

## 1968 No. 305

## INCOME TAX

**The Double Taxation Relief (Taxes on Income)  
(Australia) Order 1968**

*Laid before the House of Commons in draft*

*Made - - - - - 4th March 1968*

At the Court at Buckingham Palace, the 4th day of March 1968

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 347(6) of the Income Tax Act 1952(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 347(1) of the said Income Tax Act 1952, as amended by section 39 and section 64 of the Finance Act 1965(b), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Australia) Order 1968.

2. It is hereby declared—

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Commonwealth of Australia with a view to affording relief from double taxation in relation to income tax, profits tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Australia; and

(b) that it is expedient that those arrangements should have effect.

*W. G. Agnew.*

## SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia,

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

Have agreed as follows:

## ARTICLE 1

(1) The taxes which are the subject of this Agreement are—

(a) in the United Kingdom of Great Britain and Northern Ireland:

the income tax (including surtax), the corporation tax and the capital gains tax;

(b) in Australia:

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

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Government or by the Government of any territory to which the present Agreement is extended under Article 22.

## ARTICLE 2

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

(a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(b) the term “the Commonwealth” means the Commonwealth of Australia;

(c) the term “Australia” means the whole of the Commonwealth and includes—

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands; and

- (v) any area outside the territorial limits of the Commonwealth and the said Territories in respect of which there is for the time being in force a law of the Commonwealth or of a State or part of the Commonwealth or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and sub-soil of the Continental Shelf;
- (d) the terms "territory", "one of the territories" and "the other territory" mean the United Kingdom or Australia as the context requires;
- (e) the term "taxation authority" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Australia, the Commissioner of Taxation or his authorised representative;
- (f) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Agreement applies by virtue of Article 1; the term "Australian tax" means tax imposed by the Commonwealth being tax to which this Agreement applies by virtue of Article 1;
- (g) the term "tax" means United Kingdom tax or Australian tax as the context requires;
- (h) the term "person" includes any body of persons corporate or not corporate;
- (i) the term "company" means any body corporate;
- (j) the term "resident in the United Kingdom" has the meaning which it has under the laws of the United Kingdom relating to United Kingdom tax;
- (k) the term "resident of Australia" has the meaning which it has under the laws of Australia relating to Australian tax;
- (l) words in the singular include the plural, and words in the plural include the singular.
- (2) The terms "Australian tax" and "United Kingdom tax" do not include any amount which represents a penalty or interest imposed under the law of either territory relating to the taxes which are the subject of the present Agreement.

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

(4) In the application of the provisions of this Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Government relating to the taxes which are the subject of this Agreement.

## ARTICLE 3

(1) For the purposes of this Agreement—

- (a) the term “Australian company” means any company which being a resident of Australia—
- (i) is incorporated in Australia and has its centre of administrative or practical management in Australia whether or not any person outside Australia exercises or is capable of exercising any overriding control or direction of the company or of its policy or affairs in any way whatsoever; or
  - (ii) is managed and controlled in Australia;
- (b) the term “United Kingdom company” means any company which is managed and controlled in the United Kingdom and which is not an Australian company;
- (c) the term “United Kingdom resident” means any United Kingdom company and any person (other than a company) who is resident in the United Kingdom but the term does not include any individual, not being ordinarily resident in the United Kingdom, who is liable to tax in the United Kingdom only if he derives income from sources therein; and
- (d) the term “Australian resident” means any Australian company and any other person (other than a United Kingdom company) who is a resident of Australia but the term does not include any individual, not being ordinarily resident in Australia, who is liable to tax in Australia only if he derives income from sources therein.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is both a United Kingdom resident and an Australian resident—

- (a) he shall be treated solely as a United Kingdom resident—
- (i) if he has a permanent home available to him in the United Kingdom and has not a permanent home available to him in Australia;
  - (ii) if sub-paragraph (a) (i) of this paragraph is not applicable but he has an habitual abode in the United Kingdom and has not an habitual abode in Australia;
  - (iii) if neither sub-paragraph (a) (i) nor sub-paragraph (a) (ii) of this paragraph is applicable but the territory with which his personal and economic relations are closest is the United Kingdom;
- (b) he shall be treated solely as an Australian resident—
- (i) if he has a permanent home available to him in Australia and has not a permanent home available to him in the United Kingdom;
  - (ii) if sub-paragraph (b) (i) of this paragraph is not applicable but he has an habitual abode in Australia and has not an habitual abode in the United Kingdom;
  - (iii) if neither sub-paragraph (b) (i) nor sub-paragraph (b) (ii) of this paragraph is applicable but the territory with which his personal and economic relations are closest is Australia.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is both a United Kingdom resident and an Australian resident—

