

No. 23618

**IRELAND
and
AUSTRALIA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains. Signed at Canberra on 31 May 1983

Authentic text: English.

Registered by Ireland on 18 November 1985.

**IRLANDE
et
AUSTRALIE**

Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et d'impôts sur les gains en capital. Signé à Canberra le 31 mai 1983

Texte authentique : anglais.

Enregistré par l'Irlande le 18 novembre 1985.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF IRELAND AND
THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVA-
SION WITH RESPECT TO TAXES ON INCOME AND CAPITAL
GAINS

The Government of Ireland and the Government 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 gains,
Have agreed as follows:

Article 1. PERSONAL SCOPE

This Agreement 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 Agreement shall apply are:
- (a) In Australia: the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;
 - (b) In Ireland;
 - (i) The income tax;
 - (ii) The corporation tax; and
 - (iii) The capital gains tax.
- (2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. As soon as possible after the end of each calendar year, the competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any substantial changes which have been made in the laws of the State relating to the taxes to which this Agreement applies.

Article 3. GENERAL DEFINITIONS

- (1) In this Agreement, unless the context otherwise requires:
- (a) The term "Australia" means the Commonwealth of Australia 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;
 - (v) The Coral Sea Islands Territory; and

¹ Came into force on 21 December 1983 by the exchange of notifications by which the Parties informed each other that the last of all such things had been done as were necessary to give the Agreement the force of law in Ireland and in Australia, in accordance with article 29.

- (vi) Any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;
- (b) The term “Ireland” includes any area outside the territorial waters of Ireland which in accordance with international law has been or may hereafter be designated, under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea-bed and subsoil and their natural resources may be exercised;
- (c) The terms “Contracting State”, “one of the Contracting States” and “the other Contracting State” mean Australia or Ireland, as the context requires;
- (d) The term “person” includes an individual, a company and any other body of persons;
- (e) The term “company” means any body corporate or any entity which is assimilated to a body corporate for tax purposes;
- (f) The terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Ireland, as the context requires;
- (g) The term “tax” means Australian tax or Irish tax, as the context requires;
- (h) The term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
- (i) The term “Irish tax” means tax imposed by Ireland, being tax to which this Agreement applies by virtue of Article 2;
- (j) The term “competent authority” means:
- (i) In the case of Australia, the Commissioner of Taxation or his authorised representative;
- (ii) In the case of Ireland, the Revenue Commissioners or their authorised representative.
- (2) In this Agreement, the terms “Australian tax” and “Irish tax” do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.
- (3) In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which this Agreement applies.

Article 4. RESIDENCE

- (1) For the purposes of this Agreement, a person is a resident of one of the Contracting States:
- (a) In the case of Australia, subject to the provisions of paragraph (2) of this Article, if the person is a resident of Australia for the purposes of Australian tax; and
- (b) In the case of Ireland, if the person is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature but not if he is liable to tax in Ireland in respect only of income from sources therein.
- (2) In relation to income from sources in Ireland a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Ireland is subject to

Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Irish tax.

(3) Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) He shall be deemed to be a resident solely 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 solely of the Contracting State in which he has an habitual abode;
- (c) If he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

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

Article 5. PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an 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, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) An agricultural, pastoral or forestry property;
- (h) A building site or construction, installation or assembly project which exists for more than twelve months;
- (i) An installation or structure used for the exploration of natural resources.

(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) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

(a) It carries on supervisory activities in that State for more than twelve 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 being used in that State by, for or under contract with the enterprise; or

(c) It carries on activities in that State in connection with the exploration or exploitation of the sea-bed, subsoil or their natural resources in that 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 an 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 State if:

(a) He has, and habitually exercises in that 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) In so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

(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 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.

(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 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.

(8) The principles set forth in paragraphs (1) to (7) of this Article shall be applied in determining for the purposes of paragraph (5) of Article 12 and paragraph (5) of Article 13 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

Article 6. LIMITATION OF RELIEF

Where under any provision of this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State,

(a) The income or a part thereof is exempt from tax; or

(b) A person, 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 State, and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply;

- (c) Where (a) above applies, only to so much of the income as is not exempt from tax in the other State; or
- (d) Where (b) above applies, only to so much of the income as is remitted to or received in the other State.

Article 7. INCOME FROM REAL PROPERTY

(1) Income from 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 laws of Australia, and shall also include:
 - (i) A lease of land and any other interest in or over land, whether improved or not;
 - (ii) A right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
- (b) In the case of Ireland, means immovable property according to the laws of Ireland, and shall also include:
 - (i) Property accessory to immovable property;
 - (ii) Rights to which the provisions of the general law respecting landed property apply;
 - (iii) Usufruct of immovable property; and
 - (iv) A right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

Ships, boats and aircraft shall not be regarded as real property.

