

# INCOME TAX (INTERNATIONAL AGREEMENTS).

No. 82 of 1953.

An Act to give the force of Law to certain Conventions and Agreements with respect to Taxes on Income, and for purposes incidental thereto.

[Assented to 11th December, 1953.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Income Tax (International Agreements) Act 1953*. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
- 3.—(1.) In this Act, unless the contrary intention appears— Definitions.
  - “ agreement ” means a convention or agreement a copy of which is set out in a Schedule to this Act ;
  - “ Australian tax ” means income tax and social services contribution imposed as such by any Act ;
  - “ foreign tax ” means tax, other than Australian tax, which is the subject of an agreement ;

“ the Assessment Act ” means the *Income Tax and Social Services Contribution Assessment Act 1936-1953* ;

“ the United Kingdom agreement ” means the Agreement between the Government of the United Kingdom and the Government of the Commonwealth for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which is set out in the First Schedule to this Act ;

“ the United States convention ” means the Convention between the Government of the Commonwealth and the Government of the United States of America 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 is set out in the Second Schedule to this Act.

(2.) For the purposes of this Act and the Assessment Act, a reference in an agreement to profits of an activity or business shall, in relation to Australian tax, be read, where the context so permits, as a reference to taxable income derived from that activity or business.

Incorporation.

4.—(1.) Subject to the next succeeding sub-section, the Assessment Act is incorporated and shall be read as one with this Act.

(2.) The provisions of this Act have effect notwithstanding anything inconsistent with those provisions contained in the Assessment Act or in an Act imposing Australian tax.

Agreement with  
United  
Kingdom.

5. Subject to this Act, the provisions of the United Kingdom agreement, so far as those provisions affect Australian tax, have the force of law in relation to tax in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and fifty-three, and in respect of income of all subsequent years of income in relation to which the agreement remains effective.

Convention  
with United  
States of  
America.

6. Subject to this Act, the provisions of the United States convention, so far as those provisions affect Australian tax, shall have the force of law in relation to tax in respect of income of the year of income commencing on the first day of July next succeeding the date upon which the convention becomes effective in the case of tax of the United States of America, and in respect of income of all subsequent years of income in relation to which the convention remains effective.

Determination  
of claims for  
credits.

7.—(1.) Where a claim is made for a credit for foreign tax in accordance with the provisions of an agreement, the Commissioner shall determine whether a credit is allowable and, if so, the amount of the credit.

(2.) A determination under this Act does not form part of an assessment under the Assessment Act.

(3.) As soon as conveniently may be after a determination is made, the Commissioner shall serve notice in writing of the determination, by post or otherwise, upon the person claiming the credit.

(4.) The notice in writing under the last preceding sub-section may be included in a notice of assessment.

**8.** The production of a notice of a determination, or of a document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of a determination, is conclusive evidence of the due making of the determination and (except in proceedings on appeal against the determination) that the determination is correct. Evidence of determinations.

**9.—(1.)** Subject to the next two succeeding sub-sections, the Commissioner may at any time amend a determination in such manner as he thinks necessary. Amendment of determinations.

(2.) Where a person claiming a credit for foreign tax has made to the Commissioner a full and true disclosure of all the material facts necessary for the making of a determination and a determination is made after that disclosure, an amendment of the determination decreasing the amount of a credit shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment, credit or refund of Australian tax or foreign tax.

(3.) An amendment of a determination increasing the amount of a credit for foreign tax shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment, credit or refund of Australian tax or foreign tax.

(4.) Nothing in this section prevents the amendment of a determination in order to give effect to the decision upon an appeal or review, or the amendment of a determination increasing the amount of a credit for foreign tax in pursuance of an objection made by the person who claimed the credit or pending an appeal or review.

(5.) An amended determination shall, for all the purposes of this Act, be deemed to be a determination.

**10.—(1.)** The provisions of Division 2 of Part V. of the Assessment Act apply to and in relation to determinations under this Act in like manner as they apply to and in relation to assessments under the Assessment Act and, for the purposes of those provisions as so applying— Reviews and appeals.

