

**SCHEDULE 2**  
**AGREEMENT**  
**BETWEEN**  
**AUSTRALIA**  
**AND**  
**THE INDEPENDENT STATE OF**  
**PAPUA NEW GUINEA**  
**FOR**  
**THE AVOIDANCE OF DOUBLE TAXATION**  
**AND**  
**THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME**

Australia and the Independent State of Papua New Guinea,

Recognising the importance of measures to strengthen their relationship in accordance with the Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia including the principle that cooperation and exchanges between the two countries shall be mutually beneficial and based on full participation by both countries;

Re-affirming their desire to maintain and strengthen trade, investment and private sector cooperation between the two countries; and

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

Have agreed as follows:

**ARTICLE 1**

*Personal Scope*

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

**ARTICLE 2**

*Taxes Covered*

(1) The existing taxes to which this Agreement shall apply are:

(a) in Australia:

the income tax, and the petroleum resource rent tax in respect of offshore projects imposed under the federal law of the Commonwealth of Australia;

(b) in Papua New Guinea:

the income tax imposed under the law of Papua New Guinea, including:

- (i) the salary or wages tax;
- (ii) the additional profits tax upon taxable additional profits from mining operations;
- (iii) the additional profits tax upon taxable additional profits from petroleum operations;
- (iv) the specific gains tax upon taxable specific gains; and
- (v) the dividend withholding tax upon taxable dividend income.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or under the law of Papua New Guinea after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial





changes which are made in the laws of their respective States relating to the taxes to which this Agreement applies.

### ARTICLE 3

#### *General Definitions*

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

- (a) the term "Australia", when used in a geographical sense, excludes all external territories other than:
  - (i) the Territory of Norfolk Island;
  - (ii) the Territory of Christmas Island;
  - (iii) the Territory of Cocos (Keeling) Islands;
  - (iv) the Territory of Ashmore and Cartier Islands;
  - (v) the Territory of Heard and McDonald Islands; and
  - (vi) the Coral Sea Islands Territory,

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

- (b) the term "Papua New Guinea" means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to the territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistently with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the continental shelf, its sea-bed and subsoil;

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

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

- (e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

- (f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Papua New Guinea, as the context requires;

- (g) the term "tax" means Australian tax or Papua New Guinea tax, as the context requires;

- (h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

- (i) the term "Papua New Guinea tax" means tax imposed by Papua New Guinea, being tax to which this Agreement applies by virtue of Article 2;

- (j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorized representative of the Commissioner and, in the case of Papua New Guinea, the Chief Collector of Taxes or an authorized representative of the Chief Collector of Taxes.

(2) In this Agreement, the terms "Australian tax" and "Papua New Guinea tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.



(3) In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies.

#### ARTICLE 4

##### *Residence*

(1) For the purposes of this Agreement, a person is a resident of one of the Contracting States:

- (a) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of Papua New Guinea, if the person is a resident of Papua New Guinea for the purposes of Papua New Guinea tax.

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

(3) Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, 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 Contracting State in which a permanent home is available to the person;
- (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;
- (c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.

(4) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then its status shall be determined in accordance with the following rules:

- (a) it shall be deemed to be a resident solely of the Contracting State in which its place of central management and control is situated;
- (b) if its place of central management and control is not situated in either Contracting State, it shall be deemed to be a resident solely of the Contracting State in which it was incorporated.

(5) Where a trust estate is treated by the laws of both Contracting States relating to tax as a resident or a resident trust estate, it shall not be treated, for the purposes of this Agreement, as a resident of either State.

#### ARTICLE 5

##### *Permanent Establishment*

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

(2) The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;



- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) an agricultural, pastoral or forestry property;
- (h) a building site or construction, installation or assembly project which exists for more than 90 days.

(3) An enterprise shall not be deemed to have a permanent establishment merely by reason of:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

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

- (a) it carries on supervisory activities in that State for more than 90 days in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;
- (b) substantial equipment is being used in that State by, for or under contract with the enterprise; or
- (c) services are furnished in that State, including consultancy services through employees or other personnel engaged by the enterprise for such purposes, and those activities continue for the same or a connected project within that State for a period or periods aggregating more than 90 days in any year of income.

