

No. 26161

**AUSTRIA
and
AUSTRALIA**

**Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
Signed at Vienna on 8 July 1986**

Authentic texts: German and English.

Registered by Austria on 16 September 1988.

**AUTRICHE
et
AUSTRALIE**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu.
Signée à Vienne le 8 juillet 1986**

Textes authentiques : allemand et anglais.

Enregistrée par l'Autriche le 16 septembre 1988

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

The Republic of Austria and Australia, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

CHAPTER I. SCOPE OF THE AGREEMENT

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 the case of Australia: the income tax imposed under the federal law of the Commonwealth of Australia, including the additional tax upon the undistributed amount of the distributable income of a private company and the tax known as the resource rent tax;

(b) In the case of Austria:

- (i) The income tax (*die Einkommensteuer*);
- (ii) The corporation tax (*die Körperschaftsteuer*);
- (iii) The tax on interest yields (*die Zinsertragsteuer*);
- (iv) The directors tax (*die Aufsichtsratsabgabe*); and
- (v) The tax on commercial and industrial enterprises, including the tax levied on the sum of wages (*die Gewerbesteuer einschließlich der Lohnsummensteuer*).

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or the law of the Republic of Austria 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 his State relating to the taxes to which this Agreement applies.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

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

¹ Came into force on 1 September 1988, i.e., the first day of the third month following the month in which the Parties had notified each other (on 15 June 1988) of the completion of the constitutional procedures, in accordance with article 27.

(a) The term “Australia”, when used in geographical sense, excludes all external territories other than:

- (i) The Territory of Norfolk Island;
- (ii) The Territory of Christmas Island;
- (iii) The Territory of Cocos (Keeling) Islands;
- (iv) The Territory of Ashmore and Cartier Islands;
- (v) The Territory of Heard and McDonald Islands; and
- (vi) The Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia [including the Territories specified in subparagraphs (i) to (vi) inclusive] in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf.

(b) The term “Austria” means the Republic of Austria.

(c) The terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Austria, 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 Austria, as the context requires.

(g) The term “tax” means Australian tax or Austrian 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 “Austrian tax” means tax imposed by Austria, 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 Austria, the Federal Minister of Finance.

(2) In this Agreement, the terms “Australian tax” and “Austrian 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 from time to time in force 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, if the person is a resident of Australia for the purposes of Australian tax; and

(b) In the case of Austria, if the person is subject to unlimited tax liability under Austrian law.

(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) 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.

(4) Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident 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”, 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;

(h) A building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists, or those activities are carried on, 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) 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 (5) 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 substantially processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that the provisions of this subparagraph shall apply only in relation to the goods or merchandise so manufactured or processed.

(5) 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.

(6) 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.

(7) The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes 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.

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM REAL PROPERTY

(1) Income from real property, including royalties and other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource, may be taxed in the Contracting State in which the real property, mines, quarries or natural resources are situated.

(2) Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property situated where the land to which the lease or other direct interest relates is situated.

(3) The provisions of paragraphs (1) and (2) shall also apply to the income from real property of an enterprise and to income from real property 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) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

(6) Where profits include items of income 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 affect the operation of any law of a Contracting State relating to tax imposed on 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.

(8) The provisions of this Article shall also apply to income derived by a sleeping partner from participation in a sleeping partnership (*stille Gesellschaft*) created under Austrian law.

(9) Where:

(a) A resident of Austria is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in Australia by the trustee of a trust estate other than a corporate unit trust; and

(b) In relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in Australia, the enterprise carried on by the trustee shall be deemed to be a business carried on in Australia by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

Article 8. SHIPS AND AIRCRAFT

(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) Income 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 or of personal property pertaining to the operation of those ships or aircraft shall be taxable only in that State.

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 it is practicable to do so, consistently with the principles of this Article.

(3) 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 paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might 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.

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.

(3) The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, 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 Austria for the purposes of Austrian tax.

(6) Nothing in this Agreement shall be construed as preventing Australia from imposing, under a federal law, tax on the income of a company that is a resident of Austria in addition to the taxes referred to in Article 2 in relation to Australia which

are payable by a company which is a resident of Australia, 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 Australia. Any tax payable to Australia on the undistributed profits of a company which is a resident of Austria 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" 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 law, relating to tax, 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 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, relating to tax, 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" 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 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, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

Article 13. 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:

(a) The term “real property” 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;

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

- (i) Where it consists of direct 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, 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.

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 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 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 or the taxable year, as the case may be, 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 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 (2) of Article 19, 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 19. 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 or national of that State; or

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

(2) (a) Subject to the provisions of subparagraph (b), a pension paid by, or out of funds created by, one of the Contracting States or a political subdivision or a local authority of that State to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

(3) The provisions of paragraph (1) shall also apply to remuneration paid out of public funds provided by Austria to any individual in respect of services rendered as a member of the Austrian permanent delegation of foreign commerce in Australia.

(4) 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 or a political subdivision or local authority of that State. 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 Austria 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 law of Australia relating to Australian tax 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 Austria shall for the purposes of paragraph (1) of Article 23 and of the law of Australia relating to Australian tax be deemed to be income from sources in Austria.

CHAPTER IV. METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 23

(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), Austrian tax paid under the law of Austria 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 Austria (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) For the purposes of paragraph (1), the term "Austrian tax" shall include the tax on commercial and industrial enterprises, referred to in sub-paragraph (b) (v) of paragraph (1) of Article 2, only where it is levied on a basis other than capital or the sum of wages.

(3) In the case of a resident of Austria double taxation shall be avoided as follows:

(a) Where a resident of Austria derives income which in accordance with the provisions of this Agreement may be taxed in Australia, Austria shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax.

(b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraph (2) of Article 10, 11 or 12, paragraph (1) of Article 13 [in regard only to income from the alienation of real property as defined in subparagraph (2) (a) (iii) of that Article] or paragraph (2) of Article 21, may be taxed in

Australia, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Australia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived in Australia.

(c) Where in accordance with any provision of this Agreement income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income of that resident, take into account the exempted income.

(4) If, in an agreement for the avoidance of double taxation that is made, after the date of signature of this Agreement, between Australia and a third State, being a State that is a member of the Organization for Economic Co-operation and Development, Australia agrees to limit the rate of tax:

(a) 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

(b) 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

(c) 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,

the Government of Australia shall immediately inform the Government of Austria in writing through the diplomatic channel and shall enter into negotiations with the Government of Austria to review the relevant provision or provisions in order to provide the same treatment for Austria as that provided for the third State.

CHAPTER V. SPECIAL PROVISIONS

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 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 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 25. 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) be construed so as to impose on the competent authority of 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 26. DIPLOMATIC AND CONSULAR OFFICIALS

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

CHAPTER VI. FINAL PROVISIONS

Article 27. ENTRY INTO FORCE

This Agreement shall enter into force on the first day of the third month next following that in which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such constitutional processes has been completed as are necessary to give this Agreement the force of law in Australia and in Austria, 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; and
- (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 Austria:

- (i) In respect of tax withheld at the source on amounts paid on or after 1 January in the calendar year next following that in which the Agreement enters into force; and

- (ii) In respect of other Austrian tax for taxable years beginning on or after 1 January in the calendar year next following that 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 Austria:

- (i) In respect of tax withheld at the source on amounts paid on or after 1 January in the calendar year next following that in which the notice of termination is given; and
- (ii) In respect of other Austrian tax for taxable years beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate in Vienna this 8th day of July one thousand nine hundred and eighty-six in the English and German languages, both texts being equally authentic.

For the Republic of Austria:

Dr. EGON BAUER

For Australia:

KELSO