

AGREEMENT BETWEEN AUSTRALIA AND SWITZERLAND FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF AUSTRALIA AND THE SWISS FEDERAL COUNCIL,

DESIRING to conclude an Agreement for the avoidance of double taxation with respect to taxes on income,

HAVE AGREED as follows:

CHAPTER 1

SCOPE OF THE AGREEMENT

Article 1

Personal scope

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

Article 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are -

(a) in Australia:

The Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company and also income tax upon the reduced taxable income of a non-resident company;

(b) in Switzerland:

The Federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits and other items of income).

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. At 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.

3. In this Agreement, the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies; the term "Swiss tax" means tax imposed in Switzerland, being tax to which this Agreement applies; and the term "tax" means Australian tax or Swiss tax, as the context requires; but the terms "Australian tax" and "Swiss tax" do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.

4. This Agreement shall not apply to Federal anticipatory tax withheld in Switzerland at the source on prizes in a lottery.

CHAPTER II

DEFINITIONS

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires -

(a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Coral Sea Islands Territory; and

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

(b) the term "Switzerland" means the Swiss Confederation;

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Australia or Switzerland, as the context requires;

(d) the terms "person" includes an individual, a company and any other body of persons;

(e) the term "company" includes any body or association corporate or unincorporate 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 Switzerland, as the context requires;

(g) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorised representative, and in the case of Switzerland, the Director of the Federal Tax Administration or his authorized representative.

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

Article 4

Residence

1. (a) For the purposes of this Agreement, a person is a resident of Australia if the person is a resident of Australia for the purposes of Australian tax. However, in relation to income from sources in Switzerland, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Switzerland is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Swiss tax.

(b) For the purposes of this Agreement, a person is a resident of Switzerland if the person is subject to unlimited tax liability in Switzerland.

2. 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.

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

Article 5

Permanent establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially -

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property;

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

3. An enterprise shall not be deemed to have permanent establishment merely by reason of -

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if -

(a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or

(b) substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 6 applies - shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if -

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

(b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

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

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

8. The principles set forth in paragraphs 1 to 7 inclusive shall be applied in determining for the purposes of this Agreement 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 may be taxed in the Contracting State in which the real property is situated.

2. The term "real property" shall have the meaning which it has under the laws in force in the Contracting State in which the property in question is situated. The term shall in any case include rights to royalties and other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource, which rights shall be regarded as situated where the mines, quarries or natural resource are situated. Ships, boats or aircraft shall not be regarded as real property.

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

4. 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 is situated.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal 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. 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.

Article 8

Shipping and air transport

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

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

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

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in one of the Contracting States for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

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

6. Paragraph 5 shall not apply to profits derived from the operation of ships or aircraft by a resident of one of the Contracting States whose principal place of business is in the other Contracting State, nor shall it apply to profits derived from the operation of ships or aircraft by a resident of one of the Contracting States if those profits are derived otherwise than from the carriage of passengers, livestock, mails, goods or merchandise. In such cases, the provisions of Article 7 shall apply.

Article 9

Associated enterprises

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.

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 taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 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, being the 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 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 Switzerland for the purposes of Swiss tax.

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 interest by the taxation law of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 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, being the 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 giving rise to the interest is effectively connected with the 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. Interest shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself or a political sub-division of that State or a 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 a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

Article 12

Royalties

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

2. Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments (including credits), whether periodical or not and however described or computed, to the extent to which they are consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or any assistance of an ancillary and subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies, or 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, or for total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carried on business in the other Contracting State, being the 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 asset giving rise to the royalties is effectively connected with that 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. Royalties shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself or a political sub-division of that State or a 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 a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such 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, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the 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 shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

Article 13

Alienation of property

1. Income or gains from the alienation of real property or of a direct interest in or over land or of a right to exploit, or to explore for, a natural resource may be taxed in the Contracting State in which the real property, the land or the natural resource is situated.

2. For the purposes of this Article, shares or comparable interests in a company, the assets of which consist wholly or principally of real property or 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, shall be deemed to be real property situated in the Contracting State in which the land or the natural resources are situated or in which the exploration may take place.

3. Subject to the provisions of paragraphs 1 and 2, income from the alienation of capital assets of an enterprise of one of the Contracting States shall be taxable only in that Contracting State, but, where those assets form part of the business property of a permanent establishment situated in the other Contracting State, such income may be taxed in that other State.

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 fiscal year as the case may be, of that other State; and

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

Article 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 has 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.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer nor persons related to the entertainer participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18

Pensions and annuities

1. Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding anything in this Agreement -

(a) the pensions and other payments referred to in paragraphs (a) and (b) of sub-section 23 AD(3) of the Australian Income Tax Assessment Act 1936, as amended, where they are paid by Australia, shall be exempt from Swiss tax as long as they are exempt from Australian tax;

(b) the pensions and other payments received from Switzerland under the legislation concerning Military Insurance shall be exempt from Australian tax as long as they are exempt from Swiss tax.