- (a) it shall be treated solely as a United Kingdom resident if it is managed and controlled in the United Kingdom;
- (b) it shall be treated solely as an Australian resident if it is managed and controlled in Australia.

(4) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a United Kingdom resident or a person who is an Australian resident as the context requires.

(5) The terms "United Kingdom enterprise" and "Australian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a United Kingdom resident and an industrial or commercial enterprise or undertaking carried on by an Australian resident, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or an Australian enterprise, as the context requires.

#### ARTICLE 4

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

(2) The term "permanent establishment" includes—

- (a) a management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) an agricultural, pastoral or forestry property;
- (h) a building site or a construction, installation or assembly project which exists for more than six months.

(3) The term "permanent establishment" shall not be deemed to include—

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of 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 of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on supervisory activities in that other territory for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other territory.

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

- (a) if he has, and habitually exercises in that first-mentioned territory, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) if he habitually fills orders from a stock of goods or merchandise maintained in that first-mentioned territory; or
- (c) if in so acting he manufactures or processes in that first-mentioned territory any goods for the enterprise.

(6) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on trade or business in that other territory through a broker, a general commission agent or any other agent of independent status, where such a person is acting in the ordinary course of his business as a broker, a general commission agent or other agent of independent status.

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

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

- (a) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise; or
- (b) the same persons participate directly or indirectly in the management, control or capital of both enterprises,

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

#### ARTICLE 5

(1) Industrial or commercial profits of a United Kingdom enterprise shall be exempt from Australian tax unless the enterprise carries on trade or business in Australia through a permanent establishment situated therein. If the enterprise carries on trade or business as aforesaid, Australian tax may be imposed on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(2) Industrial or commercial profits of an Australian enterprise shall be exempt from United Kingdom tax unless the enterprise carries on trade or business in the United Kingdom through a permanent establishment situated therein. If the enterprise carries on trade or business as aforesaid, United Kingdom tax may be imposed on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories carries on trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

(4) In determining the industrial or commercial profits of an enterprise of one of the territories which are taxable in the other territory in accordance with the previous paragraphs of this Article, there shall be allowed as deductions all expenses of the enterprise (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the profits so taxable, whether incurred in the territory in which the permanent establishment is situated or elsewhere, but where goods manufactured out of the other territory by the enterprise are imported into that territory, and the goods are, either before or after importation, sold in that territory by the enterprise, the profits of the enterprise taxable in that territory may be determined by deducting from the sale price of the goods the amount for which, at the date the goods were shipped to that territory, goods of the same nature and quality could be purchased by a wholesale buyer in the country of manufacture, and the expenses incurred in transporting them to and selling them in that territory.

(5) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory. Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this Article.

(6) 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.

(7) The term "industrial or commercial profits" means income derived by an enterprise from the conduct of a trade or business, including income derived by an enterprise from the furnishing of services of employees or other personnel, but it does not include—

- (a) dividends, interest, royalties (as defined in Articles 8, 9 and 10) or rents other than dividends, interest, royalties or rents effectively connected with a trade or business carried on through a permanent establishment which an enterprise of one of the territories has in the other territory; or
- (b) remuneration for personal (including professional) services; or
- (c) income arising from, or in relation to, contracts or obligations to provide the services of public entertainers or athletes referred to in Article 13.

(8) Nothing in this Article shall apply to either territory to prevent the operation in the territory of any provisions of its law relating specifically to the taxation of any person who carries on a business of any form of insurance or to the taxation of a non-resident who derives income under any contract or

agreement with any person in relation to the carrying on in the territory by that person of any form of firm business controlled abroad. Provided that if the law in force in either territory at the date of signature of this Agreement relating to the taxation of such persons is varied (otherwise than in minor respects so as not to affect its general character, or by this Agreement), the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this paragraph as may be necessary.