(a) a reference in that Division to an assessment under the Assessment Act shall be read as a reference to a determination under this Act ;

(b) the reference in sub-section (2.) of section one hundred and eighty-eight of the Assessment Act to the reduction of an assessment shall be read as a reference to the allowance of a credit or of an increase in the amount of a credit ;

- (c) the reference in paragraph (b) of section one hundred and ninety of the Assessment Act to the burden of proving that an assessment is excessive shall be read as a reference to the burden of proving that a determination allows insufficient credit; and
- (d) the references in section one hundred and ninety-one of the Assessment Act to the reduction of an assessment by the Commissioner and to the reduced assessment shall be read as references to the amendment of a determination by the Commissioner and to the amended determination, respectively.

(2.) The fact that an appeal or reference in respect of a determination is pending does not in the meantime interfere with or affect the determination or an assessment of tax against which a credit is claimed, and tax may be recovered on the assessment as if an appeal or reference were not pending.

Information for credit to be furnished within three years.

**11.** A credit in respect of foreign tax shall not be allowed unless, within three years after the date upon which Australian tax against which the credit is claimed became due and payable (or within such further period, not exceeding three years, as the Commissioner, in special circumstances, determines), the person claiming the credit furnishes to the Commissioner all the information (including information in relation to any amount to which he is entitled in respect of any relief or repayment of the foreign tax) necessary for the purpose of determining the amount of the credit.

Election in respect of foreign tax on dividend.

**12.—(1.)** Where an agreement provides that a credit in respect of the whole or a part of any foreign tax payable in respect of a dividend shall be allowed against Australian tax payable in respect of the dividend by the person entitled to the dividend only if that person elects to have an amount of foreign tax payable in respect of the dividend included in his assessable income, that credit shall not be allowed unless, within three years after the date upon which Australian tax in respect of the dividend became due and payable (or within such further period, not exceeding three years, as the Commissioner, in special circumstances, determines), the person gives to the Commissioner a notice in writing that he elects to have the amount of foreign tax included in his assessable income of the year of income in which the dividend was paid.

(2.) Where a person gives a notice in accordance with the last preceding sub-section that he elects to have an amount of foreign tax payable in respect of a dividend included in his assessable income, that amount shall, in addition to the dividend, be included in his assessable income of the year of income in which the dividend was paid to him and the dividend shall, for the purposes of this Act and the Assessment Act, be deemed to be increased by the amount of the foreign tax.

## (3.) Where—

- (a) a person gives a notice in accordance with sub-section (1.) of this section that he elects to have an amount of foreign tax payable in respect of a dividend included in his assessable income ; and
- (b) under section twenty-six A of the Assessment Act, an amount in respect of foreign tax deducted, or authorized to be deducted, from that dividend was included, or would, but for this sub-section, be included, in his assessable income of a year of income, other than the year of income in which the dividend was paid to him,

that last-mentioned amount—

- (c) shall be deemed not to have been so included, or shall not be so included, as the case may be ; and
- (d) shall be included in the assessable income of that person of the year of income in which the dividend was paid to him,

and the dividend shall, for the purposes of this Act and the Assessment Act, be deemed to be increased by that amount.

(4.) For the purpose of giving effect to sub-section (2.) or (3.) of this section, the Commissioner may at any time amend an assessment under the Assessment Act.

**13.** Where—

- (a) a person gives a notice in accordance with sub-section (1.) of the last preceding section that he elects to have an amount of foreign tax payable in respect of a dividend included in his assessable income ;
- (b) the company by which the dividend was paid was authorized under the law of the country with the government of which the agreement referred to in that sub-section has been made to deduct from the dividend an amount in respect of foreign tax ; and
- (c) the company has paid the dividend without making such a deduction or without making the authorized deduction in full,

Dividend paid  
without  
deduction in  
full of foreign  
tax.

then, for the purposes of the inclusion of the amount of foreign tax in that person's assessable income and of the determination of the credit in respect of foreign tax to which that person is entitled, there shall be deemed to have been deducted as foreign tax in respect of the dividend the amount which would have been the amount so deducted in respect of foreign tax if the amount of the dividend paid to that person was the balance of a dividend remaining after the company had made the authorized deduction in full.

