1980-1981-1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL (1982)

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon. John Howard, M.P.)

13915/82 Cat. No. 82 4863 2 Recommended retail price $1.30

General Outline

The main purpose of this Bill is to give the force of law in Australia to comprehensive double taxation conventions (agreements) between Australia and the Kingdom of Norway and Australia and the Republic of Korea which were signed in Canberra on 6 May 1982 and 12 July 1982 respectively.

The Bill also specifies that interest and royalties derived from Norway or Korea by residents of Australia, and in respect of which, under the conventions, those countries are required to limit their tax (to 10 per cent in the case of Norway and to 15 per cent in the case of Korea) will not, by reason of the payment of that limited tax, be exempt from Australian tax. Australia will instead allow credit for the limited tax against the Australian tax on this income.

As a transitional measure, because the conventions will have effect in Norway and Korea from dates prior to their signature, provision is made to the effect that Australian residents deriving interest or royalties from either of the two countries will not be disadvantaged by the change in the method of relieving double taxation of such income the tax on which is limited under the convention with the country concerned, in respect of income derived up to and including the date of signature of that convention.

The conventions set out the basis on which, and the extent to which, income derived in one country by residents of the other is to be taxed in each country and the basis on which relief from double taxation is to be effected where income may be taxed by both countries. The main features of the conventions are as follows:

- Business profits, if they are derived by a resident of one country from a branch or other "permanent establishment" in the other country, may be taxed in the latter country; otherwise they are to be taxed only in the country of residence.

- Dividends, interest and royalties may be subjected to tax in the country of source, but there are general limits on the tax that that country may charge on such income flowing to residents of the other country. These limits, in the case of the Norwegian convention, are 15 per cent for dividends and 10 per cent for interest and royalties. In the convention with Korea, the limit is 15 per cent for dividends, interest and royalties.

- Income from real property is taxable in full in the country in which the property is situated.

- Profits from international operations of ships and aircraft will be taxed only in the country of residence of the operator.

- Income from independent personal services will be taxed only in the country of residence of the recipient unless the income is attributable to a fixed base of the recipient in the other country or, alternatively, in the case of Norway, is derived during a period or periods exceeding 183 days in a year of income or, in aggregate, 183 days over any two consecutive years of income in which the recipient is present in the other country, in which case the income may be taxed in the other country. However, because, under Norwegian law, income derived by a resident of Norway from the performance of such services outside Norway may be exempt from Norwegian tax, the Norwegian convention provides that, to the extent that such income is exempt from tax in the country of residence, it may be taxed in the other country.

- Income from dependent personal services, i.e., employees' remuneration, will generally be taxable in the country where the services are performed. However, where the services are performed during a short visit to one country by a resident of the other country, and the remuneration is not an expense borne by a resident of, or a permanent establishment in, the country visited, the income will be exempt in the country visited. However, as in the case of income from independent personal services, the Norwegian convention provides that the exemption of this income from tax in the country visited will only apply to the extent that the income is subject to tax in the country of residence of the recipient.

- Government officials are to be taxed by their home country.

- Directors' fees will generally be taxed in the country of residence of the paying company.

- Income derived by public entertainers from their activities as such are to be taxed by the country in which the activities are performed.

- Pensions and annuities will generally be taxed only in the country of residence of the recipient.

- Remuneration derived by professors or teachers during visits of up to two years duration for the sole purpose of teaching or research will, under the convention with Korea, be taxed only in the country of residence.

- Students resident in one country who are only temporarily present in the other country solely for the purpose of their education will be exempt from tax in the country visited in respect of payments made from abroad for the purposes of their maintenance or education. In the case of the convention with Korea these provisions also extend to trainees.

- Dual residents (i.e. residents of both countries party to a convention) are, in accordance with specified criteria, to be treated for the purposes of the relevant convention as being residents of only one country.

- Associated enterprises may be taxed on the basis of dealings at arm's length.

- Income derived from offshore activities, i.e., those connected with the exploration or exploitation of the sea-bed and subsoil and their natural resources, including income from an employment connected with such activities, will, under a special article in the convention with Norway, generally be taxed by the country in whose offshore area the activities or employment giving rise to the income are performed, except in relation to activities or employment of short duration. General provisions in the convention with Korea are to a broadly similar effect.

- Capital represented by real property owned by an Australian resident and situated in Norway, and movable property which forms part of the business property of a permanent establishment or fixed base that an Australian resident has in Norway, may be taxed in that country. As Australia does not impose any comparable taxes, the article has no application in this country.

- Exchange of information and consultation between the taxation authorities of each country is authorised.

. Double taxation relief to be allowed by the country of residence in respect of income taxed in the other country will be:

- in Australia, by allowance of credit against Australian tax for the other country's tax on interest and royalties, where that tax is subject to a limit expressed in the relevant convention, and on dividends received by individuals - dividends received by Australian companies from Norway or Korea and all other categories of taxed income received by Australian residents from those countries are freed from Australian tax by the operation of provisions in Australian tax law;

  Australia will also, in the case of Korea, grant a "tax sparing" credit for Korean tax foregone under agreed incentive legislation of that country.

- in Korea, broadly, by allowance of credit against Korean tax for the Australian tax on income derived by residents of Korea from sources in Australia.

- in Norway, generally, by allowance of a credit against Norwegian tax for the Australian tax on dividends, interest, royalties, profits from the operation of ships or aircraft wholly within Australia, and income from offshore activities in Australia, and, subject to taking other income which, under the convention, may be taxed in Australia into account in determining the rate of Norwegian tax on taxable income, by exempting such other income from Norwegian tax.

Notes on the clauses of the Bill are given below and these are followed by explanations of the articles of the conventions.

Clause 1 : Short title, etc.

This clause formally provides for the short title of the amending Act and refers to the Income Tax (International Agreements) Act 1953 as the Principal Act.

Clause 2 : Commencement

Under section 5(1A) of the Acts Interpretation Act 1901, unless the contrary intention appears, every Act is to come into operation on the twenty-eighth day after the

day on which it receives the Royal Assent. By this clause the amending Act will come into operation on the day on which it receives the Royal Assent, thus enabling early implementation of the conventions.

Clause 3 : Interpretation

Section 3 of the Principal Act contains a number of definitions for the more convenient interpretation of the Act. Paragraphs (a) and (b) of clause 3 will insert in sub-section 3(1) definitions referring to the comprehensive conventions with Korea and Norway (which by clause 8 of the Bill are being incorporated as Schedules 19 and 20 to the Principal Act).

Clause 4 : Agreement with Singapore

This clause proposes an amendment to section 7 of the Principal Act, which provided for the force of law to be given to the agreement with Singapore. Sub-paragraph (a) of paragraph (3) of Article 18 of the Singapore agreement provides for the allowance of a special tax credit in respect of income which is subject to an exemption from or reduction in taxation under parts V and VI of the Economic Expansion Incentives (Relief from Income Tax) Act, 1967, of Singapore or subsequently enacted provisions which are agreed by each Government in Notes exchanged for this purpose to be of a substantially similar character. Sub-clause (1) proposes the insertion in section 7 of a new sub-section (3) providing for particulars of any provisions so agreed by the Governments to be of a substantially similar character to be published in the Gazette, while sub-clause (2) formally establishes that the amendment effected by sub-clause (1) does not apply retrospectively. No additional provisions have been agreed so far.

