

**AGREEMENT BETWEEN THE TAIPEI ECONOMIC AND CULTURAL OFFICE AND THE AUSTRALIAN COMMERCE AND INDUSTRY OFFICE CONCERNING THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

**The Taipei Economic and Cultural Office and the Australian Commerce and Industry Office,**

**Desiring to conclude an agreement concerning the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,**

**Have agreed as follows:**

**ARTICLE 1 Personal Scope**

This Agreement shall apply to persons who are residents of one or both of the territories.

**ARTICLE 2 Taxes Covered**

1. The existing taxes to which this Agreement shall apply are :
  - (a) in the territory in which the taxation law administered by the Australian Taxation Office is applied:  
the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under that law;
  - (b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:  
the profit seeking enterprise income tax and the individual consolidated income tax, imposed under that law.
2. This Agreement shall apply also to any identical or substantially similar taxes on income, profits or gains which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities will notify each other as soon as practicable of any substantial changes which have been made in the taxation laws of their respective territories.

**ARTICLE 3 General Definitions**

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "territory" means the territory referred to in subparagraph 1(a) or 1(b) of Article 2, as the case requires;

- (b) the term "person" includes an individual, a company and any other body of persons;
  - (c) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory or an enterprise carried on by a resident of the other territory, as the context requires;
  - (e) the term "tax" means tax imposed under the law of a territory, being a tax to which this Agreement applies by virtue of Article 2, but does not include any penalty or interest imposed under that law;
  - (f) the term "competent authority" means, in the case of the territory in which the taxation law administered by the Australian Taxation Office is applied, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, the Director-General of the Department of Taxation or an authorised representative of the Director-General.
2. As regards the application of this Agreement at any time in a territory, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that territory concerning the taxes to which this Agreement applies, any meaning under the applicable tax law of that territory prevailing over a meaning given to the term under other laws of that territory.

#### **ARTICLE 4 Residence**

1. For the purposes of this Agreement, a person is a resident of a territory if the person is a resident of that territory for the purposes of its tax.
2. A person is not a resident of the territory in which the taxation law administered by the Australian Taxation Office is applied for the purposes of this Agreement if the person is liable to tax in that territory in respect only of income from sources in that territory.
3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both territories, then the status of the person shall be determined in accordance with the following rules:
  - (a) the person shall be deemed to be a resident solely of the territory in which a permanent home is available to the person;
  - (b) if a permanent home is available to the person in both territories, or in neither of them, the person shall be deemed to be a resident solely of the territory in which the person has an habitual abode;

- (c) if the person has an habitual abode in both territories or in neither of them, the person shall be deemed to be a resident solely of the territory with which the person's economic and personal relations are closer.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both territories, then it shall be deemed to be a resident solely of the territory in which its place of incorporation is situated.

#### **ARTICLE 5 Permanent Establishment**

1. For the purposes of this Agreement, the term "permanent establishment", in relation to an enterprise, means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
- (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (g) an agricultural, pastoral or forestry property;
  - (h) a building site or construction, installation or assembly project which exists for more than 6 months; and
  - (i) the furnishing of services, including consultancy services in a territory by an enterprise of the other territory through employees or other personnel engaged by the enterprise for such purpose, but only where those activities ( for the same or a connected project ) within the first-mentioned territory continue for a period or periods aggregating more than 120 days within any twelve month period.
3. An enterprise shall not be deemed to have a permanent establishment merely by reason of:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery ; or
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- or

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; or
  - (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 a territory and to carry on business through that permanent establishment if:
- (a) it carries on supervisory activities in that territory for more than 6 months in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that territory; or
  - (b) substantial equipment is being used in that territory by, for or under contract with, the enterprise where that use continues for more than 3 months.
5. A person acting in a territory on behalf of an enterprise of the other territory - 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 territory if:
- (a) the person has, and habitually exercises in that territory, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or
  - (b) in so acting, the person manufactures or processes in that territory for the enterprise goods or merchandise belonging to the enterprise.
6. An enterprise of a territory shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a person who is a broker, general commission agent or any other agent of an independent status and is acting in the ordinary course of the person's business as such a broker or agent.
7. The fact that a company which is a resident of a territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 5 of Article 11 and paragraph 5 of Article 12 whether an enterprise, not being an enterprise of either territory, has a permanent establishment in a territory.

