

No. 24090

**AUSTRALIA
and
FINLAND**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Canberra on 12 September 1984

Authentic texts: English and Finnish.

Registered by Australia on 2 May 1986.

**AUSTRALIE
et
FINLANDE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Canberra le 12 septembre 1984

Textes authentiques : anglais et finnois.

Enregistré par l'Australie le 2 mai 1986.

AGREEMENT¹ BETWEEN AUSTRALIA AND FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Australia and the Government of Finland,

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

Have agreed as follows:

Article 1. 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 Finland:

- (i) The state income tax;
- (ii) The communal tax;
- (iii) The church tax;
- (iv) The sailors' tax; and
- (v) The tax withheld at source from non-residents' income.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the law of Australia or the law of Finland 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 authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective laws relating to the taxes to which this Agreement applies.

Article 3. GENERAL DEFINITIONS

(1) For the purposes of 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;

¹ Came into force on 28 March 1986, i.e., the thirty-first day after the date on which the Contracting Parties had notified each other (on 25 February 1986) that the last of all such things had been done as were necessary to give it the force of law in Australia and in Finland, in accordance with article 27.

- (iii) The Territory of Cocos (Keeling) Islands;
- (iv) The Territory of Ashmore and Cartier Islands;
- (v) The Coral Sea Islands Territory; and
- (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 “Finland” means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration and exploitation of the natural resources of the sea-bed and its subsoil may be exercised;

(c) The terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Finland, 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 treated as a company or 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 Finland, as the context requires;

(g) The term “tax” means Australian tax or Finnish 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 “Finnish tax” means tax imposed by Finland, 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 Finland, the Ministry of Finance or its authorized representative.

(2) For the purposes of this Agreement, the terms “Australian tax” and “Finnish 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, subject to paragraph (2), a resident of one of the Contracting States:

- (a) In the case of Australia, if the person is a resident of Australia for the purposes of Australian tax; and
- (b) In the case of Finland, if the person is liable under the laws of Finland to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

(3) For the purposes of taxation in Finland, an undivided estate of a deceased person shall be deemed to be a person who is a resident of the Contracting State of which the deceased was a resident, at the time of his death, in accordance with the provisions of this Article.

(4) 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 with which his personal and economic relations are the closer.

(5) Where, by reason of any of the preceding provisions 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 it is incorporated, created or organized.

Article 5. PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term “permanent establishment”, in relation to an enterprise, means a fixed place of business through 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, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) An agricultural, pastoral or forestry property situated in Australia;
- (h) A building site or construction, installation or assembly project which exists for more than twelve 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) 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; or
- (b) Substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or exploitation of, natural resources, or in activities connected with such exploration or exploitation.

(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) 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 binding the enterprise, unless the activities of that person are limited to those mentioned in paragraph (3) and are such that, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) In so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on 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 the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement 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. INCOME FROM REAL PROPERTY

(1) Income from real property, including income from an agricultural, pastoral or forestry property in Finland, may be taxed in the Contracting State in which that property is situated.

(2) For the purposes of 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 Finland, means such property which, according to the laws of Finland, is immovable property and shall in any case include:

(i) Property accessory to immovable property;

(ii) Livestock and equipment used in agriculture and forestry;

(iii) Rights to which the provisions of the general law respecting landed property apply;

(iv) Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of or the right to work mineral deposits, mineral sources and other natural resources.

Ships and aircraft shall not be regarded as immovable property.

(3) A lease of land, any other interest in or over land and any rights or property referred to in any of the sub-paragraphs of paragraph (2) shall be regarded as situated where the land, mineral deposits, mineral sources, oil or gas wells, quarries, natural resources or property, as the case may be, are situated.

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

(5) Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company and situated in Finland, the income from the direct use, letting or use in any other form of such right to enjoyment may be taxed in Finland.

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

(7) The provisions of paragraph (5) shall also apply to income of an enterprise from a right to enjoyment referred to in that paragraph and shall also apply to income from such a right to enjoyment that is used for the performance of professional services.

Article 7. 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), 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 independently 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) Insofar as it has been customary in one of the Contracting States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

(5) 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.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(8) 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.

(9) Nothing in this Article shall affect the operation of any law of a Contracting State relating to taxation of profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of

signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

Article 8. 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), 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) 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 one of the Contracting States 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.

(5) The amount which shall be charged to tax in one of the Contracting States under paragraph (2) 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 from the operation of ships derived by a resident of one of the Contracting States if:

- (a) His principal place of business is in the other Contracting State; or
- (b) Those profits are derived from activities other than the carriage of passengers, cargo or mail.