(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) the person has, and habitually exercises in that State, an authority to conclude contracts or behalf of the enterprise, unless the person's activities are limited to the mere purchase of goods or merchandise for the enterprise;
- (b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers in that State goods or merchandise on behalf of the enterprise; or
- (c) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a 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 one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

(8) The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

## ARTICLE 6

### *Income from Real Property*

(1) Income from real property may be taxed in the Contracting State in which the real property is situated.

(2) In this Article, the term "real property", in relation to one of the Contracting States, has the meaning which it has under the laws of that State and also includes:

- (a) a lease of land and any other interest in or over land including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine such deposits or resources; and
- (b) a right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

(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 paragraphs (1) and (3) shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

## ARTICLE 7

### *Business Profits*

(1) The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

- (a) that permanent establishment; or
- (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities within that other State of the same or a similar kind as those carried on, through that permanent establishment, if, on the basis of the information available to the competent authority of that other State, it may reasonably be concluded that those sales or business activities would not have been made or carried on but for the existence of that permanent establishment or the continued provision by it of goods or services.

(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 a deduction expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

(6) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

(7) Nothing in this Article shall affect the operation of:

(a) any law of a Contracting State relating to tax imposed on profits from insurance with non-residents; or

(b) the law of Papua New Guinea relating to:

(i) the specific gains tax upon taxable specific gains; or

(ii) the taxation of income derived by a foreign contractor from a prescribed contract within the meaning of that law, where, in accordance with this Agreement, that contractor is a resident of Australia with a permanent establishment in Papua New Guinea,

provided that if the relevant law in force in either Contracting State or in Papua New Guinea, as the case may be, at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

(8) Where:

(a) a resident of a Contracting State 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 Contracting State 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 State,

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

## ARTICLE 8

### *Ships and Aircraft*

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



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

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

(4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State 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.

#### ARTICLE 9

##### *Associated Enterprises*

(1) Where:

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

(3) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

#### ARTICLE 10

##### *Dividends*

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

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax



so charged shall not exceed, in Papua New Guinea, 20 per cent and, in Australia, 15 per cent, of the gross amount of the dividends.

(3) The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

(4) The provisions of paragraph (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In any such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Papua New Guinea for the purposes of Papua New Guinea tax.

(6) The amount of specific gains tax imposed by Papua New Guinea in respect of the disposal by a resident of Australia of shares in a company that is a resident of Papua New Guinea shall not exceed an amount equivalent to 20 per cent of that proportion of the total dividend to which the vendor would have been entitled in respect of those shares had the company declared a dividend to the extent of its undistributed profits within the meaning of the law of Papua New Guinea relating to Papua New Guinea 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 income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

(4) The provisions of paragraph (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to in subparagraph (1)(b) of Article 7,

in which case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State, or a person who is a resident of that State



for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

## ARTICLE 12

### *Royalties*

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

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

(3) The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);
- (e) the use of, or the right to use:
  - (i) motion picture films;
  - (ii) films or video tapes for use in connection with television; or
  - (iii) tapes for use in connection with radio broadcasting; or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

(4) The provisions of paragraph (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the property or right in respect of which the royalties are paid or credited is effectively connected with:

- (a) such permanent establishment or fixed base; or



(b) business activities referred to in subparagraph (1)(b) of Article 7,  
in which case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where a special relationship exists between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, and

- (a) the basis on which the payment or credit is made would not commonly be found in the absence of such relationship: the amount of the royalties paid or credited may be taxed in the Contracting State in which they arise and according to the law, relating to tax, of that State, but subject to the other provisions of this Agreement; or
- (b) the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship: the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

### ARTICLE 13

#### *Alienation of Property*

(1) Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

(2) Income or gains from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

(3) Income or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property referred to in Article 6) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

(4) Income or gains derived by a resident of one of the Contracting States from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property in the other Contracting State of a kind referred to in Article 6 and, as provided in that Article, situated in that other State, may be taxed in that other State.

(5) Nothing in this Article affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), and (4) apply.



## 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:

- (a) a fixed base is regularly available to the individual in the other Contracting State 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 State but only so much of it as is attributable to activities exercised from that fixed base;
- (b) the income is derived from a resident of that other Contracting State or a permanent establishment in that other Contracting State and exceeds an amount of \$A8,000 or its equivalent in Papua New Guinea Kina in any one 12 month period. In that case so much of the income as is derived from that individual's activities in that other Contracting State may be taxed in that State; or
- (c) that individual's stay in that other Contracting State exceeds 90 days in any year of income. In that case so much of the income as is derived from that individual's activities in that other Contracting State may be taxed in that State.