#### **ARTICLE 6 Income from Real Property**

1. Income from real property may be taxed in the territory in which the real property is situated.
2. In this Article, the term "real property":
  - (a) in the case of the territory in which the taxation law administered by the Australian Taxation Office is applied, has the meaning it has under the law of that territory, and includes:
    - (i) a lease of land and any other interest in or over land, whether improved or not; and
    - (ii) a right to receive variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the proceeds from the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
  - (b) in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, has the meaning it has under the law of that territory, and includes:
    - (i) property accessory to immovable property, livestock and equipment used in agriculture and forestry;
    - (ii) rights to which the provisions of the general law respecting landed property apply; and
    - (iii) usufruct of immovable property and rights to variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, sources and other natural resources; but
  - (c) shall not include ships, boats and aircraft.
3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.
4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.
5. The provisions of paragraphs 1 and 4 shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

## **ARTICLE 7 Business Profits**

1. The profits of an enterprise of a territory shall be taxable only in that territory unless the enterprise carries on business in the other territory through a permanent establishment situated in that other territory. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other territory 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 a territory carries on business in the other territory through a permanent establishment situated in that other territory, there shall be attributed to that permanent establishment in each territory the profits which that permanent establishment 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 determining the profits of a permanent establishment, there shall be allowed as deductions 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 territory in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. Nothing in this Article shall affect the application of any law of a territory relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that territory is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
6. Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the operation of any law of a territory relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either territory at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the parties to this Agreement shall consult each other with a view to facilitating any amendment of this paragraph as may be appropriate.
8. Where:
  - (a) a resident of a territory is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other territory by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
  - (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other territory,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other territory by that resident through a permanent establishment situated in that other territory and that share of business profits shall be attributed to that permanent establishment.

#### **ARTICLE 8 Ships and Aircraft**

1. Profits derived by an enterprise of a territory from the operation of ships or aircraft shall be taxable only in that territory.
2. Notwithstanding the provisions of paragraph 1, such profits shall be taxed in the other territory to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other territory.
3. The profits to which the provisions of paragraphs 1 and 2 apply shall include profits from:
  - (a) the lease of ships or aircraft on a full time, voyage or bareboat basis, and of containers and related equipment, which is merely incidental to the international operation of ships or aircraft by the lessor, provided that the leased ships or aircraft, or the containers and related equipment, are used in international operations by the lessee; and
  - (b) the operation of ships or aircraft derived through participation in a pool, a joint business or 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 which are shipped in a territory and discharged at a place in that territory shall be treated as profits from ship or aircraft operations confined solely to places in that territory.

#### **ARTICLE 9 Associated Enterprises**

1. Where
  - (a) an enterprise of a territory 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 a territory and an enterprise of the other territory,and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Nothing in this Article shall affect the application of any law of a territory relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that territory is inadequate to determine the profits to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
3. Where profits on which an enterprise of a territory has been charged to tax in that territory are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other territory and charged to tax in that other territory, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other territory if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned territory shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned territory. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities shall if necessary consult each other.

## ARTICLE 10 Dividends

1. Dividends paid by a company which is a resident of a territory for the purposes of its tax, being dividends to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.
2. However, those dividends may also be taxed in the territory of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that territory, but the tax so charged shall not exceed:
  - (a) in the territory in which the taxation law administered by the Australian Taxation Office is applied:
    - (i) 10 per cent of the gross amount of the dividends, to the extent to which the dividends have been fully "franked" in accordance with the federal law of that territory relating to its income tax; and
    - (ii) 15 per cent of the gross amount of the dividends in all other cases; and
  - (b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:
    - (i) 10 per cent of the gross amount of the dividends, where the dividends are paid to a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; and
    - (ii) 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either territory at the date of signature of this Agreement is varied, otherwise than in minor respects so as to not affect its general character, the parties to this Agreement shall consult each other with a view to facilitating any amendment of this paragraph as may be appropriate.
3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the territory of which the company making the distribution is a resident for the purposes of its tax.
4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the holding in respect of which the dividends are paid is effectively

connected with that permanent establishment or fixed base. In that 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 a territory, being dividends to which a person who is not a resident of the other territory is beneficially entitled, shall be exempt from tax in that other territory except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other territory. This paragraph shall not apply in relation to dividends paid by any company which is a resident of the territory in which the taxation law administered by the Australian Taxation Office is applied for the purposes of tax imposed by that territory and which is also a resident of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied for the purposes of tax imposed by that territory.