(9) This Article shall not apply to profits derived by a resident of one of the territories from the operation of ships or aircraft which are exempt from tax in the other territory under paragraph (1) of Article 6, nor shall it apply to profits to which paragraph (2) of Article 6 applies.

#### ARTICLE 6

(1) A resident of one of the territories shall be exempt from tax in the other territory on profits from the operation of ships or aircraft, other than profits from voyages or operations of ships or aircraft confined solely to places in the other territory, voyages of ships or aircraft between a place in Australia and a place in the Territory of Papua or the Territory of New Guinea being treated as voyages between places within Australia.

(2) The amount which shall be charged to tax in one of the territories as profits from voyages of ships in respect of which a resident of the other territory is not exempt from tax in the first-mentioned territory under paragraph (1) of this Article shall not exceed 5 per cent. of the amounts paid or payable (net of rebates) in respect of such voyages for the carriage of passengers, livestock, mails or goods shipped in the first-mentioned territory.

(3) Paragraph (2) of this Article shall not apply to the profits derived from the operation of ships by a United Kingdom enterprise whose principal place of business is in Australia, but there shall be excluded from the profits on which any such enterprise is charged to Australian tax any amounts of profits taxed in the Territory of Papua or the Territory of New Guinea.

#### ARTICLE 7

(1) Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and, in either case, conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another, then, if by reason of those conditions, profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise there may be included in the profits of that enterprise the profits which might have been expected to accrue to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

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



(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in this Article shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory. Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

#### ARTICLE 8

(1) The United Kingdom tax on dividends derived and beneficially owned by an Australian resident shall not exceed 15 per cent. of the gross amount of the dividends.

(2) The Australian tax on dividends derived and beneficially owned by a United Kingdom resident shall not exceed 15 per cent. of the gross amount of the dividends.

(3) The term "dividends" includes any item (other than interest or royalties relieved from tax under Article 9 or Article 10 of this Agreement) which—

- (a) in the case of the United Kingdom is, under the law of the United Kingdom, a distribution of a company;
- (b) in the case of Australia is, or is deemed to be, under the laws in force in Australia relating to Australian tax, a dividend.

(4)—(a) Notwithstanding paragraphs (1) and (2) of this Article where a company (other than a company to which the proviso to paragraph (8) of this Article applies) which is a resident of one of the territories satisfies the condition prescribed in sub-paragraph (b) of this paragraph, tax shall not be imposed in that territory on dividends paid by that company which are derived and beneficially owned by a resident of the other territory, provided that the Government of the other territory does not impose on the profits attributable to a permanent establishment of the company in that other territory any tax which is in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the territory of that Government;

(b) the condition referred to in sub-paragraph (a) of this paragraph is that the company derived not less than 90 per cent. of its income for each of its last three accounting periods or years of income before the dividend was paid (or in the case of a company having fewer than three accounting periods or years of income, for each accounting period or year of income before that date) from a business carried on by it in the other territory.

(5) Paragraphs (1) and (4) of this Article shall not apply if the beneficial owner of the dividends, being an Australian resident, has in the United Kingdom a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through such permanent establishment and, in the case of a company, the trade or business is such that a profit on the sale of the holding would be a trading receipt.

(6) Paragraphs (2) and (4) of this Article shall not apply if the beneficial owner of the dividends, being a United Kingdom resident, has in Australia a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through such permanent establishment and, in the case of a company, the trade or business is such that the proceeds of sale or a profit on the sale of the holding would be assessable income.

(7) If the beneficial owner of dividends being an Australian resident owns 10 per cent. or more of the class of shares in respect of which the dividends are paid, then paragraph (1) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purpose of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent. or more of the class of shares in question. Provided that this paragraph shall not apply if the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(8) Dividends paid by a company which is a resident of one of the territories and which are beneficially owned by a person who is not a resident of the other territory shall be exempt from tax in that other territory. Provided that this paragraph shall not apply in relation to any United Kingdom company which is also a resident of Australia or any Australian company which is also resident in the United Kingdom.

