Income Tax (International Agreements) Amendment Act (No. 2) 1980

No. 127 of 1980

An Act to amend the *Income Tax (International Agreements) Act* 1953

[*Assented to 17 September 1980*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Income Tax (International Agreements) Amendment Act* (*No.* 2) 1980.

(2) The *Income Tax (International Agreements) Act* 1953[1] is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by omitting "or" from paragraph (b) of the definition of "agreement" in sub-section (1);

(b) by adding at the end of the definition of "agreement" in sub-section (1) the following word and paragraph:

"or (d) the previous Canadian agreement;";

(c) by omitting from sub-section (1) the definition of "the Canadian agreement" and substituting the following definition:

" 'the Canadian convention' means the Convention between the Government of Australia and the Government of Canada for the avoidance of double taxation and the prevention of fiscal

evasion with respect to taxes on income, being the convention a copy of which in the English language is set out in Schedule 3;"; and

(d) by inserting after the definition of "the Philippine agreement" in sub-section (1) the following definition:

" 'the previous Canadian agreement' means the Agreement between the Government of Australia and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income that was signed at Mont Tremblant on 1 October 1957;".

4. (1) Section 6A of the Principal Act is repealed and the following section substituted:

Convention with Canada

"6A. (1) Subject to this Act, on and after the date of entry into force of the Canadian convention, the provisions of the convention, so far as those provisions affect Australian tax, have, and shall be deemed to have had, the force of law—

(a) in relation to withholding tax—in respect of dividends or interest derived on or after 1 July 1975 and in relation to which the convention remains effective; and

(b) in relation to tax other than withholding tax—in respect of income of any year of income commencing on or after 1 July 1975 and in relation to which the convention remains effective.

"(2) As soon as practicable after the entry into force of the Canadian convention in accordance with Article 27 of the convention, the Treasurer shall cause to be published in the *Gazette* a notice specifying the date on which the convention entered into force, and the date so notified shall, for the purposes of this Act, be conclusively presumed to be the date of entry into force of the convention.

"(3) The provisions of the previous Canadian agreement, so far as those provisions affect Australian tax, continue to have the force of law in relation to tax in respect of income in relation to which the agreement remains effective.

"(4) For the purposes of the Assessment Act, income derived by a person who is a resident of Canada for the purposes of the Canadian convention, being income that under Articles 6 to 8 and 10 to 18 of the convention may be taxed in Australia, shall be deemed to be derived from sources in Australia.".

(2) The Commissioner may amend an assessment made before the date of entry into force of the Canadian convention for the purpose of giving effect to sub-section 6A (1) of the Principal Act as amended by this Act.

Provisions relating to certain income derived from sources in certain countries

5. (1) Section 12 of the Principal Act is amended—

(a) by omitting from paragraph (ai) of sub-section (1) "or" (last occurring); and

(b) by inserting after paragraph (ai) of sub-section (1) the following paragraph:

"(aj) income being—

(i) interest or royalties to which paragraph (1) of Article 11 or paragraph (1) of Article 12 of the Canadian convention applies; or

(ii) income to which paragraph (3) of Article 21 of the Canadian convention applies and which is attributable to interest or royalties,

where the income was derived in the year of income that commenced on 1 July 1975, or a subsequent year of income, from sources in Canada; or".

(2) If a taxpayer derived, on or before 21 May 1980, income to which paragraph 12 (1) (aj) of the Principal Act as amended by this Act applies, that paragraph in its application in relation to that income shall not operate to increase the Australian tax payable by the taxpayer in respect of the year of income unless there is a decrease, by virtue of the Canadian convention, in the tax payable under the law of Canada in respect of that income and, where there is such a decrease, the amount of the increase shall not exceed the amount of the decrease expressed in Australian currency.

(3) The Commissioner may amend an assessment made before the date of entry into force of the Canadian convention for the purpose of giving effect to paragraph 12 (1) (aj) of the Principal Act as amended by this Act (including that paragraph as affected by sub-section (2) of this section).