Article 19

Government service

1. Remuneration (other than a pension or annuity) paid by one of the Contracting States or a political subdivision of that State or a 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 remunerations shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a citizen or national of that State; or

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

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division of one of the States or a local authority of one of the States. In such a case the provisions of Articles 15 and 16 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 the other State solely for the purpose of his education, receives payments from sources outside the other State for the purpose of his maintenance or education, those payments shall be exempt from tax in the other State.

Article 21

Income of dual resident

Where a person, who by reason of the provisions of paragraph 1 of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph 2 or 3 of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

CHAPTER IV

METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 22

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), Swiss tax paid, whether directly or by deduction, in respect of income derived by a resident of Australia from sources in Switzerland (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. Where a resident of Switzerland derives income dealt with in this Agreement and which, in accordance with the provisions of this Agreement, may be taxed in Australia, Switzerland shall, subject to the provisions of paragraph 3, exempt such income from Swiss tax but may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. Provided, however, that the exemption shall apply to gains from the alienation of property referred to in paragraph 2 of Article 13 only if taxation of such gains by Australia is demonstrated.

3. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Australia, Switzerland shall allow, upon request, relief to that person. The relief may consist of:

(a) a deduction from the Swiss tax on the income of that person of an amount equal to the tax levied in Australia in accordance with the provisions of Articles 10, 11 and 12; such deduction

shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia, or

(b) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in sub-paragraph (a), or

(c) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Australia from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

4. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Australia shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted if the company paying the dividends were a resident of Switzerland.

CHAPTER V

SPECIAL PROVISIONS

Article 23

Mutual agreement procedure

1. Where a resident of one of the Contracting States considers that the actions of tax authorities in one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the taxpayer's 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.

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 24

Exchange of information

1. The competent authorities of the Contracting States 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 in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection 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.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application..

Article 25

Source of income

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in the other Contracting State, shall for the purposes of Article 22, and of the income tax law of that other State, be deemed to be income from sources in that other State.

Article 26

Diplomatic and consular officials

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

2. For the purposes of this Agreement, an individual who is a member of a diplomatic mission, consular post or permanent mission of one of the Contracting States which is situated in the other Contracting State or in a third State shall be deemed to be a resident of the sending Contracting State if:

(a) in accordance with international law he is not liable to tax in the receiving Contracting State in respect of income from sources outside that Contracting State, and

(b) he is liable in the sending Contracting State to the same obligations in relation to tax on his total income as are residents of that Contracting State.

3. This Agreement shall not apply to international organisations, to organs or officials thereof or to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in one of the Contracting States and not treated in either Contracting State as residents in respect of taxes on income.

CHAPTER VI

FINAL PROVISIONS

Article 27

Entry into force

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

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(a) 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 1 January 1979;

(ii) in respect of other Australian tax for any year of income beginning on or after 1 July 1979;

(b) in Switzerland -

for any taxable year beginning on or after 1 January 1979.

Article 28

Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Swiss Federal Council may on or before 30 June in any calendar year give to the other 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 respect of 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, for 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 Switzerland -

for any taxable year 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 authorized thereto, have signed this Agreement.

DONE in duplicate at Canberra this 28th day of February, One thousand nine hundred and eighty in the English and German languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF FOR THE SWISS FEDERAL COUNCIL:

AUSTRALIA:

[Signed:] [Signed:]

JOHN HOWARD HENRI ROSSI

PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE SWISS FEDERAL COUNCIL

HAVE AGREED at the signing of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 2, the provisions of the Australian law relating specifically to the income tax upon the reduced taxable income of a non-resident company in existence at the date of signature of this Agreement are to be applied in ascertaining the income subject to that tax or, if those provisions are amended so as to make more favourable to the company the ascertainment of that income, those provisions as so amended are to be so applied.

2. With reference to Article 7,

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

(b) for the purposes of (a) and of paragraphs 1 to 4 of Article 7, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary;

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

3. With reference to Articles 7 and 9, where the information available to the competent authority of one of the Contracting States is inadequate to determine the profits of an enterprise on which tax may be imposed in that State in accordance with Article 7 or Article 9 of the Agreement, nothing in those Articles shall affect the application of any law of that State relating to the determination of the tax liability of an enterprise in special circumstances, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of those Articles.

4. With reference to Articles 10, 11 and 12, if, in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third State being a State that at the date of signature of this Protocol is a member of the Organisation for Economic Co-operation and Development, Australia shall agree to limit the rate of its taxation -

(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 a 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 Swiss Federal Council in writing through the diplomatic channel and shall enter into negotiations with the Swiss Federal Council to review the provisions specified in (a), (b) and (c) above in order to provide the same treatment for Switzerland as that provided for the third State.

DONE in duplicate at Canberra this twenty-eighth day of February, One thousand nine hundred and eighty, in the English and German languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF FOR THE SWISS FEDERAL COUNCIL:

AUSTRALIA:

[Signed:] [Signed:]

JOHN HOWARD HENRI ROSSI