Maximum  
credits.

14. Where, under the provisions of an agreement or agreements, a credit for foreign tax is, or credits for foreign tax are, allowable in respect of income of a person of a year of income—

- (a) the amount of that credit or the sum of those credits ; or
- (b) in a case where, under section forty-five of the Assessment Act, that person is also entitled to a credit or credits in respect of a dividend or dividends included in that income, the sum of the credit or credits allowable under the agreement or agreements and the credit or credits to which the person is entitled under section forty-five of the Assessment Act,

shall not exceed—

- (c) the amount of Australian tax payable in respect of that income ; or
- (d) the amount of Australian tax payable in respect of the taxable income of that person of the year of income,

whichever is the less.

Application  
of credit.

15.—(1.) Subject to this section, the amount of a credit for foreign tax is a debt due and payable to the person entitled to the credit by the Commissioner on behalf of the Commonwealth.

(2.) The Commissioner may apply the whole or a part of the credit in total or partial discharge of any liability to the Commonwealth of the person entitled to the credit arising under, or by virtue of, the Assessment Act or any other Act of which the Commissioner has the general administration.

(3.) Where, under the last preceding sub-section, the Commissioner has applied an amount of credit for foreign tax in discharge of a liability of a person to the Commonwealth, that person shall be deemed to have paid the amount so applied for the purpose for which, and at the time at which, it has been so applied.

(4.) Where, in a year of income, an amount of credit for foreign tax to which a company is entitled is, in accordance with the provisions of this section, applied by the Commissioner or paid to the company, the amount otherwise deductible from the taxable income of the company of that year of income in accordance with the provisions of paragraphs (a) and (b) of the definition of "the distributable income" in sub-section (1.) of section one hundred and three of the Assessment Act, and of section one hundred and five c of that Act, shall be reduced by the aggregate of the amounts so applied or paid.

(5.) Where, by reason of an amendment of a determination made under this Act, the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit for foreign tax to which a person is entitled exceeds the amount of the credit to which that person is entitled, the Commissioner may recover the amount of the excess as if it were Australian tax due and payable by that person.

16.—(1.) Where, for the purposes of the application of the provisions of an agreement, it is necessary to ascertain the amount of Australian tax payable by a person in respect of the whole or a part of a dividend or of an amount which, for the purposes of a provision of this Act or the Assessment Act, is deemed to be a dividend, the amount of tax shall be ascertained in accordance with this section.

Ascertainment  
of Australian  
tax on dividend.

(2.) Subject to the next succeeding sub-section, in the case of a company, other than a company in the capacity of a trustee, the amount of Australian tax is the amount ascertained by applying to the net dividend the average rate of tax payable by the company and deducting from the resultant amount an amount which bears to the sum of the rebates (if any) which relate to so much of the dividend as is included in the taxable income the same proportion as the net dividend bears to so much of the dividend as is included in the taxable income.

(3.) In the case of a company, other than a company in the capacity of a trustee, by which additional tax under Division 7 of Part III. of the Assessment Act is or was payable in respect of the undistributed amount of the company of the year of income, the amount of Australian tax is the sum of the amount ascertained in accordance with the last preceding sub-section and the amount ascertained by applying to the adjusted net dividend the rate of additional tax imposed on the undistributed amount.

(4.) Subject to the next succeeding sub-section, in the case of a person other than a company, and in the case of a company in the capacity of a trustee, the amount of Australian tax is the amount ascertained by applying to the net dividend the average rate of tax payable by the taxpayer.