Schedule 3

6. Schedule 3 to the Principal Act is repealed and the following Schedule substituted:

SCHEDULE 3

Section 3

CONVENTION BETWEEN AUSTRALIA AND CANADA 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 Canada,

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

Have agreed as follows:

SCHEDULE 3—continued

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

(1) The existing taxes to which this Convention shall apply are—

(a) In Australia:
the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in Canada:
the income taxes imposed by the Government of Canada.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. At the end of each calendar year, each Contracting State shall notify the other Contracting State of any substantial changes which have been made in its laws relating to the taxes to which this Convention applies.

CHAPTER II

DEFINITIONS

ARTICLE 3

General Definitions

(1) In this Convention, unless the context otherwise requires—

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

(i) the Territory of Norfolk Island;
(ii) the Territory of Christmas Island;
(iii) the Territory of Cocos (Keeling) Islands;
(iv) the Territory of Ashmore and Cartier Islands;
(v) the Coral Sea Islands Territory; and
(vi) any area adjacent to the territorial limits of Australia or of the said Territories which is an area where Australia may, in accordance with its national legislation and international law, exercise rights in respect of the seabed and sub-soil and their natural resources.

(b) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which is an area where Canada may, in accordance with its national legislation and international law, exercise rights with respect to the seabed and sub-soil and their natural resources;

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

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

(e) the term "company" means any body corporate or any entity which is assimilated to a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian Law;

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;

(g) the term "tax" means Australian tax or Canadian tax, as the context requires;

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

SCHEDULE 3—continued

(i) the term "Canadian tax" means tax imposed by Canada, being tax to which this Convention applies by virtue of Article 2;

(j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Canada, the Minister of National Revenue or his authorized representative;

(k) words in the singular include the plural and words in the plural include the singular.

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

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

ARTICLE 4

Residence

(1) Subject to paragraph (2), for the purposes of this Convention, a person is a resident of one of the Contracting States if that person is a resident of that State for the purposes of its tax.

(2) In relation to income from sources in Canada, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Canada is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Canadian tax.

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

(a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

(b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

(4) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then the person's status shall be determined as follows:

(a) it shall be deemed to be a resident of the Contracting State in which it is incorporated or otherwise constituted;

(b) if it is not incorporated or otherwise constituted in either of the Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

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

(2) The term "permanent establishment" includes especially—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) an agricultural, pastoral or forestry property;

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

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

SCHEDULE 3—continued

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

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

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

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

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

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

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

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

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

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

(b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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

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

(8) The principles set forth in paragraphs (1) to (7) inclusive shall be applied in determining for the purposes of this Convention whether there is a permanent establishment outside both Contracting States and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

Income from Real Property

(1) Income from real property, including royalties and other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource, may be taxed in the Contracting State in which the real property, mines, quarries, or natural resources are situated.

(2) Income from real property or from any direct interest in or over land shall be regarded as income from real property situated where the real property or land is situated.

(3) Ships, boats or aircraft shall not be regarded as real property.

(4) The provisions of paragraphs (1) and (2) shall also apply to the income from real property of an enterprise and to income from real property used for the performance of professional services.

SCHEDULE 3—continued

ARTICLE 7

Business Profits

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

(2) Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

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

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

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

(6) For the purposes of this Article, except as provided in the Articles referred to in this paragraph, the profits of an enterprise do not include items of income dealt with in Articles 6, 8, 10, 11, 12, 13, 14, 16 and 17 and paragaphs (3) and (4) of Article 21.

(7) Nothing in this Article shall affect the operation of any law of a Contracting State relating specifically to taxation of any person who carries on a business of any form of insurance, provided that if the law in force in either Contracting State at the date of signature of this Convention 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.

ARTICLE 8

Shipping and Air Transport

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

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

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

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

SCHEDULE 3—continued

ARTICLE 9

Associated Enterprises

(1) Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

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

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

(2) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall, subject to paragraph (4), make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Convention in relation to the nature of the income, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(4) The provisions of paragraph (3) relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of income or taxation year in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

ARTICLE 10

Dividends

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

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) 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 a 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 Canada for the purposes of Canadian tax.

