



International Tax Agreements Amendment Act (No. 1) 2000

No. 100, 2000



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**An Act to amend the *International Tax Agreements
Act 1953***

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International Tax Agreements Amendment Act (No. 1) 2000

No. 100, 2000

An Act to amend the *International Tax Agreements Act 1953*

[Assented to 6 July 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Tax Agreements Amendment Act (No. 1) 2000*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Agreement with Romania

International Tax Agreements Act 1953

1 Subsection 3(1)

Insert:

the Romanian agreement means the Agreement between Australia and Romania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that agreement, being the agreement and protocol a copy of each of which in the English language is set out in Schedule 45.

2 After section 11ZI

Insert:

11ZJ Agreement with Romania

Subject to this Act, on and after the date of entry into force of the Romanian agreement, the provisions of the agreement, so far as those provisions affect Australian tax, have the force of law according to their tenor.

3 At the end of the Act

Add:

Schedule 45—Romanian agreement

Note: See section 3.

AGREEMENT BETWEEN AUSTRALIA AND ROMANIA FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

AUSTRALIA AND ROMANIA,

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 This Agreement shall apply to the following existing taxes on income:

(a) in Romania:

- (i) the tax on income derived by individuals;
- (ii) the tax on profit;
- (iii) the tax on salaries and other similar remuneration;
- (iv) the tax on dividends; and
- (v) the tax on agricultural income;

(b) in Australia:

- (i) the income tax; and
- (ii) the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources,

imposed under the federal law of Australia.

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of Romania 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 have been made in the laws

of their respective States relating to the taxes to which this Agreement applies within a reasonable period of time after those changes.

Article 3
General definitions

1 In this Agreement, unless the context otherwise requires:

- (a) the term “Romania” means the state territory of Romania, including its territorial sea and air space over the territory and the territorial sea over which Romania exercises sovereignty, as well as the contiguous zone and the continental shelf and the exclusive economic zone over which Romania exercises, in accordance with its legislation and with the rules and principles of international law, sovereign rights and jurisdiction;
- (b) 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 Island 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 this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
- (c) the term “Contracting State” means Australia or Romania, 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 a Contracting State” 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 Romania, as the context requires;
- (g) the term “tax” means Australian tax or Romanian tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;
- (h) the term “Romanian tax” means tax imposed by Romania, being tax to which this Agreement applies by virtue of Article 2;
- (i) the term “Australian tax” means tax imposed by Australia, 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 authorised representative of the Commissioner and, in the case of Romania, the Minister of Finance or an authorised representative of the Minister;
- (k) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State.

2 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 relating to the taxes to which this Agreement applies, in force at the time of that application.

Article 4
Residence

1 For the purposes of this Agreement, the term “resident of a Contracting State” means any person who is a resident of that State in accordance with the taxation laws of that State.

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 with which the person’s economic and personal relations are the closer; and
- (c) in cases where the status of the person cannot be determined under paragraphs (a) and (b), the competent authorities of the Contracting States shall consult each other.

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

Article 5 Permanent establishment

1 For the purposes of this Agreement, the term “permanent establishment”, 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) a farm, plantation or other place where agricultural, other farming, forestry or plantation activities are carried on; and
- (h) a building site or construction, installation or assembly project which exists for more than 9 months.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
- (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research; or
- (f) the sale of goods or merchandise belonging to the enterprise which have been displayed during a non-permanent or occasional fair or exhibition where the goods or merchandise are sold no later than one month after the closing of the said fair or exhibition.

4 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that State for more than 6 months in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that State; or
- (b) substantial equipment is being used in that State for more than 6 months by, for or under contract with the enterprise.

5 A person acting in a Contracting State 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 firstmentioned State if:

- (a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6 An enterprise of a Contracting State 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 a Contracting State 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 paragraph 6 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside

both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

Article 6
Income from real property

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

2 For the purposes of this Article, the term “real property”:

- (a) in the case of Romania, means such property which, according to the laws of Romania, is immovable property and shall in any case include:
 - (i) property accessory to immovable property;
 - (ii) livestock and equipment used in agriculture and forestry;
 - (iii) rights to which the provisions of the general law respecting landed property apply; and
 - (iv) lease and usufruct of immovable property and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
- (b) in the case of Australia, has the meaning which it has under the laws of Australia, and shall also include:
 - (i) a lease of land and any other interest in or over land, whether improved or not; and
 - (ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

Ships and aircraft shall not be regarded as real property.

3 Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources, as the case may be, are situated or where the exploration or exploitation may take place.

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

5 Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to use real property held by the company and situated in a Contracting State, the income from such rights may be taxed in that State.

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

7 The provisions of paragraph 5 shall also apply to income of an enterprise from a right to use referred to in that paragraph and shall also apply to income from such a right that is used for the performance of independent personal services.

Article 7 Business profits

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

2 Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated in that other State, 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.