Clause 5 : Agreement with Malaysia

This clause proposes an amendment to section 11F of the Principal Act, which provided for the force of law to be given to the Malaysian agreement, similar to that proposed by clause 4 in relation to the Singapore agreement. Sub-paragraph (a)(ii) of paragraph (5) of Article 23 of the Malaysian agreement provides for the allowance of a special tax credit in respect of income which has been either wholly or partly relieved from taxation under provisions of Malaysian law which are agreed by the Governments of Malaysia and Australia in an Exchange of Letters to be of a substantially similar character to the provisions contained in Schedule 7A of the Malaysian Income Tax Act 1967 or sections 21, 22, 26 or 30Q of the Investment Incentives Act 1968 of Malaysia. Sub-clause (1) proposes the insertion in section 11F of a new sub-section

(5) providing for particulars of any provisions so agreed by the Governments to be of a substantially similar character to be published in the Gazette. Sub-clause (2) formally establishes that the amendment effected by sub-clause (1) does not apply retrospectively. No additional provisions have been agreed so far.

Clause 6 : Convention with the Republic of Korea and Convention with the Kingdom of Norway

This clause proposes the insertion in the Principal Act of two sections - sections 11J and 11K - which, respectively, will give the force of law in Australia to the comprehensive double taxation conventions with Korea and with Norway. Each convention will be given the force of law with effect from the dates set out in each convention (see explanations of Article 28 of the Korean convention and Article 29 of the Norwegian convention).

By proposed section 11J(1), the Korean convention will, when the convention enters into force, have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax that are derived on or after 1 January 1982;

(b) in respect of other income, for any year of income commencing on or after 1 July 1982.

By proposed section 11K(1), the Norwegian convention will, when the convention enters into force, have effect as regards Australian tax -

(a) in respect of dividends or interest subject to withholding tax that are derived on or after 1 July 1982;

(b) in respect of other income, for any year of income beginning on or after 1 July 1982.

Sub-section (2) of each of the proposed sections 11J and 11K provides for the dates on which the conventions enter into force to be notified in the Gazette as soon as practicable thereafter. The purpose of this is to provide a readily available and authoritative source from which persons may ascertain the date on which each of the conventions entered into force . Because the date of entry into force of each convention is dependent on the exchange of diplomatic notes advising that everything has been done to give the convention the force of law in Australia and the other country , it is not possible in this Bill to indicate the dates of entry into force of the conventions.

Sub-section (3) of the proposed section 11J will have a similar effect, in relation to the Korean agreement, to the amendments proposed by clauses 4 and 5 in relation to the Singapore and Malaysian agreements. It provides for the publication in the Gazette of particulars of those provisions of the laws of Korea relating to Korean tax that are agreed in an exchange of letters between the Minister of Finance of Korea and the Treasurer of Australia to fall within the definition of the term "the relevant legislation" for the purposes of the allowance of a special tax credit under sub-paragraph (3)(a) of Article 24 where interest or royalty income derived by a resident of Australia from sources in Korea has been wholly or partly exempted from Korean tax.

Sub-section (4) of the proposed section 11J provides for publication in the Gazette of a notice specifying any date agreed by the Governments of both countries in letters exchanged in accordance with paragraph (5) of Article 24 of the Korean convention. That paragraph provides that the special tax credit provisions referred to in the notes on sub-section (3) shall not apply after 30 June 1987 unless the two Governments agree on a later date. It is this later date which is referred to in sub-section (4).

By sub-section (3) of the proposed section 11K provision is made for publication in the Gazette of a notice specifying the date of confirmation of receipt of a note forwarded by the Norwegian Government through the diplomatic channel requesting the replacement of paragraph (2) of Article 25 (which relates to the method of eliminating double taxation by Norway) of the Norwegian convention with the provision set out in paragraph (b) of clause (2) of the protocol that forms part of the convention.

Sub-clauses (2) and (3) of clause 6 will empower the Commissioner to amend assessments for the purpose of giving effect to the Korean and Norwegian conventions. It is necessary to give the Commissioner this power because, although the conventions will not enter into force until exchanges of diplomatic notes have been made, their provisions will have effect - pursuant to proposed sub-sections 11J(1) and 11K(1) - in relation to income in respect of which assessments may have already been made.

Clause 7 : Provisions relating to certain income derived from sources in certain countries

The primary purpose of this clause is to apply the credit method of relief of double taxation to interest and royalties that are derived by residents of Australia from Korea and Norway and in respect of which, under the

agreements, the Korean or Norwegian tax is subject to limit. Section 12 of the Principal Act, which is to be amended by this clause, already achieves a corresponding result for interest and royalties derived by residents of Australia from countries with which Australia has concluded comprehensive double taxation agreements which limit the foreign tax on such income.

Section 23(q) of the Income Tax Assessment Act 1936 confers relief from double taxation in the form of an exemption from Australian tax in respect of foreign source income (other than dividends) of Australian residents that is not exempt from income tax in the country where it is derived. Section 12 of the Principal Act gives effect to a policy that this exemption method of relief is not to apply to interest or royalties derived, either directly or as a beneficiary in a trust estate, from another country where the double taxation agreement with that country limits the tax it may charge. Once the exempting provision is, by section 12, made inapplicable, interest and royalties that are taxed in the country of source become assessable income for the general purposes of the Income Tax Assessment Act, but in each case the convention requires Australia to credit against its tax the limited tax of the other country. Sections 14 and 15 of the Principal Act govern the allowance of the credit.

Clause 7 will apply this policy to interest and royalties derived by Australian residents from Korea or Norway after the commencement of the year of income to which the relevant convention is to apply. Articles 24 and 25 respectively are the relevant credit articles in the Korean and Norwegian conventions. However, as Norway does not generally tax interest or royalties derived by residents of other countries, the "not exempt from tax" condition of section 23(q) of the Assessment Act is not met, and such interest and royalties derived by Australian residents are, and will remain, fully taxable.

Paragraph (a) of clause 7(1) will effect a formal drafting amendment consequent upon the addition to section 12(1) of the Principal Act of two new paragraphs, (ao) and (ap).

Paragraph (b) will insert the two new paragraphs in section 12(1) of the Principal Act. This section formally sets out classes of income to which the exemption under section 23(q) of the Income Tax Assessment Act is not to apply.

The new paragraph (ao) will ensure that interest and royalties derived by a resident of Australia from Korea, the Korean tax on which is expressly limited to 15

per cent of the gross amount of the relevant income, will not be exempt from Australian tax. Paragraph (ao) will apply to income derived on or after 1 July 1982.

New paragraph (ap) will serve a similar purpose in relation to income from Norway. It will have effect in relation to interest and royalties derived in income years commencing on or after 1 July 1982 where, under the convention, Norwegian tax is limited to 10 per cent of the gross amount of the relevant income. As noted earlier, Norway does not, at present, generally impose tax on interest or royalties paid to non-residents. However, should Norwegian tax be imposed on such income in the future, the convention would apply to limit the Norwegian tax to 10 per cent and Australia would allow a credit against the Australian tax on the income in respect of this amount of Norwegian tax.