(9) The Government of one of the territories shall not impose on a company which is a resident of the other territory any tax in the nature of an undistributed profits tax on undistributed profits of the company on a basis that is less favourable than that applicable in the case of a company which is a resident of the first-mentioned territory.

#### ARTICLE 9

(1) The United Kingdom tax on interest (on bonds, securities, debentures, or on any other form of indebtedness) derived and beneficially owned by an Australian resident shall not exceed 10 per cent. of the gross amount of the interest.

(2) The Australian tax on interest (on bonds, securities, debentures, or on any other form of indebtedness) derived and beneficially owned by a United Kingdom resident shall not exceed 10 per cent. of the gross amount of the interest.

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

(4) Any provision in the law of either of the territories relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other territory to be treated as a distribution of or a dividend from the company paying such interest. The preceding sentence shall not apply to interest paid to a company which is a resident of one of the territories in which more than 50 per cent. of the voting power is controlled, directly or indirectly, by a person resident in the other territory.

(5) Paragraphs (1) and (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest—

(a) is not subject to tax in respect thereof in the territory of which it is a resident; and

(b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

#### ARTICLE 10

(1) The United Kingdom tax on royalties derived and beneficially owned by an Australian resident shall not exceed 10 per cent. of the gross amount of the royalties.

(2) The Australian tax on royalties derived and beneficially owned by a United Kingdom resident shall not exceed 10 per cent. of the gross amount of the royalties.

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

(4) Royalties paid by a company which is a resident of one of the territories to a resident of the other territory shall not be treated as a distribution of or a dividend from that company. The preceding sentence shall not apply to royalties paid to a company which is a resident of one of the territories where—

(a) the same persons participate directly or indirectly in the management or control of the company paying the royalties and the company deriving the royalties; and

(b) more than 50 per cent. of the voting power in the company deriving the royalties is controlled, directly or indirectly, by a person resident in the other territory.

(5) In this Article the term "royalties" means payments of any kind to the extent to which they are paid as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge, information or assistance, and includes any payments of any kind to the extent to which they are paid as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of natural resources.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

## ARTICLE 11

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

## ARTICLE 12

(1) Subject to Articles 14, 15 and 16, salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised such remuneration as is derived therefrom shall be deemed to have a source in, and may be taxed in, that other territory.

(2) Notwithstanding the provisions of paragraph (1) of this Article remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be exempt from tax in the other territory if—

- (a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the year of income or the year of assessment as the case may be of that other territory; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory; and
- (c) the remuneration is not deductible in determining the profits of a permanent establishment or a fixed base which the employer has in the other territory.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the territory in which the place of effective management of the enterprise is situated.

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

## ARTICLE 13

Notwithstanding anything contained in Articles 11 and 12, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such shall be deemed to have a source in, and may be taxed in, the territory in which these activities are exercised.

## ARTICLE 14

(1) Any pension or annuity derived from sources within one of the territories by an individual who is a resident of the other territory shall be exempt from tax in the first-mentioned territory.

(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.

## ARTICLE 15

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth or of any State of the Commonwealth to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from United Kingdom tax if the individual is not ordinarily resident in the United Kingdom or is ordinarily resident in the United Kingdom solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of the United Kingdom or the Government of Northern Ireland to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia or is resident in Australia solely for the purpose of rendering those services.

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

## ARTICLE 16

A professor or teacher who visits one of the territories for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that territory and who is, or was immediately before that visit, a resident of the other territory shall be exempt from tax in the first-mentioned territory on any remuneration for such teaching in respect of which he is subject to tax in the other territory.

## ARTICLE 17

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

## ARTICLE 18

(1) This Article shall apply to a person who is a resident of Australia and is also resident in the United Kingdom.

(2) Where such a person is treated for the purposes of this Agreement solely as a resident of one of the territories he shall be exempt in the other territory from tax on any income in respect of which he is subject to tax in the first-mentioned territory if the income is derived—

- (a) from sources in the first-mentioned territory; or
- (b) from sources outside both territories.