In such cases, the provisions of Article 7 shall apply.

Article 9. 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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise,

provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(3) Where, according to the provisions of paragraph (1), profits are included by one of the Contracting States in the profits of an enterprise, the other Contracting State shall, on a claim being made by the other enterprise concerned, consistently with its law consider the inclusion so made and the provision of relief to that other enterprise in relation to the taxation of profits which the other State determines to be profits which, but for the particular conditions referred to in paragraph (1), might have been expected to accrue to the first-mentioned enterprise. For the purpose of determining any such relief, due regard shall be had to the other provisions of this Agreement in relation to the nature of the income and the competent authorities of the States shall if necessary consult each other.

Article 10. DIVIDENDS

(1) Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used 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 for the purposes of its tax.

(4) The provisions of paragraph (2) 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 any such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) 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 Finland for the purposes of Finnish tax.

(6) Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing on the income of a company which is a resident of the other Contracting State, tax in addition to the taxes referred to in Article 2 in relation to the first-mentioned Contracting State which are payable by a company which is a resident of the first-mentioned State, provided that any such additional tax shall not exceed 15 per cent of the amount by which the taxable income of the

first-mentioned company of a year of income exceeds the tax payable on that taxable income to the first-mentioned State. Any tax payable to one of the Contracting States on the undistributed profits of a company which is a resident of the other Contracting State shall be calculated as if that company were not liable to the additional tax referred to in this paragraph and had paid dividends of such amount that tax equal to the amount of that additional tax would have been payable on the dividends in accordance with paragraph (2) of this Article.

Article 11. 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" as used 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.

(4) The provisions of paragraph (2) 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 7 or Article 14, 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, a statutory authority of that State or of a political subdivision thereof 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 one of the Contracting States or not, has in one of the Contracting States 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.

Article 12. 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" as used 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 sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (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 or supply of any property or right referred to in this paragraph.

(4) The provisions of paragraph (2) 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 property or right 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 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State, a statutory authority of that State or of a political subdivision thereof 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 one of the Contracting States or not, has in one of the Contracting States 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.

Article 13. INCOME FROM ALIENATION OF PROPERTY

(1) Income 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, the term “real property”:

(a) In the case of Australia, shall have the meaning which it has under the laws of Australia and shall include:

- (i) A lease of land or any other direct interest in or over land;
- (ii) Rights to exploit, or to explore for, natural resources; and
- (iii) Shares or comparable interests in a company, the assets of which consist wholly or principally of direct 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; and

(b) In the case of Finland, shall have the same meaning that it has for the purposes of Article 6 and shall include shares or other corporate rights in a company which entitle the owner of those shares or other corporate rights to the enjoyment of real property held by the company and situated in Finland.

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

- (a) Where it consists of direct interests in or over land — in the Contracting State in which the land is situated;
- (b) 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;
- (c) Where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct 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 — in the Contracting State in which the assets or the principal assets of the company are situated; and
- (d) Where it consists of any of the rights or property referred to in subparagraph (2) (b) of Article 6 or shares or other corporate rights referred to in paragraph (5) of Article 6 — in Finland.

Article 14. 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 perform-

ing 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 15. DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 16, 18 and 19, 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), 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 of that other State;
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of that other State;
- (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; and
- (d) The remuneration is, or upon the application of this Article will be, subject to tax 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 16. 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 or of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ENTERTAINERS

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and 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 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

Article 18. PENSIONS AND ANNUITIES

(1) Subject to the provisions of paragraph (3), any pension or annuity 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) Pensions paid by one of the Contracting States, a political subdivision or a statutory authority of that State or a political subdivision thereof or a local authority of that State to any individual in respect of services rendered to that State, political subdivision, statutory authority or local authority, as the case may be, and pensions paid and other payments made under the social security legislation of one of the Contracting States may be taxed in that State. The provisions of this paragraph shall apply only to individuals who are citizens or nationals of the Contracting State from which the payments are made.

(4) 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 19. GOVERNMENT SERVICE

(1) Remuneration, other than a pension or annuity, paid by one of the Contracting States, a political subdivision or local authority of that State or a statutory authority of that State or a political subdivision thereof to any individual in respect of services rendered to that State, political subdivision, local authority or statutory authority, as the case may be, 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 or national of that State; or

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

(2) The provisions of paragraph (1) 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, a political subdivision or local authority of that State or by a statutory authority of that State or of a political subdivision thereof. In such a case, the provisions of Article 15 or Article 16, as the case may be, shall apply.