#### **ARTICLE 11 Interest**

1. Interest arising in a territory, being interest to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.
2. However, that interest may also be taxed in the territory in which it arises, and according to the law of that territory, 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, interest from any other form of indebtedness and all other income assimilated to income from money lent by the law, relating to tax, of the territory 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 a territory, carries on business in the other territory, in which the interest arises, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Interest shall be deemed to arise in a territory when the payer is an authority of that territory or a subdivision or local authority of that territory or a person who is a resident of that territory for the purposes of

its tax. Where, however, the person paying the interest, whether the person is a resident of a territory or not, has in a territory a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

6. Where, by reason of 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 that relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each territory, but subject to the other provisions of this Agreement .

## **ARTICLE 12 Royalties**

1. Royalties arising in a territory, being royalties to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.
2. However, those royalties may also be taxed in the territory in which they arise, and according to the law of that territory, but the tax so charged shall not exceed 12.5 per cent of the gross amount of the royalties.
3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
  - (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or
  - (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or
  - (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
  - (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph(c) of this paragraph; or

- (e) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology; or
  - (f) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology; or
  - (g) the use of, or the right to use:
    - (i) motion picture films; or
    - (ii) films or video tapes for use in connection with television; or
    - (iii) tapes for use in connection with radio broadcasting; or
  - (h) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.
4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a territory, carries on business in the other territory, in which the royalties arise, through a permanent establishment situated in that other territory, or performs in that other territory independent personal services from a fixed base situated in that other territory, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a territory when the payer is an authority of that territory or a subdivision or local authority of that territory or a person who is a resident of that territory for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a territory or not, has in a territory a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case,

the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each territory, but subject to the other provisions of this Agreement.

### **ARTICLE 13 Alienation of Property**

1. Income, profits or gains derived by a resident of a territory from the alienation of real property situated in the other territory may be taxed in that other territory.
2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or pertains to a fixed base available in that other territory to a resident of the first-mentioned territory for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other territory.
3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in the territory of which the enterprise operating those ships or aircraft is a resident.
4. Income, profits or gains derived by a resident of a territory from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in the other territory, may be taxed in that other territory.
5. Nothing in this Agreement shall affect the application of a law of a territory relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.
6. In this Article, the term "real property" has the same meaning as it has in Article 6.
7. The situation of real property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

### **ARTICLE 14 Independent Personal Services**

1. Income derived by an individual who is a resident of a territory in respect of professional services or other activities of an independent character

shall be taxable only in that territory unless a fixed base is regularly available to the individual in the other territory for the purpose of performing the individual's activities. If such a fixed base is available to the individual, the income may be taxed in the other territory 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 a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other territory.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:
  - (a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income concerned; and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other territory; 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 territory; and
  - (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned territory.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a territory in international traffic shall be taxable only in that territory.

#### **ARTICLE 16 Directors' Fees**

Directors' fees and similar payments derived by a resident of a territory in the person's capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

#### **ARTICLE 17 Entertainers and Sportspersons**

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 sportspersons from their personal activities as such may be taxed in the territory in which these activities are exercised.
2. Where income in respect of the personal activities of an entertainer or a sportsperson as such accrues not to that entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the territory in which the activities of the entertainer or sportsperson are exercised.

#### **ARTICLE 18 Pensions and Annuities**

1. All pensions and annuities paid to a resident of a territory shall be taxable only in that 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 19 Public Service**

1. Salaries, wages and other similar remuneration, other than a pension or annuity, paid by an authority administering a territory or a subdivision of that territory or by a local authority of that territory to any individual in respect of services rendered in the discharge of public or administrative functions on behalf of such an authority shall be taxable only in that territory. However, such salaries, wages and other similar remuneration shall be taxable only in the other territory if the services are rendered in that other territory and the recipient is a resident of that other territory who:
  - (a) is a citizen or national of that territory; or
  - (b) did not become a resident of that territory solely for the purpose of performing the services.
2. The provisions of paragraph 1 shall not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by any authority referred to in paragraph

1. In that case, the provisions of Article 15 or Article 16 , as the case may be, shall apply.\_

#### **ARTICLE 20 Students**

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

#### **ARTICLE 21 Other Income**

1. Items of income of a resident of a territory, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that territory.
2. However, any such income derived by a resident of a territory from sources in the other territory may also be taxed in that other territory.
3. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a territory where that income is effectively connected with a permanent establishment or fixed base situated in the other territory. In that case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

#### **ARTICLE 22 Methods of Elimination of Double Taxation**

Subject to the provisions of the law of a territory from time to time in force relating to the allowance of a credit against tax payable in that territory of tax paid outside that territory (which shall not affect the general principle of this Article), tax paid under the law of the other territory and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the first-mentioned territory from sources in the other territory shall be allowed as a credit against tax payable in the first-mentioned territory in respect of that income. The amount of credit, however, shall not exceed the amount of the tax in the first-mentioned territory on that income computed in accordance with its taxation laws and regulations.