(5.) In the case of a trustee of a trust estate who, or a partnership which, has paid or is liable to pay tax assessed under section one hundred and two or ninety-four of the Assessment Act, the amount of Australian tax shall be such amount as the Commissioner determines, being so much of the tax paid or payable by the trustee or partnership in respect of income of the year of income as, in the opinion of the Commissioner, is reasonably attributable to the dividend.

(6.) For the purposes of this section—

(a) the net dividend is an amount calculated in accordance with the formula—

$$A - B \left( \frac{A}{C + B - D} \right); \text{ and}$$

(b) the adjusted net dividend is an amount calculated in accordance with the formula—

$$E \left( \frac{F - G}{C - G} \right).$$

(7.) For the purposes of the last preceding sub-section—

A is the amount of the dividend included in the assessable income of the year of income less the sum of such of the deductions allowed or allowable from the assessable income as relate directly to the dividend ;

B is—

(a) the sum of the apportionable deductions allowed or allowable from the assessable income of the year of income ; or

(b) the amount, if any, by which the sum of the deductions, other than deductions which relate directly to dividends or public loan interest included in the assessable income, allowed or allowable from the assessable income exceeds the amount of income, other than dividends or public loan interest, included in the assessable income,

whichever is the greater ;

C is the amount of the taxable income of the year of income ;

D is the amount of public loan interest included in the taxable income of the year of income ;

E is—

(a) if interest to which section one hundred and sixty AB of the Assessment Act applies is not included in the taxable income of the year of income—the amount of the net dividend ; or

(b) if interest to which that section applies is included in that taxable income—an amount equal to the amount that would have been the net dividend if that interest had been interest other than public loan interest ;

F is the undistributed amount of the year of income in respect of which additional tax under Division 7 of Part III. of the Assessment Act is or was payable ;

G is the amount of interest included in the taxable income of the year of income, being interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931 or sub-section (2.) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911-1946 applies.

(8.) In this section—

“ apportionable deduction ” means—

(a) a deduction allowed or allowable under paragraph (a) or (b) of sub-section (1.) of section seventy-eight, or subdivision B of Division 3 of Part III., of the Assessment Act ; or

- (b) a deduction allowed or allowable under section seventy-two of the Assessment Act, not being a deduction allowed or allowable in respect of rates or land tax incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income ;

“ public loan interest ” means interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931, sub-section (2.) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911–1946 or section one hundred and sixty AB of the Assessment Act applies ;

“ the average rate of tax ” means—

- (a) in relation to a company which has paid or is liable to pay Australian tax, upon taxable income of the year of income consisting of dividends, at a rate imposed expressly in relation to taxable income consisting of dividends—an amount per pound ascertained by dividing the amount of tax which, but for this Act, would have been assessed in respect of the taxable income of the company of the year of income consisting of dividends if there had been no other taxable income by a number equal to the number of whole pounds in the taxable income consisting of dividends ; and
- (b) in relation to a person other than a company to which the last preceding paragraph applies—an amount per pound ascertained by dividing the amount of tax which, but for this Act, would have been assessed in respect of the taxable income of the person of the year of income if—
- (i) the whole of that taxable income had consisted of dividends ;
  - (ii) the person had not been entitled to any rebate of tax or credit against his liability for tax ; and
  - (iii) the person had not been liable to pay any tax under Division 7 of Part III. of the Assessment Act,
- by a number equal to the number of whole pounds in that taxable income ;

“ the dividend ” means the dividend, part of a dividend or amount in respect of which the Australian tax is to be ascertained ;

“ the year of income ” means the year of income in the assessable income of which the dividend is included.

Rebates of  
excess tax on  
dividends.

17.—(1.) Where a provision of an agreement limits the amount of Australian tax payable in respect of a dividend and the amount ascertained in accordance with the last preceding section as the amount of Australian tax payable in respect of that dividend exceeds the limit specified in the agreement, the taxpayer is, subject to the next succeeding sub-section, entitled, in his assessment of the income in which the dividend is included, to a rebate of an amount of tax equal to the amount of the excess.