Sub-clauses (2) and (3) of clause 7 are designed to avoid any retrospective increase in overall tax liability that might result from the application of the credit method of double taxation relief in relation to interest and royalty income derived by Australian residents from Korea or Norway after the commencement of the 1982-83 income year (or any other accounting period adopted by the taxpayer in lieu of that income year), but on or before the date of signature and announcement of the conventions - on 12 July 1982 and 6 May 1982 respectively.

Sub-clauses (4) and (5) of clause 7 empower the Commissioner to amend assessments that have already issued in order to apply the credit method of double taxation relief as regards interest and royalties from Korea and Norway respectively.

Clause 8 : Addition of Schedules

This clause will add the conventions with Korea and Norway as Schedules 19 and 20 respectively to the Principal Act.

CONVENTION WITH THE REPUBLIC OF KOREA

Subject to some differences that reflect the position of the Republic of Korea as a developing country, the convention accords in substantial practical effect with other comprehensive double taxation agreements to which Australia is a party. Like them, the convention allocates the right to tax some income to the country of source, sometimes at limited rates, while the country of residence is given the sole right to tax other types of income. It contains provisions to the effect that where income may be taxed in both countries, the country of residence, if it taxes, is to allow a credit against its own tax for the tax imposed by the country of source.

Article 1 - Personal Scope

The convention will apply to persons (which term includes companies) who are residents of either Australia or Korea.

The situation of persons who are dual residents (i.e. residents of both countries) is dealt with in Article 4.

Article 2 - Taxes Covered

This article specifies the existing taxes to which the convention applies. These are, in broad terms, the Australian income tax and the Korean income tax, corporation tax and inhabitant tax. The article will automatically extend the application of the convention to any identical or substantially similar taxes which may subsequently be imposed by either country in addition to, or in place of, the existing taxes.

Article 3 - General Definitions

This article provides definitions for a number of the terms used in the convention. Some other terms are defined in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

As with Australia's other modern double taxation agreements, "Australia" is defined as including external territories and areas of the continental shelf. By reason of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities on its continental shelf. The definition is also relevant to the taxation by Australia of shipping and airline profits in accordance with Article 8 of the convention.

Article 4 - Residence

This article sets out the basis on which the residential status of a person is to be determined for the purposes of the convention. Residential status is one of the criteria for determining each country's taxing rights and is a necessary condition for the provision of relief under the convention. Residence according to each country's taxation law provides the basic test. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under the domestic laws of both countries.

Article 5 - Permanent Establishment

Application of various provisions of the convention (principally Article 7) is dependent upon whether a person resident of one country has a "permanent establishment" in the other, and if so, whether income derived by the person in the other country is effectively connected with that "permanent establishment". The definition of the term "permanent establishment" which this article embodies corresponds closely with definitions of the term in Australia's other double taxation agreements.

The primary meaning of the defined term is expressed in paragraph (1) as being a fixed place of business through which the business of an enterprise is wholly or partly carried on. Other paragraphs of the article are concerned with elaborating on the meaning of the term by giving examples of what may constitute a "permanent establishment" - such as an office, a mine or an agricultural property - and by specifying the circumstances in which a resident of one country shall, or shall not, be deemed to have a "permanent establishment" in the other country.

Article 6 - Income from Real Property

By this article, income from real property, including royalties and other payments in respect of the operation of mines or quarries or from the exploitation of any natural resource may be taxed in the country in which the property is situated. Income from a lease of land and income from any other direct interest in or over land are, in accordance with paragraph (2), to be regarded as income from real property situated where the land to which the lease or other interest relates is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (6) of that article) and is therefore taxable in the country of source regardless of whether the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

This article is concerned with the taxation of business profits derived by a resident of one country from sources in the other country.

The taxing of these profits depends on whether they are attributable to a "permanent establishment" of the taxpayer in that other country. If they are not, the profits will be taxed only in the country of residence of the taxpayer. If, however, a resident of one country carries on business through a "permanent establishment" (as defined in Article 5) in the other country, the country in which the "permanent establishment" is situated may tax profits attributable to the establishment.

The article provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing. These provisions correspond in their practical effect with comparable provisions in Australia's other double taxation agreements, and with the revised Division 13 that was recently inserted in the Income Tax Assessment Act.

Paragraph (5) of the article allows the application of provisions of the source country's domestic law (e.g. the new Australian Division 13) where the correct amount of profits attributable to a "permanent establishment" is incapable of determination or the ascertainment thereof presents exceptional difficulties, for example, where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing.

Article 8 - Ships and Aircraft

Under this article the right to tax profits from the operation of ships or aircraft in international traffic, including profits derived from participation in a pool, a joint business or an international operating agency, is reserved to the country of residence of the operator.

Any profits derived by a resident of one country from internal traffic in the other country may be taxed in that other country. By reason of the definition of the terms "international traffic" and "Australia" contained in

Article 3, any shipments by air or sea from a place in Australia to another place in Australia, its continental shelf or external territories are treated as forming part of internal traffic.

Article 9 - Associated Enterprises

This article authorises the re-allocation of profits between related enterprises in Australia and Korea on an arm's length basis where the commercial or financial arrangements between the enterprises differ from those that might be expected to operate between independent enterprises dealing at arm's length with one another.

By virtue of paragraph (4) of the article, each country retains the right to apply its domestic law (e.g. the revised Australian Division 13) to its own enterprises, provided that such provisions are applied, so far as it is practicable to do so, in accordance with the principles of this article.

Where a re-allocation of profits is effected under this article or, by virtue of paragraph (4), under domestic law, so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (5) requires the other country concerned to make an appropriate adjustment to the amount of tax charged on the profits involved with a view to relieving any such double taxation.

Article 10 - Dividends

This article in general limits the tax that the country of source may impose on dividends payable to beneficial owners resident in the other country to 15 per cent of the gross amount of dividends. Under this article, Australia will reduce its rate of withholding tax on dividends paid to residents of Korea from 30 per cent to 15 per cent, while Korea will reduce its withholding tax on dividends paid to Australian residents from 25 per cent to 15 per cent.

Paragraph (4) provides that the 15 per cent limitation on the source country's tax will not apply to dividends derived by a resident of the other country who has a "permanent establishment" or "fixed base" in the country from which the dividends are derived, if the holding giving rise to the dividends is effectively connected with that "permanent establishment" or "fixed base". In those cases the dividends will be taxed at normal rates in accordance with the provisions of Article 7 or Article 14, as the case may be.

The purpose of paragraph (5) of this article is to ensure, broadly, that one country will not tax dividends paid by a company resident solely in the other country unless the person deriving the dividend is a resident of the first country or the holding giving rise to the dividends is effectively connected with a "permanent establishment" or "fixed base" in that country.

Paragraph (6) preserves the right of Australia to impose the "branch profits" tax provided for in its domestic law. It also provides that, for the purpose of calculating undistributed profits tax, the branch profits tax will not be taken into account, but the company will be deemed to have paid dividends of such amount that tax equal to the amount of the branch profits tax would have been payable under the article.