## ARTICLE 19

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

- (a) Australian tax payable under the laws of Australia and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Australia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid), shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Australian tax is computed; and
- (b) in the case of a dividend paid by a company which is a resident of Australia and is not resident in the United Kingdom to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Australian tax creditable under (a)) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

(2)—(a) Subject to the provisions of the law of Australia from time to time in force and which relate to the allowance of a credit against Australian tax of tax payable in a country outside Australia (which shall not affect the general principle hereof), United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Agreement (reduced by the amount of any relief or repayment attributable to that income which is allowable under the law of the United Kingdom), whether directly or by deduction, on income derived by a resident of Australia from sources in the United Kingdom (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against the Australian tax assessed by reference to the same income by reference to which the United Kingdom tax is payable;

(b) in the event that Australia should cease to allow a company which is a resident of Australia a rebate in its assessment at the average rate of tax payable by the company in respect of dividends derived from sources in the United Kingdom and included in the taxable income of the company, the Contracting Governments will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

(3) For the purposes of this Article—

- (a) (i) Australian tax borne by a United Kingdom resident in respect of dividends (as defined in Article 8) paid by a company which is a resident of Australia shall be treated as tax on income from sources in Australia;
- (ii) United Kingdom tax borne by an Australian resident in respect of dividends (as defined in Article 8) paid by a company which is resident in the United Kingdom shall be treated as tax on income from sources in the United Kingdom;
- (b) interest and royalties (as defined in Articles 9 and 10), which under the law of one of the territories—
- (i) are derived from sources within that territory; or
- (ii) being derived by a non-resident are subject to withholding tax, shall be treated in the other territory as having a source in the first-mentioned territory;

- (c) remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic shall be treated as having a source in the territory in which the place of effective management of the enterprise is situated;
- (d) any amount which is included, for the purposes of tax in one of the territories, in the chargeable profits or taxable income of a person who is a resident of the other territory, and which is so included under any provision of the law of the first-mentioned territory for the time being in force regarding taxation of income of a business of any form of insurance or of income derived under a contract or agreement with a person who carries on in the first-mentioned territory any form of film business controlled abroad shall be treated as having a source in that first-mentioned territory;
- (e) profits to which paragraph (2) of Article 6 applies derived by a resident of one of the territories from the operation of ships, being profits that are charged to tax in the other territory, shall be treated as having a source in that other territory.

(4) Where profits on which an enterprise of one of the territories has been charged to tax in that territory are also included in the profits of an enterprise of the other territory and the profits so included are profits which might have been expected to accrue to that enterprise of the other territory if conditions operative between each of the enterprises had been those which might be expected to operate between independent enterprises dealing at arm's length, the amount of such profits included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other territory of the enterprise of the first-mentioned territory and relief shall be given in accordance with this Article in respect of the extra tax chargeable in the other territory as a result of the inclusion of the said amount.

#### ARTICLE 20

(1) Where a taxpayer considers that the action of the taxation authority of either territory has resulted or will result in taxation contrary to the provisions of this Agreement, he shall be entitled to present his case to either taxation authority. Should the taxpayer's claim be deemed worthy of consideration, the taxation authority to which the claim is made shall endeavour to come to an agreement with the other taxation authority with a view to a satisfactory adjustment.

(2) The taxation authorities may communicate with each other directly to implement the provisions of this Agreement and to assure its consistent interpretation and application. In particular, the taxation authorities may consult together to endeavour to resolve disputes arising out of the application of paragraph (3) of Article 5 or Article 7, or the determination of the source of particular items of income.

#### ARTICLE 21

The taxation authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or tribunal) concerned with the

assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

#### ARTICLE 22

(1) This Agreement may be extended, either in its entirety or with modifications to any territory for whose international relations either of the Contracting Governments is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Agreement, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Governments in Letters to be exchanged for this purpose.

(2) The termination of this Agreement under Article 24 shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of this Agreement to any territory to which it has been extended under this Article.