(2.) A rebate, or the sum of the rebates, to which, under the last preceding sub-section, a taxpayer is entitled in respect of a dividend or dividends included in the income of a year of income shall not exceed the amount of Australian tax payable in respect of the taxable income of the year of income after all other rebates of and deductions from that tax have been taken into account.

Source of  
dividends.

18.—(1.) Where a company is not a resident of Australia but, for the purposes of a law of a country with the government of which an agreement has been made (being a law which imposes foreign tax), is resident in that other country, a dividend paid by the company shall, for the purposes of the agreement, be deemed to be derived from a source in that country.

(2.) The last preceding sub-section does not limit the operation of a provision of an agreement by virtue of which a dividend is deemed to be derived from a source outside Australia.

Certain  
dividends paid  
to United  
Kingdom  
residents.

19. Where a company which is a resident of Australia and, for purposes of United Kingdom tax, is resident in the United Kingdom pays a dividend to a person who is a United Kingdom resident for purposes of United Kingdom tax but is not a resident of Australia, that person shall, for the purposes of paragraphs (2) and (3) of Article VI. of the United Kingdom agreement, be deemed to be subject to United Kingdom tax in respect of that dividend.

Collection of  
tax due to the  
United States  
of America.

20.—(1.) The purpose of this section is to enable the Government of the Commonwealth to give effect to its obligation under Article XVI. of the United States convention and accordingly the amounts of United States tax to which this section applies are amounts of United States tax the collection of which is necessary in order to ensure that the benefit of exemptions from United States tax, or of reductions in rates of United States tax, provided for by the convention is not received by a person not entitled to that benefit.

(2.) Where a person is liable to pay an amount of United States tax to which this section applies, there is payable by that person to the Commissioner as a debt due to the Queen on behalf of the Commonwealth an amount equivalent to that amount, and the amount

so payable may be sued for and recovered in any court of competent jurisdiction by the Commissioner, the Second Commissioner or a Deputy Commissioner suing in his official name.

(3.) An amount payable to the Commissioner under the last preceding sub-section may be collected by the Commissioner under section two hundred and eighteen of the Assessment Act and, for that purpose, a reference in that section to a taxpayer shall be read as a reference to the person by whom that amount is payable and a reference to an amount due by a taxpayer in respect of tax shall be read as a reference to the amount so payable.

(4.) The Commissioner, the Second Commissioner or a Deputy Commissioner may, by writing under his hand, certify—

- (a) that, on a date specified in the certificate, a person specified in the certificate was liable to pay an amount of United States tax ;
- (b) that that amount was an amount of United States tax to which this section applies ; and
- (c) that an amount specified in the certificate is an amount equivalent to the amount of United States tax,

and such a certificate is, in all courts and for all purposes, evidence of the matters stated in the certificate and that the person specified in the certificate has, during the period from the date specified in the certificate until the date of the certificate, continued to be liable to pay the amount of United States tax.

(5.) There shall be paid to the Government of the United States of America out of the Consolidated Revenue Fund an amount equal to any amount paid or recovered by virtue of this section, and the Consolidated Revenue Fund is appropriated accordingly.

(6.) In this section, "United States tax" has the same meaning as in the United States convention.

21. The power to make regulations conferred by section two hundred and sixty-six of the Assessment Act shall be deemed to extend to the making of regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

22. Nothing in this Act affects assessments in respect of income, or the ascertainment of credits against tax on income, of a year of income before the year of income that commenced on the first day of July, One thousand nine hundred and fifty-three. Application of this Act.

## THE SCHEDULES.

### Section 3.

### FIRST SCHEDULE.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE  
GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA FOR THE AVOIDANCE OF  
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia, 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 I

(1) The taxes which are the subject of the present Agreement are—

(a) In Australia :

The Commonwealth income tax (including super-tax), the social services contribution, the additional amount of tax assessed in respect of the undistributed amount of the distributable income of a private company, the further tax imposed on the portion of the taxable income of a company (other than a private company) which has not been distributed as dividends, and the war-time (company) tax (hereinafter referred to as "Australian tax").