Article 11 - Interest

This article requires the country of source generally to limit its tax on interest derived by residents of the other country to 15 per cent of the gross amount of the interest. This limitation will not affect the rate of Australian withholding tax on interest derived by Korean residents which will continue to be imposed at the rate of 10 per cent under Australia's domestic law.

Paragraph (3) requires each country to exempt interest derived by the Government of, or any other body exercising governmental functions in, the other country, or by a bank performing central banking functions in the other country.

Interest derived by a resident of one country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the other country will form part of the business profits of that establishment or "fixed base" and be subject to the provisions of Article 7 or Article 14. Accordingly, paragraph (5) of Article 11 requires that the 15 per cent limitation is not to apply to such interest.

The article also contains a general safeguard (paragraph (7)) against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 15 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons dealing at arm's length.

Article 12 - Royalties

The purpose of this article is to place a limit of 15 per cent of the amount of the gross royalties on the tax Australia and Korea may charge on royalties derived by a resident of the other country.

The 15 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation of the tax that may be imposed. In the absence of a double taxation agreement, Australia generally taxes such royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax.

As in the case of the dividends and interest, it is specified in paragraph (4) that the 15 per cent limitation of tax in the country of origin is not to apply to royalties effectively connected with a "permanent establishment" or "fixed base" in that country.

By paragraph (6), if royalties flow between related persons, the 15 per cent limitation will apply only to the extent that the royalties are not excessive.

Article 13 - Alienation of Property

Under this article, income from the alienation of real property may be taxed in the country in which that property is situated. Real property is defined for the purposes of the article as including a lease of land or other direct interest in or over land and rights to exploit, or to explore for, natural resources. Shares or comparable interests in a company the assets of which consist wholly or principally of direct interests in or over land in one of the countries, or of rights to exploit or explore for natural resources in one of the countries, are also for these purposes deemed to be real property.

Paragraph (3) specifies that income derived by an enterprise of one country from the disposal of ships or aircraft operated in international traffic while owned by that enterprise, or personal property associated with such operations, shall be taxable only in that country.

Article 14 - Independent Personal Services

The purpose of this article is to ensure that income derived by an individual resident in Australia or Korea from the performance of professional services or similar independent activities in the other country (which may now be taxed in the country in which the services or activities are performed), will continue to be taxed in the country in which the services are performed if the recipient has a "fixed base" regularly available in that country for the purpose of performing his or her activities, and the income is attributable to activities exercised from that base. If these tests are not met, the income will be taxed only in the country of residence.

Remuneration derived as an employee and income derived by public entertainers are the subject of other articles of the convention and are not covered by this article.

Article 15 - Dependent Personal Services

Article 15 provides the basis upon which the remuneration of visiting employees is to be taxed. Generally, salaries, wages, etc. derived by a resident of one country from an employment exercised in the other country will be taxed in that other country. However, subject to specified conditions, there is a conventional provision for exemption from tax in the country being visited where only visits of a short-term nature are involved. The conditions for exemption are that the visit or visits not exceed, in the aggregate, 183 days in the year of income of the country visited, that the remuneration is paid by, or on behalf of, an employer who is not a resident of the country being visited and that the remuneration is not deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country being visited. Where these conditions are met, the remuneration so derived will be taxed in the country of residence.

By paragraph (3) of the article, income from an employment exercised aboard a ship or aircraft operated in international traffic is to be taxed in the country of residence of the operator.

Article 16 - Directors' Fees

Under this article, remuneration derived by a resident of one country in the capacity of a director of a company which is a resident of the other country is to be taxed in the country where the company is resident.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, irrespective of the duration of the visit.

Paragraph (2) of this article is a safeguarding provision designed to ensure that income in respect of personal activities exercised by an entertainer, whether received by the entertainer or by another person, e.g., a separate enterprise which formally provides the entertainer's services, is taxed in the country in which the entertainer performs, whether or not that enterprise has a "permanent establishment" in that country.

Paragraphs (3) and (4) provide, broadly, that income derived by an entertainer visiting one of the countries, or by another person in relation to such a visit, is to be exempt from tax in that country if the visit, or that other person, is supported substantially from public funds of the other country, or if the other person is a non-profit organisation of the other country.

Article 18 - Pensions and Annuities

Under this article pensions and annuities (other than government pensions referred to in Article 19) are to be taxed only by the country of residence of the recipient.

Article 19 - Government Service

Paragraph (1) of this article provides that remuneration in respect of services rendered to a government (including a State or local government) of one of the countries will be taxed only in that country. However, such remuneration is to be taxable only in the other country if the services are rendered in that country and the recipient is a citizen of, or ordinarily resides in, that country.

Paragraph (2) provides that any pension paid by the government (including State and local government) of one country in respect of services rendered to that government may be taxed only in that country, unless the recipient is a resident of, and a national or citizen of, the other country, in which case the pension is to be taxed only in the other country.

Paragraph (3) provides, in effect, that paragraphs (1) and (2) do not apply where the services are rendered in connection with a trade or business carried on by a government. In such a case, the provisions of Articles 15, 16 and 18 apply. By paragraph (4), however, the provisions of paragraphs (1) and (2) also apply to remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea and the Korea Trade Promotion Corporation and, in the case of Australia, by the Reserve Bank of Australia.

Article 20 - Professors and Teachers

This article applies to professors or teachers who are residents of one country and who, at the invitation of a recognised educational institution in the other country, visit that country for a period of not more than two years solely for the purpose of teaching or research or both at that educational institution. In these circumstances, the remuneration for such teaching or research is to be taxed only in the country of residence of the professor or teacher.

Article 21 - Students and Trainees

This article applies to students and trainees temporarily present in a country solely for the purpose of their education or training who are, or immediately before the visit were, resident in the other country. In these circumstances, the students or trainees will be exempt from tax in the country visited in respect of payments received from abroad for the purposes of their maintenance or education.

Article 22 - Income Not Expressly Mentioned

This article provides rules for the allocation between the two countries of taxing rights in relation to items of income not expressly mentioned in the preceding articles of the convention.

Broadly, such income derived by a resident of one country is to be taxed only in his country of residence unless it is derived from sources in the other country, in which case the income may also be taxed in the country of source.

However, the first mentioned exclusive taxing right of the country of residence does not apply where the income is effectively connected with a "permanent establishment" or "fixed base" which a resident of one country has in the other. In such cases the provisions of Article 7 or Article 14, as the case may be, will apply.

Article 23 - Source of Income

Article 23 specifies the source of various classes of income, for the purposes of ensuring that each country is empowered to exercise the taxing rights allocated to it by the convention over residents of the other country and that, as intended by the convention, double taxation relief will be given by the country of residence in respect of tax levied by the country of source in accordance with the taxing rights allocated to it under the convention. The provision obviates any question of income not having, by domestic law rules, a source in the country that is, by the convention, entitled to tax that income in the hands of a resident of the other country.

Article 24 - Methods of Elimination of Double Taxation

Double taxation does not arise in respect of income flowing between the two countries where the terms of the convention provide for the income to be taxed only in one country or the other, or where the domestic taxation law of one of the countries frees the income from its tax. It is necessary, however, to prescribe a method for

relieving double taxation in respect of other classes of income which are subject to tax in both countries. Australia's other double taxation agreements provide for a credit basis for the relief of double taxation to be applied by Australia and, usually, the other country. In these cases, the country of residence is required to give credit against its tax for the tax of the country of source. This approach has generally been adopted in this convention.