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

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

5 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 or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7 Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State 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

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- (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 the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

Article 8
Ships and aircraft

- 1 Profits of an enterprise derived from the operation of ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- 2 Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.
- 3 If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is resident.
- 4 The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.
- 5 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 a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

Article 9
Associated enterprises

- 1 Where:

- (a) an enterprise of a Contracting State 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 a Contracting State 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 paragraph 1 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 a Contracting State 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 firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned 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 a Contracting State 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 However, those dividends may also 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:

- (a) 5 per cent of the gross amount of the dividends, to the extent to which those dividends are paid out of profits that have borne the normal rate of company tax, where those dividends are paid to a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends; and
- (b) 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either Contracting State 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 each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3 For the purposes of paragraph 2, profits have borne the normal rate company tax:

- (a) in Romania, where they have been subject to the profits tax; and
- (b) in Australia, to the extent to which the dividends have been fully “franked” in accordance with its law relating to tax.

4 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.

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6 Dividends paid by a company which is a resident of a Contracting State, 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 in so far 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. 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 Romania for the purposes of Romanian tax.

Article 11
Interest

1 Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2 However, that interest may also 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 Interest derived from the investment of official funds by the Government of a Contracting State, its monetary institutions or a bank performing central banking functions in that State, shall be exempt from tax in the other Contracting State.

4 The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness and all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6 Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, local authority or an administrative-territorial unit 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 a Contracting State or not, has in a Contracting State 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 that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7 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 that relationship, the provisions of this Article shall apply only to the lastmentioned 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 a Contracting State, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2 However, those royalties may also 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; or
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or

- (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (e) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology; or
- (f) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology; or
- (g) the use of, or the right to use:
 - (i) motion picture films; or
 - (ii) films or video tapes for use in connection with television; or
 - (iii) tapes for use in connection with radio broadcasting; or
- (h) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated in that other State, or performs in

that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5 Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, local authority or an administrative-territorial unit 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 a Contracting State or not, has in a Contracting State 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, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid 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 lastmentioned 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

Income, profits or gains from the alienation of property

1 Income, profits or gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2 Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that

permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3 Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise alienating those ships, aircraft or other property is situated.

4 Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to real property situated in the other Contracting State, may be taxed in that other State.

5 Nothing in this Agreement 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 the preceding paragraphs of this Article apply.

6 In this Article, the term “real property” has the same meaning as it has in Article 6.

7 The situation of real property shall be determined for the purposes of this Article in accordance with the provisions of paragraph 3 of Article 6.

Article 14 Independent personal services

1 Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless 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.

2 The term “professional services” includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching

activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent personal services

1 Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State 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 a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned State if:

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

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

Article 16
Directors' fees

Directors' fees and similar payments derived by a resident of a Contracting State 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 and sportspersons

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

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

3 Notwithstanding the provisions of paragraphs 1 and 2, income derived in respect of activities referred to in paragraph 1 within the framework of a cultural or sports exchange program agreed to by the Governments of the Contracting States and carried out other than for the purpose of profit, shall be exempted from tax in the Contracting State in which these activities are exercised.

Article 18
Pensions and annuities

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

Article 19
Government service

1 Remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision, local authority or administrative-territorial unit of that State to any individual in respect of services rendered in the discharge of

governmental functions shall be taxable only in that State. However, such 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) has the citizenship 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 a Contracting State or a political subdivision, local authority or administrative-territorial unit of that State. In that case, the provisions of Article 15 or Article 16, as the case may be, shall apply.

Article 20
Students

Where a student, who is a resident of a Contracting State or who was a resident of that State immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of the student's education for a period not exceeding seven years, receives payments from sources outside that other State for the purpose of the student's 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 a Contracting State 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 a Contracting State 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, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State.

In that case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22
Source of income

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

Article 23
Methods of elimination of double taxation

1 In the case of Romania, double taxation shall be eliminated as follows:

- (a) subject to subparagraph (b), where a resident of Romania derives income, profits or gains which, in accordance with the provisions of this Agreement, are taxable in Australia, then Romania shall exempt from tax such income, profits or gains. However Romania may, in calculating the amount of tax on the remaining income of that resident, take into account the exempted income, profits or gains; and
- (b) where a resident of Romania derives items of income which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Australia, Romania shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Australia. However, that deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to that income from Australia.

2 In the case of Australia, double taxation shall be eliminated as follows:

-
- (a) 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 of this Article), Romanian tax paid under the law of Romania 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 Romania shall be allowed as a credit against Australian tax payable in respect of that income; and
- (b) where a company which is a resident of Romania 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 firstmentioned company, the credit referred to in subparagraph (a) shall include the Romanian tax paid by that firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

Article 24
Mutual agreement procedure

1 Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the domestic 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 domestic 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 in so far as the taxation under those laws 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. Those persons or authorities may disclose the information in public court proceedings or in judicial decisions.