(b) In the United Kingdom :

The income tax (including sur-tax), the excess profits tax, and the national defence contribution (hereinafter referred to as "United Kingdom tax").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article XIV.

#### ARTICLE II

(1) In the present Agreement, unless the context otherwise requires—

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(b) The term "Australia" means the Commonwealth of Australia and includes the Territories of Papua, New Guinea and Norfolk Island.

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Australia, as the context requires.

(d) The term "tax" means United Kingdom tax or Australian tax, as the context requires.

(e) The term "person" includes any body of persons, corporate or unincorporate.

(f) The terms "United Kingdom resident" and "Australian resident" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and is not a resident of Australia for the purposes of Australian tax and any person who is a resident of Australia for the purposes of Australian tax and is not resident in the United Kingdom for the purposes of United Kingdom tax.

(g) The terms "resident of one of the territories" and "resident of the other territory" mean a United Kingdom resident or an Australian resident, as the context requires.

(h) The terms "United Kingdom enterprise" and "Australian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a United Kingdom resident and an industrial or commercial enterprise or undertaking carried on by an Australian resident; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or an Australian enterprise, as the context requires.

(i) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services.

FIRST SCHEDULE—*continued.*

- (j) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch or other fixed place of business and includes a management, factory, mine, or agricultural or pastoral property, but does not include an agency in the other territory unless the agent has, and habitually exercises, authority to conclude contracts on behalf of such enterprise otherwise than at prices fixed by the enterprise or regularly fills orders on its behalf from a stock of goods or merchandise in that other territory :

Provided that an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at the rate customary in the class of business in question :

Provided further that the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

- (k) Words in the singular include the plural, and words in the plural include the singular.

(2) The terms "Australian tax" and "United Kingdom tax", as used in the present Agreement, do not include any tax payable in Australia or the United Kingdom which represents a penalty imposed under the law of Australia or the United Kingdom relating to the taxes which are the subject of the present Agreement.

(3) In the application of the provisions of the present Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of the present Agreement.

## ARTICLE III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Australian tax unless the enterprise is engaged in trade or business in Australia through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Australia, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect—

- (a) the operation of Divisions 14 and 15 of Part III of the Australian Income Tax Assessment Act 1936-1946 (or that Act as amended from time to time) relating to film business controlled abroad and insurance with non-residents, or the corresponding provisions of any statute substituted for that Act; or
- (b) the application of the law of Australia regarding the imposition of war-time (company) tax where a holding company has elected that its subsidiary companies shall be treated as branches.

(2) The industrial or commercial profits of an Australian enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and national defence contribution in the case of inter-connected companies.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

FIRST SCHEDULE—*continued.*

If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

## ARTICLE IV

(1) Where

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory and
- (c) in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,

then, if by reason of those conditions profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the territories under paragraph (1) of this Article shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

## ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships whose port of registry is in that territory, or aircraft registered in that territory, shall be exempt from tax in the other territory.

## ARTICLE VI

(1) Any dividend paid to a United Kingdom resident by a company which is a United Kingdom resident shall be exempt from Australian tax.

(2) Any dividend paid by a company which is a resident of Australia (whether or not also resident in the United Kingdom or elsewhere) to a company which—

- (a) is a United Kingdom resident,
- (b) is subject to United Kingdom tax in respect thereof, and
- (c) beneficially owns all the shares (less directors' qualifying shares) of the former company,

shall be exempt from Australian tax:

Provided that the exemption shall not apply if

- (i) the total of the directors' qualifying shares exceeds five per centum of the paid-up capital of the company paying the dividend, or
- (ii) ordinarily more than one-half of the taxable income of that company is derived from interest, dividends and rents other than interest, dividends and rents from any wholly-owned subsidiary company the taxable income of which consists wholly or mainly of industrial or commercial profits.