Article 20. 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 21. 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 State.

(2) However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

(3) The provisions of paragraph (1) 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 7 or Article 14, as the case may be, shall apply.

Article 22. SOURCE OF INCOME

(1) Income derived by a resident of Finland which, under any one or more of Articles 6 to 8, Articles 10 to 19 and Article 21, may be taxed in Australia shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

(2) Income derived by a resident of Australia which, under any one or more of Articles 6 to 8, Articles 10 to 19 and Article 21, may be taxed in Finland shall for the purposes of paragraph (1) of Article 23 and of the income tax law of Australia be deemed to be income from sources in Finland.

Article 23. METHODS OF ELIMINATION OF DOUBLE TAXATION

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Finnish tax, other than that paid by reason of the provisions of sub-paragraph (c) of paragraph (2) of this Article, paid under the law of Finland 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 Finland (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) In the case of Finland double taxation shall be eliminated as follows:

- (a) Where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Australia, Finland shall, subject to the provisions of sub-paragraph (b), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Australia. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia;
- (b) Dividends paid by a company which is a resident of Australia to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland;
- (c) Notwithstanding any other provision of this Agreement, an individual who is a resident of Australia and, under Finnish taxation law with respect to Finnish tax, also is regarded as a resident of Finland may be taxed in Finland. However,

Finland shall allow any Australian tax paid on the income as a deduction from Finnish tax in accordance with the provisions of sub-paragraph (a). The provisions of this sub-paragraph shall apply only to nationals of Finland;

- (d) Where in accordance with any provision of this Agreement any income derived by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on any other income of such resident, take into account the exempted income.

Article 24. 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 by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve by mutual agreement 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 giving effect to the provisions of this Agreement.

Article 25. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for 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, the 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) 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 information which is 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 (*ordre public*).

Article 26. 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 27. ENTRY INTO FORCE

This Agreement shall enter into force on the thirty-first day after the date on which the Contracting States 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 Finland, as the case may be, and thereupon this Agreement shall have effect:

(a) In Australia:

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

(b) In Finland:

- (i) In respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
- (ii) In respect of other Finnish tax on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.

Article 28. TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) In Australia:

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

(b) In Finland:

- (i) In respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the notice is given;

- (ii) In respect of other Finnish tax on income, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

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

DONE at Canberra this Twelfth day of September One thousand nine hundred and eighty-four in duplicate in the English and Finnish languages, both texts being equally authentic.

For the Government
of Australia:

[Signed — Signé]¹

For the Government
of Finland:

[Signed — Signé]²

¹ Signed by Paul Keating — Signé par Paul Keating.

² Signed by Jermu Laine — Signé par Jermu Laine.

PROTOCOL

The Government of Australia and the Government of Finland,

Have agreed at the signing today 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 upon the following provisions which shall form an integral part of the said Agreement.

If, in an agreement for the avoidance of double taxation that is made after [12 September 1984]¹ between Australia and a third State, being a State that is a member of the Organisation for Economic Co-operation and Development,

(a) Australia agrees to limit the rate of its taxation:

- (i) On dividends paid by a company which is a resident of Australia for the purposes of Australian tax to which a company that is a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 10; or
- (ii) On interest arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or
- (iii) On royalties arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12; or

(b) There is included a Non-Discrimination Article,

the Government of Australia shall immediately inform the Government of Finland in writing through the diplomatic channel and shall enter into negotiations with the Government of Finland, in the case of paragraph (a), to review the provisions specified in that paragraph in order to provide the same treatment for Finland as that provided for the third State and, in the case of paragraph (b), in order to provide the same treatment for Finland as that provided for the third State.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at Canberra this Twelfth day of September One thousand nine hundred and eighty-four in duplicate in the English and Finnish languages, both texts being equally authentic.

For the Government
of Australia:

[Signed — Signé]²

For the Government
of Finland:

[Signed — Signé]³

¹ The text between brackets reflects corrections effected by an exchange of notes between the Government of Australia and the Government of Finland dated 21 and 26 November 1985 — Le texte entre crochets reflète les corrections effectuées par un échange de notes entre le Gouvernement australien et le Gouvernement finlandais en date des 21 et 26 novembre 1985.

² Signed by Paul Keating — Signé par Paul Keating.

³ Signed by Jermu Laine — Signé par Jermu Laine.