2 In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of a 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; or
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 26
Members of diplomatic missions and consular posts

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

Article 27
Entry into force

Both Contracting States shall notify each other in writing of the completion of their respective constitutional and legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and thereupon the Agreement shall have effect:

(a) in Romania:

in respect of taxes on income, profits and gains for the taxable period starting from 1 January of the next calendar year following that in which the Agreement enters into force;

(b) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, 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 Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into 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 five 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 Romania:

Schedule 1 Agreement with Romania

in respect of taxes on income, profits and gains for the taxable period starting from 1 January of the next calendar year following that in which the notice of termination is given;

(b) in Australia:

- (i) in respect of withholding tax on income that is derived by a nonresident, 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 Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra, this second day of February, Two thousand, in the English and Romanian languages, both texts being equally authentic.

FOR AUSTRALIA:

FOR ROMANIA:

ROD KEMP

MANUELA VULPE

[Signatures omitted]

PROTOCOL

AUSTRALIA AND ROMANIA

HAVE AGREED at the signing of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provision which shall form an integral part of the Agreement:

If, in an agreement for the avoidance of double taxation that may subsequently be concluded between Australia and a third State, there is included a Non-discrimination Article, Australia shall immediately inform Romania in writing through the diplomatic channel and shall enter into negotiations with Romania in order to provide the same treatment for Romania as may be provided for the third State.

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

DONE in duplicate at Canberra, this second day of February, Two thousand, in the English and Romanian languages, both texts being equally authentic.

FOR AUSTRALIA:

FOR ROMANIA:

ROD KEMP

MANUELA VULPE

[Signatures omitted]

Schedule 2—Amending protocol to the agreement with Finland

International Tax Agreements Act 1953

1 Subsection 3(1) (definition of *the Finnish agreement*)

Add at the end “, as amended by the second Finnish protocol”.

2 Subsection 3(1)

Insert:

the second Finnish protocol means the Protocol to amend the agreement between Australia and Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the protocol a copy of which in the English language is set out in Schedule 25A.

3 After section 11P

Insert:

11PA Second protocol with Finland

Subject to this Act, on and after the date of entry into force of the second Finnish protocol, the provisions of the protocol, so far as those provisions affect Australian tax, have the force of law according to their tenor.

4 After Schedule 25

Insert:

Schedule 25A—Second Finnish protocol

Note: See section 3.

PROTOCOL TO AMEND THE AGREEMENT BETWEEN AUSTRALIA
AND FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF FINLAND,

DESIRING to conclude a Protocol to amend the Agreement between Australia and Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Canberra on 12 September 1984,

HAVE AGREED as follows:

Article I

Sub-paragraph (b) of paragraph (1) of Article 2 of the Agreement shall be deleted and replaced by the following:

“(b) in Finland:

- (i) the state income taxes;
- (ii) the corporate income tax;
- (iii) the communal tax,
- (iv) the church tax;
- (v) the tax withheld at source from interest; and
- (vi) the tax withheld at source from non-residents’ income.”

Article II

Article 10 of the Agreement shall be deleted and replaced by the following:

“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, shall be taxable only in that other State.

(2) Notwithstanding the provisions of paragraph (1), dividends, other than dividends that are paid out of profits that have borne the normal rate of company tax, may also 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 Contracting State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. If the relevant existing law in either Contracting State changes after the date of signature of this Agreement, other 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.

(3) For the purposes of paragraph (2), profits have borne the normal rate of company tax:

- (a) in Australia, to the extent to which the dividends have been fully “franked” in accordance with its tax; and
- (b) in Finland, where they have been subject to the corporate income tax.

(4) The term “dividends” as used in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

(5) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State 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.

(6) 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 Finland for the purposes of Finnish tax.”

Article III

The opening lines and sub-paragraphs (a) and (b) of paragraph (2) of Article 23 of the Agreement shall be deleted and replaced by the following:

“(2) Subject to the provisions of Finnish law regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Finland as follows:

- (a) where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Australia, Finland shall, subject to the provisions of sub-paragraph (b), allow as a deduction from the Finnish tax of that person, an amount equal to the Australian tax paid under Australian law and in accordance with the Agreement, as computed by reference to the same income by reference to which the Finnish tax is computed;
- (b) dividends paid by a company being a resident of Australia to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.”

Article IV

Sub-paragraph (i) of paragraph (a) of the Protocol to the Agreement shall be deleted.

Article V

(1) The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Protocol have been complied with.

(2) The Protocol shall enter into force thirty days after the date of the later of the notifications referred to in paragraph (1) and its provisions 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 Protocol enters into force;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Protocol enters into force;
- (b) in Finland:
 - (i) in respect of taxes withheld at source, on income derived on after 1 January in the calendar year next following the year in which the Protocol enters into force;
 - (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Protocol enters into force.

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

DONE in duplicate at Canberra this fifth day of November 1997, in the English and Finnish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
OF AUSTRALIA:

PETER COSTELLO

FOR THE GOVERNMENT
OF FINLAND:

ESKO HAMILO

[Signatures omitted]

Schedule 3—Minor technical amendment

International Tax Agreements Act 1953

1 Sub-subparagraph (1)(j)(ii)(B) of Article 3 of Schedule 2

Omit “resouces”, substitute “resources”.

*[Minister’s second reading speech made in—
House of Representatives on 6 April 2000
Senate on 22 June 2000]*

(40/00)