By paragraph (1) of the article Australia will relieve double taxation by allowing a credit against its own tax for Korean tax on income derived by a resident of Australia from sources in Korea. Credit will be allowed by Australia for the Korean tax on dividends derived from Korea by individuals and on interest and royalties derived from Korea by individuals and companies in respect of which the tax of that country is limited by the convention to 15 per cent. Dividends derived from Korea by Australian resident companies will continue to remain free from tax under the provisions of section 46 of the Income Tax Assessment Act.

Section 23(q) of the Assessment Act will continue to exempt from Australian tax other income of Australian residents that is taxed in Korea. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part the Republic of Korea will, broadly, allow a credit to Korean residents, in respect of taxes payable in Australia on their Australian source income, against the Korean tax payable on that income. The amount of credit to be allowed in Korea is restricted to the lesser of the Australian tax payable and the Korean tax applicable to the income.

The convention contains "tax sparing" provisions which are similar to those included in Australia's agreements with Singapore, the Philippines and Malaysia. Under these provisions, which are contained in paragraphs (3), (4) and (5) of Article 24, Australia will tax an Australian recipient of interest or royalties on which Korea - under agreed incentive measures - has forgone its tax as if Korean tax forgone had been paid.

Sub-paragraph (a) of paragraph (3) defines the term "Korean tax forgone" for the purposes of the tax sparing credit as Korean tax that, but for relevant Korean legislation, would have been payable on interest or royalties, and effectively limits the tax sparing credit for Korean tax to 10 per cent of the gross amount of such income. Sub-paragraph (b) will provide for the relevant Korean incentive legislation in respect of which tax

sparing credits are to be allowed to be agreed in letters exchanged between the Korean Minister of Finance and the Australian Treasurer and proposed sub-section 11J(3) (see notes on clause 6 of the Bill) will provide for advice of any such agreement to be notifed in the Gazette.

Paragraph (4) means that for the purposes of the tax sparing credit, Korean tax forgone as defined in paragraph (3) is to be treated as Korean tax paid. Sub-paragraph (b) of paragraph (4) has the effect that where a tax sparing credit is allowed, the Korean income concerned is to be grossed-up, for purposes of calculating the Australian tax thereon, by the amount of the tax sparing credit. For example, in the case of interest and royalties received from Korea, in respect of which Korean tax has been forgone, the amount included in assessable income in Australia will be the amount received, plus 10 per cent of the amount.

By reason of paragraph (5), the tax sparing provisions outlined above will not apply after 30 June 1987 unless Australia and Korea agree to extend them beyond that date. Proposed sub-section 11J(4) (see notes on clause 6 of the Bill) will provide for advice of any such extension to be notified in the Gazette.

Article 25 - Mutual Agreement Procedure

One of the purposes of this article is to provide for consultation between the taxation authorities of the two countries with a view to reaching a satisfactory solution where a taxpayer is able to demonstrate actual or potential subjection to taxation contrary to the provisions of the convention. A taxpayer wishing to use this procedure must present a case within three years of the first notification of the action giving rise to the taxation not in accordance with the convention and if, on consideration, a solution is reached, it may be implemented irrespective of any time limits imposed by domestic tax laws of the relevant country.

The article also authorises consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the convention and to give effect to it.

Article 26 - Exchange of Information

This article authorises the two taxation authorities to exchange information necessary for the carrying out of the convention or of domestic laws concerning the taxes to which the convention applies. The purposes for which this information may be used and the persons to whom it may be disclosed are restricted along the lines of Australia's other double taxation agreements.

The exchange of information that would disclose any trade, business, industrial or professional secret or trade process or which would be contrary to public policy is not permitted by the article.

Article 27 - Diplomatic and Consular Officials

The purpose of this article is to ensure that the provisions of the convention do not result in members of diplomatic and consular posts receiving less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, such persons are entitled to fiscal privileges under the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 28 - Entry into Force

This article provides for the entry into force of the convention. This will be on the first day of the month second following the month in which an exchange of notes through the diplomatic channel notifying the completion of all procedures required by each country's law for bringing the convention into force has been completed.

Once it enters into force, the convention will have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 January 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July 1982. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July 1982 will be the date from which the convention will take effect in respect of tax other than withholding tax. In Korea, the convention will have effect, for purposes of withholding tax, in respect of income derived on or after 1 January 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 January 1982.

Article 29 - Termination

By this article the convention is to continue in effect indefinitely. However, either country may give written notice of termination on or before 30 June in any calendar year after the expiration of five years from the date of its entry into force. In that event, the convention would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 January in the calendar year immediately following that in which the notice of termination is given and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 July

in the calendar year next following that in which the notice of termination is given. It would cease to be effective in Korea for withholding tax purposes in respect of income derived on or after 1 January in the calendar year next following that in which the notice of termination is given, and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 January in the year next following that in which the notice of termination is given.

Protocol to the Convention with the Republic of Korea

The Protocol contains a number of provisions varying or extending parts of the main body of the convention. The protocol itself provides that its provisions are to form an integral part of the convention.

Paragraph 1 of the Protocol provides that the taxes covered, as outlined in Article 2, shall also include the Korean defence tax where it is charged by reference to the income tax or the corporation tax.

Paragraph 2 of the Protocol provides that the convention is not to apply to profits of an enterprise from carrying on a business of any form of insurance other than life insurance, and so preserves the application of the special provisions in each country's law relating to income from general insurance.

Paragraph 3 of the Protocol formally acknowledges that the additional tax referred to in paragraph (6) of Article 10 applicable at the date of signature of the convention is, in the case of Australia, the tax of 5 per cent levied on the reduced taxable income of non-resident companies in accordance with section 128T of the Income Tax Assessment Act.

Paragraph 4 of the Protocol acknowledges that dividends received by an Australian company from a Korean company are in effect freed from Australian tax by the rebate under section 46 of the Income Tax Assessment Act, and provides that if this rebate ceased to be allowed, Australia and Korea will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

Paragraph 5 of the Protocol provides for Australia and Korea to enter into negotiations in order to establish new provisions concerning the credit to be allowed by Korea against its tax on dividends, if subsequent to signature of the convention, Korea provides relief from its tax on intercorporate dividends or, in a convention with a third country, agrees to give credit for the tax of that third country on profits out of which dividends are paid to a resident of Korea.

Paragraph 6 provides that if, in a subsequent convention between Australia and a third country, Australia agrees to reduce below 15 per cent its tax on dividends paid from Australia to a resident of that country, or includes in such a convention an article dealing with non-discrimination, Australia and Korea are to enter into negotiations with a view to providing comparable treatment in relation to Korea.

CONVENTION WITH NORWAY

The convention with Norway is broadly along the lines of other comprehensive double taxation agreements recently concluded by Australia. The country of source is generally allocated the right to tax income which arises there, sometimes at limited rates, while the country of residence is given the sole right to tax some other types of income. The relief from double taxation of classes of income taxable in both countries is assured by provisions in the convention which require the country of residence of the recipient to give a credit against its own tax for the tax imposed in the country of origin, or comparable relief.