#### ARTICLE 23

(1) This Agreement shall enter into force on the date when the last of all such things shall have been done in the United Kingdom and Australia as are necessary to give the Agreement the force of law in the United Kingdom and Australia respectively, and shall thereupon have effect—

(a) in the United Kingdom—

- (i) in respect of income tax (including surtax) for any year of assessment beginning on or after 6 April, 1967;
- (ii) in respect of capital gains tax for any year of assessment beginning on or after 6 April, 1965;
- (iii) in respect of corporation tax for any financial year beginning on or after 1 April, 1964;

(b) in Australia—

- (i) in respect of any Australian tax on dividends, on dividends derived by a non-resident on or after 1 July, 1967;
- (ii) in respect of withholding tax on income (other than dividends) that is derived by a non-resident, in respect of any income derived on or after 1 July, 1967;
- (iii) in respect of other Australian tax, for any year of income beginning on or after 1 July, 1967.

(2) Subject to paragraph (3) of this Article, the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia signed at London on 29 October, 1946 shall terminate and cease to have effect in relation to any tax in respect of which this Agreement comes into effect in accordance with paragraph (1) of this Article.

(3)—(a) Where any provision of the Agreement signed at London on 29 October, 1946 would have afforded any greater relief from tax in one of the territories than is afforded by this Agreement any such provision as aforesaid shall continue to have effect in that territory—



- (i) in the case of the United Kingdom, for any year of assessment or financial year beginning before the date this Agreement shall enter into force;
  - (ii) in the case of Australia, for the purposes of withholding tax on income derived by a non-resident, on income derived during any financial year beginning before the date this Agreement shall enter into force and, for the purposes of other Australian tax, for any year of income beginning before that date;
- (b) notwithstanding sub-paragraph (a) of this paragraph where any greater relief from United Kingdom tax would have been afforded by Article XII of the Agreement signed at London on 29 October, 1946 in respect of dividends paid by a company which is a resident of Australia than is afforded by Article 19 of this Agreement, the aforesaid Article XII shall continue to have effect as respects United Kingdom tax for any year of assessment or any financial year beginning before the date this Agreement shall enter into force only in respect of dividends paid before the said date;
- (c) notwithstanding sub-paragraph (a) of this paragraph where any greater relief from Australian tax would have been afforded by paragraph (2) of Article VI of the Agreement signed at London on 29 October, 1946 than is afforded by Article 8 of this Agreement, the aforesaid paragraph (2) of Article VI shall continue to have effect only in respect of dividends declared on or before the date which falls seven days after the date of signature of this Agreement.

(4) This Article shall be construed as having the result, in relation to United Kingdom tax on dividends paid by companies which are resident in the United Kingdom to residents of Australia, that the limits set by section 31 of the Finance Act 1966 on the amount of such tax chargeable shall continue to apply to dividends declared on or before the date which falls seven days after the date of signature of this Agreement to a company which is a resident of Australia and which satisfies the converse of the conditions set out in paragraph (2) of Article VI of the Agreement signed at London on 29 October, 1946.

#### ARTICLE 24

This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the thirtieth day of June in any calendar year after the year 1973, give notice of termination to the other Contracting Government and, in such event, this Agreement shall cease to be effective—

(a) in the United Kingdom—

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

(b) in Australia—

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

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

DONE in duplicate at Canberra on the 7th day of December of the year One thousand nine hundred and sixty-seven.

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland:

For the Government of the Common-  
wealth of Australia:

C. H. JOHNSTON.

WILLIAM McMAHON.

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### EXPLANATORY NOTE

*(This Note is not part of the Order.)*

Under the Agreement with Australia scheduled to this Order (which is to replace the Agreement signed in London on 29th October 1946 (a)) shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries are normally to be taxed by the paying Government only. Remuneration of visiting teachers and professors and payments made for the maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited.

The rates of tax on income flowing from one country to the other are, in general, not to exceed 15 per cent in the case of dividends and 10 per cent in the case of interest and royalties. Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. In the case of dividends, credit for Australian tax on the profits out of which the dividend is paid is to be given for United Kingdom tax purposes only where the recipient of the dividend is a company which controls at least 10 per cent of the voting power in the paying company. There are provisions for the exchange of information and consultation between the taxation authorities of the two countries.

The Agreement is in general to take effect in the United Kingdom for all years for corporation tax and capital gains tax and for 1967-68 and subsequent years for income tax and surtax.

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(a) S.R. & O. 1947/806 (Rev. X, p. 347: 1947 I, p. 1069).