(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, 19 and 20, salaries, wages, gratuities and other similar remuneration, including payments made in consequence of the termination of employment, 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 90 days in the year of income of that other State;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State;
- (c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State; and
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.

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

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## ARTICLE 16

*Directors' Fees*

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

## ARTICLE 17

*Entertainers*

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

## ARTICLE 18

*Pensions and Annuities*

(1) 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) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

## ARTICLE 19

*Government Service*

(1) Remuneration, other than a pension or annuity, paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of government functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- (a) is a citizen or national of that State; or
- (b) did not become a resident of that State solely for the purpose of performing the services.

(2) The provisions of paragraph (1) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of Article 15 or Article 16, as the case may be, shall apply.

## ARTICLE 20

*Students*

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



## ARTICLE 21

*Income Not Expressly Mentioned*

(1) Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

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

(3) The provisions of paragraph (1) shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

## ARTICLE 22

*Miscellaneous*

(1) Subject to the provisions of paragraph (3), income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 19 and Article 21, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

(2) Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 19 and Article 21, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the first-mentioned Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

(3) The provisions of paragraph (1) shall not apply in relation to interest, to which Article 11 applies and to which a resident of Australia is beneficially entitled, until such time as the law of Papua New Guinea relating to Papua New Guinea tax provides for source rules, in relation to interest, consistent with those provisions.

(4) Where a resident of one of the Contracting States derives income directly or indirectly from or in relation to fisheries activities carried on within the Protected Zone of the Torres Strait, that income may be taxed only by that State.

(5) In paragraph (4), the term "Protected Zone" has the same meaning that it has in the Treaty made between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, and signed at Sydney on 18 December 1978.

## ARTICLE 23

*Methods of Elimination of Double Taxation*

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Papua New Guinea tax paid under the law of Papua New Guinea and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Papua New Guinea shall be allowed as a credit against Australian tax payable in respect of that income.

(2) Where a company which is a resident of Papua New Guinea and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in paragraph (1) shall include the Papua New Guinea tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.



(3) For the purpose of paragraphs (1) and (2), Papua New Guinea tax paid shall include an amount equivalent to the amount of any Papua New Guinea tax forgone.

(4) In paragraph (3), the term "Papua New Guinea tax forgone" means an amount which under the law of Papua New Guinea relating to Papua New Guinea tax and in accordance with this Agreement, would have been payable as Papua New Guinea tax on income but for an exemption from, or a reduction of, Papua New Guinea tax on that income resulting from the operation of those provisions of the laws of Papua New Guinea which the Treasurer of Australia and the Minister for Finance and Planning of Papua New Guinea agree from time to time in letter exchanged for this purpose to be provisions to which this paragraph applies. Subject to its terms such an agreement on applicable provisions shall be valid for as long as those provisions are not modified after the date of that agreement or have been modified only in minor respects so as not to affect their general character.

(5) Paragraphs (3) and (4) shall apply only in relation to those years of income that may be agreed by the Treasurer of Australia and the Minister for Finance and Planning of Papua New Guinea in letters exchanged for this purpose.

(6) Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea (which shall not affect the general principle hereof), tax paid under the law of Australia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purposes of the law of Papua New Guinea relating to Papua New Guinea tax from sources in Australia (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 Papua New Guinea tax payable in respect of that income.

#### ARTICLE 24

##### *Mutual Agreement Procedure*

(1) Where a person who is a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result in taxation for the person not in accordance with this Agreement, and the person may notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

(2) The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

#### ARTICLE 25

##### *Exchange of Information*

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any



information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on the competent authority of a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

#### ARTICLE 26

##### *Diplomatic and Consular Officials*

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

#### ARTICLE 27

##### *Entry into Force*

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Papua New Guinea, as the case may be, and thereupon this Agreement shall have effect:

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

#### ARTICLE 28

##### *Termination*

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of



its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Australia:

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

(b) in Papua New Guinea:

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

**History**

Sch. 2 inserted by No. 28 of 1989, s. 4, operative 1 January 1990.

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