#### **ARTICLE 23 Mutual Agreement Procedure**

1. Where a person considers that the actions of the competent authority of one or both of the territories result or will result for the person in taxation not in accordance with this Agreement, the person may, irrespective of the remedies provided by the domestic law of those territories concerning taxes to which this Agreement applies, present a case to the competent authority of the territory of which the person is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with this Agreement.
2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case with the competent authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the domestic law of the territories.
3. The competent authorities shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities 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 shall exchange such information as is necessary for carrying out this Agreement or of the domestic law of each of the territories concerning taxes to which this Agreement applies insofar as the taxation under that law is not contrary to this Agreement. Any information received by the competent authority of a territory shall be treated as secret in the same manner as information obtained under the domestic law of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of a territory the obligation:
  - (a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other territory; or

- (b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other territory;  
or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

#### **ARTICLE 25 Entry into Effect**

This Agreement shall enter into effect on the date on which the Australian Commerce and Industry Office and the Taipei Economic and Cultural Office notify each other in writing that the last of such things has been done as is necessary to give this Agreement effect in the domestic law of the respective territories. This Agreement shall have effect:

- (a) in both territories, in respect of:
  - (i) withholding tax on income, profits or gains derived by a nonresident, in relation to income, profits or gains derived on or after the first day of the second month next following that in which the Agreement enters into effect;
  - (ii) tax in relation to profits to which Article 8 applies, on or after 1 January 1991;
- (b) in respect of other tax of the territory in which the taxation law administered by the Australian Taxation Office is applied, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into effect;
- (c) in respect of other tax of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, in relation to income, profits or gains of any year of income beginning on or after 1 January in the calendar year next following that in which the Agreement enters into effect.

#### **ARTICLE 26 Termination**

This Agreement shall continue in effect indefinitely, but an authority administering either territory may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into effect, give to the other written notice of termination and, in that event, the Agreement shall cease to be effective:

- (a) in both territories, in respect of withholding tax on income, profits or gains derived by a nonresident, in relation to income, profits or gains derived on or after the first day of the second month next following that in which the notice of termination is given:

- (b) in respect of other tax of the territory in which the taxation law administered by the Australian Taxation Office is applied, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (c) in respect of other tax of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, in relation to income, profits or gains of any year of income 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, being duly authorised, have signed this Agreement.

DONE in duplicate at Canberra this 29th day of May 1996 in the Chinese and English languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**FOR THE TAIPEI ECONOMIC AND CULTURAL OFFICE**      **FOR THE AUSTRALIAN COMMERCE AND INDUSTRY OFFICE**

## ANNEX

The Australian Commerce and Industry Office and the Taipei Economic and Cultural Office,

Having regard to the Agreement concerning the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes signed today at Canberra (in this Annex called "Agreement");

Have agreed as follows:

1. If a subsequent Agreement that is given effect under the International Tax Agreements Act 1953 in the territory in which the taxation law administered by the Australian Taxation Office is applied, includes a Non-Discrimination Article, the parties to this Annex will enter into negotiations with a view to providing the same treatment as is provided for in the Non-Discrimination Article;
2. Income, profits or gains derived by an organisation, or its successors, agreed by the competent authorities in an exchange of letters for the purposes of this paragraph as carrying on activities promoting trade, investment and cultural exchanges between the territories, shall be taxable solely in the territory on whose behalf the activities are carried on. The competent authorities will also specify in their exchange of letters the date from which the organisation shall be so taxable.

This Annex shall form an integral part of the Agreement.

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

DONE in duplicate at Canberra this 29th day of May 1996 in the Chinese and English languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE TAIPEI ECONOMIC  
AND CULTURAL OFFICE FOR

FOR THE AUSTRALIAN  
COMMERCE AND INDUSTRY OFFICE