FIRST SCHEDULE—*continued.*

(3) Subject to such provisions as may be enacted in Australia for the purpose of determining the amount of Australian tax payable in respect of any dividend, and without limiting the exemptions provided by paragraphs (1) and (2) of this Article, the amount of Australian tax payable in respect of any dividend the whole or part of which is paid out of profits derived from sources in Australia to a United Kingdom resident who is subject to United Kingdom tax in respect thereof and is not engaged in trade or business in Australia through a permanent establishment situated therein, shall not exceed half the amount which would be payable in respect of the dividend or part thereof but for this paragraph.

(4) Notwithstanding the foregoing provisions of this Article, the amount of the additional tax assessable in respect of the undistributed amount of the distributable income of a company which is a private company for purposes of Australian tax shall be the amount which would have been assessable if those provisions had not been included in this Agreement.

(5) Any dividend paid by a company resident in the United Kingdom (whether or not also a resident of Australia or elsewhere) to an individual who—

- (a) is an Australian resident,
- (b) is subject to Australian tax in respect thereof, and
- (c) is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein,

shall be exempt from United Kingdom sur-tax.

## ARTICLE VII

(1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this Article in respect of so much of any such royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this Article the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources or a rent or royalty in respect of a motion picture film.

## ARTICLE VIII

(1) Remuneration (other than pensions) paid by the Government of the Commonwealth of Australia or of any State of Australia to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from United Kingdom tax if the individual is not ordinarily resident in the United Kingdom or is resident in the United Kingdom solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of the United Kingdom to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia or is resident in Australia solely for the purpose of rendering those services.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments or by the Government of any State of Australia.

## ARTICLE IX

(1) An individual who is a United Kingdom resident shall be exempt from Australian tax on remuneration or other income in respect of personal (including professional) services performed in Australia in any year of income if—

- (a) he is present in Australia for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a United Kingdom resident, and
- (c) the remuneration or other income is subject to United Kingdom tax.

FIRST SCHEDULE—*continued.*

(2) An individual who is an Australian resident shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed in the United Kingdom in any year of assessment if—

- (a) he is present in the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of an Australian resident, and
- (c) the profits or remuneration are subject to Australian tax.

(3) The provisions of this Article shall not apply to the profits, remuneration or other income of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

## ARTICLE X

(1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first-mentioned territory.

(2) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

## ARTICLE XI

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

## ARTICLE XII

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Australian tax payable, whether directly or by deduction, in respect of income derived from sources in Australia shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of Australia, the credit shall take into account, in addition to any Australian tax payable in respect of the dividend, the Australian tax (other than war-time (company) tax) payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Australian tax (other than war-time (company) tax) so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

For the purposes of this paragraph, any amount which is included in a person's taxable income under Division 14 or 15 of Part III of the Australian Income Tax Assessment Act 1936-1946 (or that Act as amended from time to time) relating to film business controlled abroad and insurance with non-residents, or under the corresponding provisions of any statute substituted for that Act, shall be deemed to be derived from sources in Australia.

(2) Where Australian tax is payable in respect of income derived from sources in the United Kingdom by a person who is a resident of Australia, being income in respect of which United Kingdom tax is payable, whether directly or by deduction, the United Kingdom tax so payable (reduced by the amount of any relief or repayment attributable to that income to which that person is entitled under the law of the United Kingdom) shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Australia, be allowed as a credit against the Australian tax payable in respect of that income: Provided that where the income is a dividend paid by a company resident in the United Kingdom the credit shall be allowed only if the recipient elects to have the amount of the United Kingdom tax (as so reduced) included in his assessable income for purposes of Australian tax.

For the purposes of this paragraph, a dividend paid by a company resident in the United Kingdom shall be deemed to be income derived from sources in the United Kingdom, and the United Kingdom tax payable in respect of any such dividend before reduction as aforesaid shall be deemed to include the amount of United Kingdom income tax deductible from the gross amount of the dividend (but not so much of

FIRST SCHEDULE—*continued.*

that income tax as exceeds tax on that gross amount at the net United Kingdom rate applicable to the dividend for purposes of United Kingdom tax where, owing to the allowance of double taxation relief in the United Kingdom, that net rate is less than the rate of United Kingdom income tax deductible from the dividend).