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

(4) A lease of land, any other interest in or over land and any right referred to in any of the subparagraphs of paragraph (2) of this Article shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources as the case may be, are situated.

(5) The provisions of paragraphs (1), (3) and (4) of this Article shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

Article 8. BUSINESS PROFITS

(1) The profits of an enterprise of one of the Contracting States 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) Subject to the provisions of paragraph (3) of this Article, where an enterprise of one of the Contracting States 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 in-

dependently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

(3) In the determination of 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) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

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

(7) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provision of its law relating specifically to the taxation of any person who carries on a business of any form of insurance.

Article 9. SHIPPING AND AIR TRANSPORT

(1) Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply in relation to the 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 organization 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, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

Article 10. ASSOCIATED ENTERPRISES

(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 operate 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.

(2) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that Contracting State as if this Article had not entered into force and had not had effect but, so far as it is practicable to do so, in accordance with the principles of this Article.

(4) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraphs (1), (2) or (3) of this Article, in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might 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 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 on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(5) The provisions of paragraph (4) of this Article relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of assessment or financial year, as the case may be, in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

Article 11. DIVIDENDS

(1) Dividends paid by a company which is a resident of Australia for the purposes of Australian tax, being dividends to which a resident of Ireland is beneficially entitled, may be taxed in Ireland. Such dividends may also be taxed in Australia, according to the law of Australia, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) (a) Dividends paid by a company which is a resident of Ireland for the purposes of Irish tax, being dividends to which a resident of Australia is beneficially entitled, may be taxed in Australia.

(b) Where a resident of Australia is entitled to a tax credit in respect of a dividend under paragraph (3) of this Article, tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid, dividends paid by a company which is a resident of Ireland for the purposes of Irish tax, being dividends to which a resident of Australia

is beneficially entitled, shall be exempt from any tax in Ireland which is chargeable on dividends.

(3) A resident of Australia who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph (4) of this Article and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to Irish tax. Any such credit shall be treated for the purposes of Australian tax as assessable income from sources in Ireland.

(4) The provisions of paragraph (3) of this Article shall not apply where the beneficial owner of the dividends (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividends. For the purposes of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(5) The term “dividends” in this Article means income from shares and includes any income or distribution assimilated to income from shares under the taxation law of the Contracting State of which the company paying the dividends or income or making the distribution is a resident.

(6) Where the company paying a dividend is a resident of one of the Contracting States and the beneficial owner of the dividend, being a resident of the other Contracting State, owns 10 per cent or more of the class of shares in respect of which the dividend is paid, paragraphs (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term “relevant date” means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question: provided that this paragraph shall not apply if the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(7) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

(8) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State: provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Ireland for the purposes of Irish tax.

Article 12. INTEREST

(1) Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) 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 income from money lent by the taxation law of the Contracting State in which the income arises but does not include any income which is treated as a dividend under Article 11.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, 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 such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that 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 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 such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to 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 have been expected to have been agreed upon by the payer and the person so entitled 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.

(7) The provisions of this Article shall not apply if the indebtedness in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

Article 13. ROYALTIES

(1) Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but 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 payments or credits, 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;
- (b) The use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) The supply of scientific, technical, industrial or commercial knowledge or information;
- (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);
- (e) The use of, or the right to use:
 - (i) Motion picture films;
 - (ii) Films or video tapes for use in connection with television; or
 - (iii) Tapes for use in connection with radio broadcasting; or
- (f) Total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that 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 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, owing to a special relationship between the payer and the person beneficially entitled to 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 have been expected to have been agreed upon by the payer and the person so entitled 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 or credited shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

(7) The provisions of this Article shall not apply if the right or property in respect of which the royalties were paid or credited was created or assigned mainly

for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

Article 14. ALIENATION OF PROPERTY

(1) Income or gains from the alienation of real property may be taxed in the Contracting State in which that property is situated.

(2) For the purposes of this Article:

(a) The term "gains" means, in the case of Ireland, chargeable gains as defined in the taxation law of Ireland;

(b) The term "real property" shall include:

- (i) A lease of land or any other interest in or over land;
- (ii) Rights to exploit, or to explore for, natural resources;
- (iii) Shares or comparable interests in a company the assets of which consist wholly or principally of interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States;
- (iv) Any partnership interest, or any interest in settled property deriving its value or the greater part of its value directly or indirectly from interests in or over land in one of the Contracting States or rights to exploit, or to explore for, natural resources in one of the Contracting States; and
- (v) Any option, consent or embargo affecting the disposition of interests in or over land in one of the Contracting States or rights to exploit, or to explore for, natural resources in one of the Contracting States; and

(c) Real property shall be deemed to be situated:

- (i) Where it consists of interests in or over land, in the Contracting State in which the land is situated;
- (ii) Where it consists of rights to exploit, or to explore for, natural resources, in the Contracting State in which the natural resources are situated or the exploration may take place; and
- (iii) Where it consists of shares or comparable interests in a company referred to in clause (iii) of subparagraph (b) of this paragraph, a partnership interest or an interest in settled property referred to in clause (iv) of the said subparagraph, or an option, consent or embargo referred to in clause (v) of the said subparagraph, in the Contracting State in which the land or natural resources are wholly or principally situated or the exploration may take place.