Article 1 - Personal Scope

The convention will apply to persons (which term includes companies) who are residents of either Australia or Norway.

The situation of persons who are residents of both countries (i.e. dual residents) is dealt with in Article 4.

Article 2 - Taxes Covered

This article specifies the existing taxes to which the convention applies. These are, in broad terms, the Australian income tax and the Norwegian national and municipal taxes on income and on capital. The article will automatically extend the application of the convention to any identical or substantially similar taxes which may subsequently be imposed by either country in addition to, or in place of, the existing taxes.

Article 3 - General Definitions

This article defines a number of the terms used in the convention. Definitions of some other terms are contained in the articles to which they relate and terms not defined in the convention are to have the meaning which they have under the taxation law of the country applying the convention.

"Australia" is defined to include the external territories and the areas of the continental shelf. By reason of this definition, Australia retains taxing rights in relation to mineral exploration and mining activities which are carried out on its continental shelf. The definition also has relevance to Australian taxation of shipping and airline profits under Article 8 of the convention.

Article 4 - Residence

The basis on which the residential status of a person is to be determined for the purposes of the convention is set out in this article. Residential status is one of the criteria for determining taxing rights, and the provision of relief, under the convention. The concepts of when a person is a resident under Australian tax law, or liable to tax by reason of domicile, residence or similar criteria under Norwegian law, are taken as the basis. The article also includes rules for determining how residency is to be allocated to one or other of the countries for the purposes of the convention where a taxpayer - whether an individual, a company or other entity - is regarded as a resident under both countries' domestic laws.

Article 5 - Permanent Establishment

There are various provisions of the convention (principally Article 7) application of which depends upon whether a resident of one country has a "permanent establishment" in the other and, if so, whether income derived by the person in the other country is attributable to with that "permanent establishment". This article provides a comprehensive definition of the term "permanent establishment" for the purposes of the convention. In practical effect, the definition corresponds closely with those contained in Australia's other modern double taxation agreements.

The primary meaning of the defined term is stated in paragraph (1) as being a fixed place of business through which the business of an enterprise is wholly or partly carried on. Other paragraphs elaborate on and refine the general meaning by giving examples of what may constitute a "permanent establishment" - such as a place of management, a factory or a mine - and specify the circumstances in which a resident of one country shall, or shall not, be deemed to have a "permanent establishment" in the other country.

Article 6 - Income from Real Property

Under this article, income from real property, including income from the direct use, letting or use in any other form of any land or interest therein, and royalties and other payments in respect of the working of or the right to work mines, oil or gas wells, quarries or other places of extraction or exploitation of natural resources, may be taxed in the country in which the land, mine, quarry or natural resource is situated.

Income to which this article applies is specifically excluded from the scope of Article 7 (by paragraph (8) of that article) and is therefore taxable in the country of source irrespective of whether the recipient has a "permanent establishment" in that country.

Article 7 - Business Profits

This article is concerned with the taxation of business profits derived by a resident of one country from sources in the other country.

The taxing of these profits depends on whether they are attributable to a "permanent establishment" of the taxpayer in that other country. If they are not, the profits will be taxed only in the country of residence of the taxpayer. If, however, a resident of one country carries on business through a "permanent establishment" (as defined in Article 5) in the other country, the country in which the "permanent establishment" is situated may tax profits attributable to the establishment.

In its practical effect, the article is comparable with similar articles contained in Australia's other double taxation agreements and with the revised Division 13 of the Assessment Act. Like them, it provides for profits of the "permanent establishment" to be determined on the basis of arm's length dealing.

Paragraph (4) provides that where it has been customary to calculate profits of a permanent establishment on the basis of an apportionment of the total profits of the enterprise (this method is used in Norway in a limited number of cases) the rules in Article 7 are not to preclude the continued application of that apportionment basis, if the result accords with arm's length principles.

Paragraph (6) of the article allows the application of provisions of the source country's domestic law (e.g. the revised Australian Division 13) where there is insufficient information available to determine the profits of the "permanent establishment" on the basis of arm's length dealing, while paragraph (9) preserves to each country the right to continue to apply any special provisions in its domestic law relating to the taxation of income from insurance with non-residents.

Article 8 - Shipping and Air Transport

The right to tax profits from the operation of ships or aircraft in international traffic, including profits received through participation in a pool service, in a joint transport operating organization or in an international operating agency, is reserved under this article to the country of residence of the operator.

Any profits derived by a resident of one country from internal traffic in the other country may be taxed in that other country. By reason of the definition of "Australia" in Article 3 and the terms of paragraph (4) of Article 8, any shipments by air or sea from a place in Australia to another place in Australia, its continental shelf or external territories are to be treated as forming part of internal traffic.

Article 9 - Associated Enterprises

This article authorises the re-allocation (on an arm's length basis) of profits between inter-connected enterprises in Australia and Norway where the commercial or financial arrangements between the enterprises differ from those that might be expected to operate between independent enterprises dealing at arm's length with one another.

Paragraph (2) preserves to each country the right to apply its domestic law where there is insufficient information available to allow the determination of the profits to be attributed to an enterprise. However, so far as it is practical, this must be done in accordance with the principles of the article.

Where a re-allocation of profits is effected under paragraph (1) or (2), so that the profits of an enterprise of one country are adjusted upwards, a form of double taxation would arise if the profits so re-allocated continued to be subject to tax in the hands of an associated enterprise in the other country. Paragraph (3) requires the competent authorities of both countries to consult with each other with a view to relieving any such double taxation.

Article 10 - Dividends

The broad scheme of this article is to impose a limit on the tax which may be imposed by the country of source on dividends paid by companies which are resident in that country to shareholders who are beneficially entitled to the dividend and who are resident in the other country.

Under this article, Australia will reduce its rate of withholding tax on dividends paid to residents of Norway from 30 per cent to 15 per cent, while Norway will reduce its dividend withholding tax from 25 per cent to 15 per cent.

Paragraph (4) declares that the 15 per cent limitation on the source country's tax will not apply to dividends derived by a resident of the other country who has a "permanent establishment" or "fixed base" in the country from which the dividends are derived, if the

holding giving rise to the dividends is effectively connected with that "permanent establishment" or "fixed base". In those cases the dividends will be taxed in accordance with the relevant articles, Article 7 or Article 14.

Paragraph (5) is a provision which ensures, broadly, that one country will not tax dividends paid by a company resident solely in the other country unless the person receiving the dividend is a resident of the first country or the holding giving rise to the dividend is effectively connected with a "permanent establishment" or "fixed base" situated in that country.

Australia's right to impose its "branch profits" tax is preserved by paragraph (6).

Article 11 - Interest

By this article the tax which the country of source may impose on interest payable to a resident of the other country is generally limited to 10 per cent of the gross amount of the interest. As the rate of the Australian withholding tax on interest paid to non-residents is 10 per cent, the convention will not change the amount of Australian tax on interest flowing to residents of Norway. Norway does not impose tax on interest paid to non-residents, unless, broadly, it is derived through a trade or business carried on in Norway. The 10 per cent limitation, therefore, does not have any practical application as regards Norwegian tax on interest paid to non-residents.

