for this purpose; or
- (ii) from dividends paid by one or more companies, being residents of Australia, of which at least 25 per cent of the voting shares or of the total shares issued are owned by the first-mentioned company, which themselves derive their income exclusively or almost exclusively from the activities referred to in (i).

If these conditions are not met, sub-paragraph (b) of paragraph (2) of Article 22 of the Agreement shall extend to and shall apply both to the income and capital concerned;

(e) Where, as long as German trade tax is levied on income, Australian tax paid in accordance with the Agreement on dividends, interest or royalties derived from Australia exceeds the corresponding German income or corporation tax against which credit is to be given by virtue of sub-paragraph (b) of paragraph (2) of Article 22 of the Agreement, there shall be deducted from such income, when computing the basis of the trade tax, such part of that income as corresponds to the ratio between the excess amount of Australian tax and the total amount of Australian tax, paid in accordance with the Agreement.

(11) General. (a) In the event that Australia should cease to allow a company which is a resident of Australia a rebate in its assessment at the average rate of tax payable by the company in respect of dividends derived from sources in the Federal Republic of Germany and included in the taxable income of the company, the Commonwealth of Australia will immediately advise the Federal Republic of Germany of the change and enter into negotiations with the Federal Republic of Germany in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

(b) In the event that the Federal Republic of Germany, in relation to dividends received by one company from another company, should reduce in its corporation tax law or in an agreement for the avoidance of double taxation with another country the percentage shareholding entitling the receiving company to relief from German corporation tax, the Federal Republic of Germany will immediately advise the Commonwealth of Australia of the reduction and enter into negotiations with the Commonwealth in order to introduce such lower percentage test into the Agreement.

(c) Unless the context of the Agreement and of this Protocol otherwise requires, words in the singular include the plural and words in the plural include the singular.

GESCHEHEN zu Melbourne am 24sten November 1972 in vier Urschriften, je zwei in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermassen verbindlich ist.

DONE at Melbourne on the twenty-fourth day of November 1972, in four originals, two in the English language and two in the German language, all texts being equally authentic.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
HEINZ VOIGT

Für den Australischen Bund:
For the Commonwealth of Australia:
B. M. SNEDDEN