(4) The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

(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 through a permanent establishment situated in the other Contracting State, or performs professional services from a fixed base situated in that other State, being the State of which the company paying the dividends is a resident and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

SCHEDULE 3—continued

(6) Canada may impose tax, on the earnings attributable to a permanent establishment in Canada of a company which is a resident of Australia, in addition to the tax which would be chargeable on the earnings of a company which is a resident of Canada; provided that any additional tax so imposed shall not exceed 15 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in Canada in a year and previous years, after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in Canada.

(7) Australia may impose an income tax (in this paragraph called a "branch profits tax") on the reduced taxable income of a company that is a resident of Canada in addition to the income tax (in this paragraph called "the general income tax") payable by the company in respect of its taxable income; provided that any branch profits tax so imposed in respect of a year of income shall not exceed 15 per cent of the amount by which the reduced taxable income of that year of income exceeds the general income tax payable in respect of the reduced taxable income of that year of income.

ARTICLE 11

Interest

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

(2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

(3) The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to interest by the taxation law of the Contracting State in which the income arises.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, or performs professional services from a fixed base situated in that other State, being the State in which the interest arises, and the indebtedness giving rise to the interest is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division or a local authority thereof or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in a State other than that of which he is a resident a permanent establishment or a 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 such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

ARTICLE 12

Royalties

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

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

(3) The term "royalties" in this Article means payments (including credits), whether periodical or not, and however described or computed, to the extent to which they are paid as consideration for 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 industrial, commercial or scientific equipment, or for the

SCHEDULE 3—continued

supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance of an ancillary and subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies and includes any payments to the extent to which they are paid as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, or for total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, or performs professional services from a fixed base situated in that other State, being the State in which the royalties arise and the asset giving rise to the royalties is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

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

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

ARTICLE 13

Alienation of Property

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

ARTICLE 14

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base.

(2) The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the year of income or the taxation year as the case may be, of that other State and either—

SCHEDULE 3—continued

(a) the remuneration does not exceed in the said year the greater of the following amounts:

(i) three thousand Canadian dollars

and

(ii) two thousand six hundred Australian dollars; or

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State and 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) The Treasurer of Australia and the Minister of National Revenue of Canada may agree, in letters exchanged for the purpose, to variations in the amounts specified in sub-paragraph (a) of paragraph (2) and the variations so agreed shall have effect according to the tenor of the letters.

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

ARTICLE 16

Directors' Fees

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

ARTICLE 17

Entertainers

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

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

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

ARTICLE 18

Pensions and Annuities

(1) Pensions and annuities arising in a Contracting State for the benefit of and paid to a resident of the other Contracting State may be taxed in that other State.

(2) Pensions and annuities arising in a Contracting State in a year of income or taxation year may be taxed in that State and according to the law of that State, but the tax so charged shall not exceed the lesser of—

(a) 15 per cent of the pension or annuity received in the year; and

(b) the tax that would be payable in respect of the pension or annuity received in the year if the recipient were a resident of the Contracting State in which the pension or annuity arises.

However, the limitation on the tax that may be charged in the Contracting State in which pensions and annuities arise does not apply to payments of any kind under an income-averaging annuity contract.

(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 first-mentioned State.

ARTICLE 19

Government Service

(1) Remuneration (other than a pension or annuity) paid by a Contracting State or a political sub-division or a local authority thereof 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 State and the recipient is a resident of that State who:

SCHEDULE 3—continued

(a) is a citizen of that State; or

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

(2) The provisions of paragraph (1) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division or a local authority thereof. In such a case the provisions of Articles 15 and 16 shall apply.

ARTICLE 20

Students

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

ARTICLE 21

Income Not Expressly Mentioned

(1) Subject to the provisions of paragraph (2), items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

(2) However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises and, subject to paragraph (3), according to the law of that State.

(3) Where the income is income derived from an estate or trust resident in Canada by a resident of Australia the Canadian tax on that income shall not exceed 15 per cent of the gross amount of the income if it is subject to tax in Australia.

(4) The provisions of paragraph (3) shall not apply if the recipient of the income, being a resident of Australia, carries on in Canada a business through a permanent establishment situated therein, or performs in Canada professional services from a fixed base situated therein, and the right or interest in the estate or trust in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or 14, as the case may be, shall apply.