Paragraph (3) requires each country to exempt interest derived by the Government of, or any other body exercising governmental functions in, the other country, or by a bank performing central banking functions in the other country.

Paragraph (5) provides that the 10 per cent limitation on the source country's tax does not apply to interest derived by a resident of the other country which is effectively connected with a "permanent establishment" or "fixed base" of that person in the country of source. Where this is the case, the interest may be treated as part of the business profits of that establishment or "fixed base" and be subject to tax in accordance with the provisions of Article 7 or Article 14.

Paragraph (7) contains a general safeguard against payments of excessive interest - in cases where there is a special relationship between the persons associated with a loan transaction - by restricting the 10 per cent limitation in such cases to an amount of interest which might be expected to have been agreed upon by persons not so related.

Article 12 - Royalties

This article in general limits to 10 per cent of the gross amount of the royalties the tax that the country of source may impose on royalties paid to beneficial owners resident in the other country. The 10 per cent limitation is not to apply to natural resource royalties, which, in accordance with Article 6, are to remain taxable in the country of source without limitation on the tax that may be imposed. In the absence of the 10 per cent limitation, Australia generally taxes such royalties paid to non-residents (other than film and video tape royalties which are taxed at the rate of 10 per cent of the gross royalties), as reduced by allowable expenses, at ordinary rates of tax. Norway does not, at present, impose tax on royalties paid to non-residents unless, broadly, the income is derived through a trade or business carried on in Norway.

As in the case of dividends and interest, it is specified in paragraph (4) that the 10 per cent limitation of tax in the country of origin is not to apply to royalties effectively connected with a "permanent establishment" or "fixed base" in that country.

By paragraph (6), if royalties flow between related persons, the 10 per cent limitation will apply only to the extent that the royalties are not excessive.

Article 13 - Alienation of Property

By this article, income from the alienation of real property may be taxed in the country in which that property is situated. For the purposes of the article, real property includes a lease of land or other direct interest in or over land and rights to exploit, or to explore for, natural resources. Shares or comparable interests in a company the assets of which consist wholly or principally of real property or of interests in or over land in one of the countries, or of rights to exploit or explore for natural resources in one of the countries, are deemed for these purposes to be real property and to be situated in the country in which the land or resources are situated or the exploration takes place.

By paragraph (3), income from the alienation of capital assets of an enterprise or resident of one country will be taxable only in that country. However, where those assets form part of the business assets of a "permanent establishment" or "fixed base" in the other country the income may be taxed in that other country.

Paragraph (4) provides that gains from the disposal of shares in a Norwegian company derived by an individual who is a resident of Australia may be taxed in

Norway. Paragraph (5) specifies that gains from the disposal of ships or aircraft operated in international traffic, or associated movable property, shall be taxable only in the country of residence of the alienator.

Article 14 - Independent Personal Services

At present, an individual resident in Australia or in Norway may be taxed in the other country on income derived from the performance in that other country of professional services or other similar independent activities. By this article, such income will continue to be subject to tax in the country in which the services are performed in cases where the recipient has a "fixed base" regularly available in that country for the purposes of performing his or her activities and the income is attributable to activities exercised from that base, or where the income is derived during a period or periods exceeding 183 days in a year of income or in any two consecutive years of income, in which the recipient is present in that country.

If the tests mentioned above are not met, the income will be taxed only in the country of residence. Where, however, income which is thus taxable in the country of residence of the recipient is, or upon the application of this article will be, exempt from tax in that country, paragraph (2) provides that it may be taxed in the other country.

Article 15 - Dependent Personal Services

This article sets out the basis for taxing remuneration derived by visiting employees. A resident of one country will generally be taxed in the other country on salaries, wages, etc., from an employment where the services are rendered during a visit to the other country. However, short-term visitors may, in specified circumstances, be exempted from tax in the country being visited. The basic condition for exemption is, in broad terms, that the visit or visits not exceed 183 days in a year of income, or in any two consecutive years of income, of the country visited. Other conditions are that the remuneration be paid by or on behalf of an employer who is a resident of the country of which the recipient is a resident, that the remuneration not be deductible in determining taxable profits of a "permanent establishment" or a "fixed base" which the employer has in the country visited, and that the remuneration will be taxed in the country of residence.

Paragraph (3) is to the effect that income from an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the country in which the enterprise operating the ship or aircraft is resident.

It also reserves to Norway the sole right to tax its residents who are employed on aircraft operated in international traffic by the Scandinavian Airlines System consortium.

Article 16 - Directors' Fees

This article relates to remuneration received by a resident of one country in the capacity of a director of a company which is a resident of the other country. The remuneration is to be taxed in the country of residence of the company.

Article 17 - Entertainers

By this article, income derived by visiting entertainers (including athletes) from their personal activities as such will continue to be taxed in the country in which the activities are exercised, no matter how short their visit to that country.

The article also contains safeguards against attempts by entertainers to circumvent its general purpose by, e.g., having fees paid to a separate enterprise which the entertainer controls, and which formally provides his or her services. In such a case, the profits of the enterprise from the provision of the services of the entertainer may be taxed in the country in which the entertainer performs, whether or not that enterprise has a "permanent establishment" in that country.

Paragraph (3) provides, broadly, that income derived by entertainers visiting one of the countries is to be exempt from tax in that country if the visit is substantially supported or sponsored by the other country and the taxation authorities of that other country provide a certification to this effect.

Article 18 - Pensions and Annuities

Under this article pensions and annuities, including government pensions and social security payments, are to be taxed only by the country of residence of the recipient.

In order to avoid a form of double taxation which could occur from the different bases of taxing alimony and maintenance payments in the two countries, paragraph (3) of the article provides that such payments arising in one country and paid to a resident of the other shall, if they are not allowable tax deductions to the payer, be taxed only in the country in which they arise.

Article 19 - Government Service

This article provides for a reciprocal exemption from tax by each country in respect of remuneration of government employees of the other country. The article is subject to the provisos that the exemption conferred by the article will not apply where the services are rendered in connection with a trade or business carried on by the government, or where, in broad terms, the employee is a citizen of, or ordinarily resides in, the country where he performs his governmental duties for the other country.

Article 20 - Students

This article applies to students temporarily present in a country solely for the purpose of their education who are, or immediately before the visit were, resident in the other country. In these circumstances, a student will be exempt from the tax of the country visited in respect of payments made from abroad for the purposes of his or her maintenance or education.

Article 21 - Income Not Expressly Mentioned

This article provides rules for the allocation between the two countries of taxing rights in relation to items of income not expressly mentioned in the preceding articles of the convention.

Broadly, such income derived by a resident of one country is to be taxed only in his country of residence unless it is derived from sources in the other country, in which case the income may also be taxed in the country of source.

However, the first mentioned exclusive taxing right of the country of residence does not apply where the income is effectively connected with a "permanent establishment" or "fixed base" which a resident of one country has in the other. In such cases the provisions of Article 7 or Article 14, as the case may be, will apply.