(3) Subject to the provisions of paragraph (1) of this Article, income or gains from the alienation of capital assets of an enterprise of one of the Contracting States or of capital assets available to a resident of one of the Contracting States for the purpose of performing professional services or other independent activities shall be taxable only in that State, but, where those assets form the whole or part of the business property of a permanent establishment or fixed base situated in the other Contracting State, such income or gains may be taxed in that other State.

(4) Income or gains derived by an enterprise of one of the Contracting States from the alienation of ships or aircraft operated in international traffic while owned by that enterprise shall be taxable only in that State.

Article 15. INDEPENDENT PERSONAL SERVICES

(1) Income 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 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 activities exercised from that fixed base.

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

Article 16. DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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) of this Article, remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or year of assessment, as the case may be, 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 deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other 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 Contracting State.

Article 17. DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of one of the Contracting States 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 18. ENTERTAINERS

(1) Notwithstanding the provisions of Articles 15 and 16, income derived by entertainers (such as theatrical, motion picture, radio or television artistes, musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(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 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer are exercised.

Article 19. PENSIONS AND ANNUITIES

(1) Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States 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) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 20. GOVERNMENT SERVICE

(1) Remuneration (other than a pension or annuity) paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such 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 citizen of that State; or

(b) Did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of paragraph (1) of this Article shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of Article 16 or Article 17, as the case may be, shall apply.

Article 21. PROFESSORS AND TEACHERS

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

(2) 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 22. STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of his education, receives payments from sources outside that other State for the purpose of his maintenance or education, those payments shall be exempt from tax in that other State.

Article 23. INCOME NOT EXPRESSLY MENTIONED

(1) Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

(2) However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.

(3) The provisions of paragraph (1) of this Article shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

Article 24. SOURCE OF INCOME

(1) Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 7 to 9, 11 to 19 and Article 23 may be taxed in the other Contracting State, shall for the purposes of the taxation law of the other Contracting State be deemed to be income or gains from sources in the other Contracting State.

(2) Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 7 to 9, 11 to 19 and Article 23 may be taxed in the other Contracting State, shall for the purposes of Article 25 and of the taxation law of the first-mentioned Contracting State be deemed to be income or gains from sources in the other Contracting State.

Article 25. METHODS OF ELIMINATION OF DOUBLE TAXATION

(1) (a) 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 hereof), Irish tax paid under the law of Ireland and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Ireland (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;

(b) 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 Ireland and included in the taxable income of the company, the Governments of the Contracting States will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

(2) Subject to the provisions of the law of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof):

(a) Australian tax payable under the law of Australia and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Australia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or chargeable gains by reference to which Australian tax is computed;

(b) In the case of a dividend paid by a company which is a resident of Australia to a company which is a resident of Ireland and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Australian tax creditable under the

provisions of subparagraph (a) of this paragraph) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

Article 26. MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of one of the Contracting States considers that the actions of the competent authority 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. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

(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 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. Notwithstanding any time limits in the national laws of the Contracting States, the solution so reached may be implemented within a period of seven years from the date of presentation of the case by the resident to the relevant competent authority in accordance with paragraph (1) of this Article.

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

(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 Agreement.

Article 27. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

(2) In no case shall the provisions of paragraph (1) of this Article 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 28. DIPLOMATIC AND CONSULAR OFFICIALS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements.

Article 29. ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Government of Australia and the Government of Ireland exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Ireland, as the case may be, and thereupon this Agreement shall have effect:

(a) In Australia:

- (i) With respect to withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year immediately following that in which the Agreement enters into force;
- (ii) With respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the Agreement enters into force;

(b) In Ireland:

- (i) With respect to income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year immediately following that in which the Agreement enters into force;
- (ii) With respect to corporation tax, for any financial year beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

Article 30. TERMINATION

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Ireland may, on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) In Australia:

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

(b) In Ireland:

- (i) With respect to income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year immediately following that in which the notice of termination is given;
- (ii) With respect to corporation tax, for any financial year beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement and affixed thereto their seals.

DONE in duplicate at Canberra this thirty-first day of May one thousand nine hundred and eighty-three in the English language.

[Signed — Signé]¹

For the Government
of Ireland

[Signed — Signé]²

For the Government
of Australia

¹ Signed by Joseph Small — Signé par Joseph Small.

² Signed by J. S. Dawkins — Signé par J. S. Dawkins.