ARTICLE 22

Source of Income

(1) Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8 and 10 to 18 may be taxed in the other Contracting State, shall for the purposes of Article 23, be deemed to be income from sources in that other State.

(2) Income derived by a resident of Canada which, under any one or more of Articles 6 to 8 and 10 to 18, may be taxed in Australia may be deemed, for the purposes of the Australian income tax law, to be income from sources in Australia.

CHAPTER IV

METHODS OF PREVENTION OF DOUBLE TAXATION

ARTICLE 23

Elimination of double taxation

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), tax paid in Canada, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Canada (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

(2) In the case of Canada, double taxation shall be avoided as follows:

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which, however, shall not affect the general principle hereof) and unless a

SCHEDULE 3—continued

greater deduction or relief is provided under the law of Canada, tax paid in Australia in accordance with this Convention on profits, income or gains arising in Australia shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which, however, shall not affect the general principle hereof) for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of Australia.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 24

Mutual Agreement Procedure

(1) Where 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 him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

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

(4) The competent authorities of the Contracting States may consult together with respect to the elimination of double taxation in cases not provided for in the Convention.

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

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 Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to this Convention. 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, collection or enforcement of the taxes to which this Convention applies, or with the determination of appeals in relation thereto, and shall be used only for such purposes.

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

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

ARTICLE 26

Diplomatic and Consular Officials

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

SCHEDULE 3—continued

(2) This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

CHAPTER VI
FINAL PROVISIONS
ARTICLE 27
Entry Into Force

(1) This Convention shall come into force on the date on which the Government of Australia and the Government of Canada exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Convention the force of law in Australia and in Canada, as the case may be, and thereupon this Convention shall have effect—

(a) in Australia—

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July 1975

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July 1975

(b) in Canada—

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1976

(ii) in respect of other Canadian tax, for taxation years beginning on or after 1 January 1976.

(2) Subject to paragraph (3) of this Article, the Agreement between the Government of the Commonwealth of Australia and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Mont Tremblant on 1 October 1957 (in this Article referred to as "the 1957 Agreement") shall cease to have effect in relation to any tax in respect of which this Convention comes into effect in accordance with paragraph (1) of this Article.

(3) Where any provision of the 1957 Agreement would have afforded any greater relief from tax in one of the Contracting States than is afforded by this Convention, any such provision shall continue to have effect in that Contracting State—

(a) in the case of Australia in respect of withholding tax on income that is derived by a non-resident, in respect of income derived during any financial year beginning before the date of signature of this Convention and, in respect of other Australian tax, for any year of income beginning before that date;

(b) in the case of Canada in respect of tax withheld at the source on amounts paid or credited to non-residents before 31 December in the calendar year during which this Convention was signed and, in respect of other Canadian tax for any taxation year beginning on or before that date.

(4)The 1957 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 28
Termination

This Convention shall continue in effect indefinitely, but the Government of Australia or the Government of Canada may, on or before 30 June in any calendar year after the year 1983, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Convention shall cease to be effective—

(a) in Australia—

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

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

SCHEDULE 3—continued

(b) in Canada—

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the second calendar year next following that in which the notice of termination is given;

(ii) in respect of other Canadian tax, for any taxation year beginning on or after 1 January in the second calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE in Canberra on the twenty-first day of May 1980 in the English and French languages, the two versions being equally authentic.

JOHN HOWARD
For the Government of Australia

EDWARD LUMLEY
For the Government of Canada

NOTE

1. No. 82, 1953, as amended. For previous amendments, see No. 25, 1958; No. 88, 1959; Nos. 19 and 29, 1960; No. 71, 1963; No. 112, 1964; No. 105, 1965; No. 17, 1966; Nos.39 and 86, 1967; No. 3, 1968; No. 24, 1969; No. 48, 1972; No. 11, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 129, 1974; No. 119, 1975; Nos. 52, 55 and 143, 1976; No. 134, 1977; No. 87, 1978; and No. 23, 1980.