Article 22 - Offshore Activities

This article provides that, notwithstanding other provisions of the convention e.g. Articles 5, 7, 14 and 15, income derived by a resident of one country from activities carried on offshore in the other country in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources is to be treated, in effect, as having been derived from a business carried on through a "permanent establishment" or "fixed base" in that other country in cases where the activities are carried on for a

period which exceeds 30 days in any 12 months period. For the purposes of this test, activities carried on by an enterprise associated with another enterprise which are substantially similar to activities carried on by the other enterprise are treated as having been carried on by the enterprise with which it is associated.

Paragraph (4) provides, broadly, that salary, wages and similar remuneration derived by a resident of one country from employment connected with such activities in the other country shall, to the extent that the duties are performed offshore in the other country, be taxable only in that other country if the employment offshore is carried on for a period exceeding 30 days in the aggregate in any 12 months period.

Article 23 - Source of Income

This article specifies the source of various classes of income for the purpose of ensuring that Australia is empowered to exercise the taxing rights assigned to it by the convention over residents of Norway and that, as the convention intends, Australia will give double taxation relief in respect of tax levied by Norway pursuant to equivalent rights assigned to it. The article overcomes any question of income not having, by domestic law rules, a source in the country that is, by the convention, entitled to tax that income in the hands of a resident of the other country.

Article 24 - Capital

Norway at present imposes municipal and national taxes on capital, and this article merely recognises Norway's right to impose these taxes on certain items of capital situated in Norway which are owned by residents of Australia. Since Australia does not impose any comparable taxes, the convention limits the taxes which may be imposed by Norway to those on capital represented by real property as defined in Article 6 situated in Norway, and movable property which forms part of the business property of a permanent establishment or fixed base that an Australian resident has in Norway. All other elements of capital of a resident of Australia are to be exempt from tax in Norway.

Article 25 - Methods of Elimination of Double Taxation

This article provides for the formal relief of double taxation where income that is derived by a resident of one country from sources in the other country would otherwise be taxed in both countries.

Some income flowing between the two countries may be taxed only in one country, in which case there is no need to give further relief. Other income may be taxed in

the country of source and if the country of residence would, but for this article, also tax, the article requires the country of residence to relieve the ensuing double taxation.

Paragraph (1) of the article requires Australia to allow against its own tax a credit for Norwegian tax on income derived by a resident of Australia from sources in Norway. Australia will allow credit for the Norwegian tax on dividends derived by individuals from Norway and on interest and royalties (should Norway in the future impose such a tax) derived by individuals and companies from Norway in respect of which the tax of that country is limited by the convention to 10 per cent. Section 46 of the Income Tax Assessment Act continues to free from Australian tax dividends derived from Norway by Australian resident companies.

Other income of Australian residents that is taxed in Norway will continue to qualify for exemption from Australian tax under section 23(q) of the Assessment Act. In these cases, since there will be no Australian tax payable, there is no call for allowance of credits.

For its part, Norway will include in assessable income certain types of income which may be taxed in Australia (namely, dividends, interest, royalties, profits from the operation of ships or aircraft wholly within Australia and income from offshore activities), and allow its residents a credit for the Australian tax paid up to but not exceeding the Norwegian tax on the income. Income derived by a Norwegian resident from Australia, which under the convention is to be taxed only in Australia, will be exempt from Norwegian tax but may be taken into account in determining the amount of tax on the remaining income of the Norwegian resident. This is commonly known as the "exemption with progression" method of relief.

Article 26 - Mutual Agreement Procedure

One of the purposes of this article is to provide for the taxation authorities of the two countries to consult with a view to reaching a satisfactory solution where a taxpayer is able to demonstrate actual or potential subjection to taxation contrary to the provisions of the convention. A taxpayer wishing to use this procedure must present a case within three years of the first notification of the action giving rise to the taxation not in accordance with the convention. Any solution so reached may be implemented notwithstanding any time limits imposed by domestic laws of the relevant country.

Another purpose of the article is to authorise consultation between the taxation authorities of the two countries for the purpose of resolving any difficulties regarding the application of the convention and to give effect to it.

Article 27 - Exchange of Information

This article authorises the exchange of information between the taxing authorities of each country where this is necessary for the carrying out of the convention or of domestic laws concerning the taxes to which the convention applies. The restrictions which it contains in relation to the purposes for which this information may be used and the persons to whom it may be disclosed are along the lines of Australia's other double taxation agreements.

The article does not permit the exchange of information that would disclose any trade, business, industrial or professional secret or trade process or which would be contrary to public policy.

Article 28 - Diplomatic and Consular Officials

This article ensures that members of diplomatic and consular posts will, under the provisions of the convention, receive no less favourable treatment than that to which they are entitled in accordance with international laws. In Australia, fiscal privileges are conferred on such persons by the Diplomatic (Privileges and Immunities) Act and the Consular (Privileges and Immunities) Act.

Article 29 - Entry into Force

This article provides for the entry into force of the convention. This will be on the date on which notes are exchanged through the diplomatic channel notifying that the last of all such constitutional processes has been completed in Australia and Norway as is necessary to bring the convention into force in both countries.

Once it enters into force, the convention will have effect in Australia, for purposes of withholding tax, in respect of income derived on or after 1 July 1982, and in respect of tax other than withholding tax, in relation to income of any income year beginning on or after 1 July 1982. Where a taxpayer has adopted an accounting period ending on a date other than 30 June, the beginning of the accounting period that has been substituted for the year beginning on 1 July 1982 will be the date from which the convention will take effect. In Norway, the convention will have effect in respect of taxes on income or on capital relating to the 1982 and subsequent calendar years, including accounting periods ending in those years.

Article 30 - Termination

This article declares that the convention is to continue in effect indefinitely but that either country may give written notice of termination on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force. In that event, the convention would cease to be effective in Australia, for withholding tax purposes, in respect of income derived on or after 1 July in the calendar year immediately following that in which the notice of termination is given and for tax other than withholding tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given. It would cease to be effective in Norway in respect of taxes on income or on capital relating to the calendar year next following that in which the notice of termination is given.

Protocol to the Convention with the Kingdom of Norway

The Protocol contains a number of provisions relating to the possible future variation of parts of the main body of the convention. The Protocol itself states that its provisions are to form an integral part of the convention.

Paragraph 1 of the Protocol requires that if, after 26 September 1980, Australia enters into a double taxation convention with a country which is a member of the O.E.C.D., in which Australia agrees to limit its tax on dividends, interest or royalties to rates which are less than those agreed for that income in the Norwegian convention, Australia is to enter into negotiations with Norway for the purpose of reviewing those rates in the Norwegian convention.

Paragraph 2 of the Protocol requires that if, after 26 September 1980, Norway enters into a double taxation convention with another member country of the O.E.C.D., in which Norway agrees to give special relief from its tax on dividends paid by a company resident in that other country to a company resident in Norway, Norway is to inform Australia and enter into negotiations to review the provisions of Article 25 (Methods of Elimination of Double Taxation) in order to provide the same relief in respect of dividends paid by Australian companies. The paragraph also provides that if, at some future time, Norway so requests, paragraph (2) of Article 25 shall be replaced with provisions to the effect that Norway will allow its residents a credit for the Australian tax paid in respect of income which, under the convention, may be taxed in Australia up to, but not exceeding, the Norwegian tax on the income.

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