(3) Where tax is imposed by both Contracting Governments on income derived from sources outside both Australia and the United Kingdom by a person who is a resident of Australia for purposes of Australian tax and is also resident in the United Kingdom for purposes of United Kingdom tax, there shall be allowed against the tax imposed by each Contracting Government a credit which bears the same proportion to the amount of that tax (as reduced by any credit allowed in respect of tax payable in the territory from which the income is derived) or to the amount of the tax imposed by the other Contracting Government (reduced as aforesaid), whichever is the less, as the former amount (before any such reduction) bears to the sum of both amounts (before any such reduction).

(4) For the purposes of this Article, profits, remuneration or other income in respect of personal (including professional) services performed in one of the territories shall be deemed to be income derived from sources in that territory.

## ARTICLE XIII

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment or collection of, or the determination of appeals in relation to, the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of Australia, the Commissioner of Taxation or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and in the case of any territory to which the present Agreement is extended under Article XIV, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

## ARTICLE XIV

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of the notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such an extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply, as from the date or dates specified in the notice or if no date is specified at the expiration of six months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to Australia, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.

FIRST SCHEDULE—*continued.*

(3) In the application of the present Agreement in relation to any territory to which it is extended by notification by the United Kingdom or Australia, references to the "United Kingdom" or, as the case may be, "Australia" shall be construed as references to that territory.

(4) The termination in respect of Australia or the United Kingdom of the present Agreement under Article XVI shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the Agreement has been extended by Australia or the United Kingdom.

(5) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

## ARTICLE XV

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Australia as are necessary to give the Agreement the force of law in the United Kingdom and Australia respectively, and shall thereupon have effect—

- (a) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years; as respects sur-tax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; and as respects excess profits tax and national defence contribution for any chargeable accounting period beginning on or after the first day of April, 1946, and for the unexpired portion of any chargeable accounting period current at that date;
- (b) in Australia, as respects tax for the year of tax beginning on the first day of July, 1946, and subsequent years.

## ARTICLE XVI

The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 31st day of March in any calendar year after the year 1954, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

- (a) in the United Kingdom, as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given; as respects sur-tax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and as respects national defence contribution for any chargeable accounting period beginning on or after the first day of April in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date;
- (b) in Australia, as respects tax for any year of tax beginning on or after the first day of July in the calendar year next following that in which such notice is given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed the present Agreement and have affixed thereto their seals.

Done at London, in duplicate, on the twenty ninth day of October One thousand nine hundred and forty-six.

HUGH DALTON

{ For the Government of the  
United Kingdom :  
(L.S.)

JOHN A. BEASLEY

{ For the Government of the  
Commonwealth of Australia :  
(L.S.)

## SECOND SCHEDULE.

Section 3.

CONVENTION BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the Commonwealth of Australia and the Government of the United States of America, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries:

The Government of the Commonwealth of Australia :

Sir Percy C. Spender, K.B.E., Q.C., Ambassador Extraordinary and Plenipotentiary of the Commonwealth of Australia, and

The Government of the United States of America :

Mr. Walter Bedell Smith, Acting Secretary of State of the United States of America,

who, having communicated to one another their full powers, found in good and due form, have agreed as follows :

## ARTICLE I

(1) The taxes which are the subject of this Convention are—

(a) In Australia :

The Commonwealth income tax and social services contribution, including the tax at the further rates of tax payable in respect of income from property and the additional tax assessed in respect of the undistributed amount of the distributable income of a private company (hereinafter referred to as "Australian tax");

(b) In the United States :

The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as "United States tax").

(2) This Convention shall also apply to any other tax of a substantially similar character imposed by either Contracting State after the date of signature of this Convention.

## ARTICLE II

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

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

(b) the term "Australia" means the Commonwealth of Australia and includes the Territories of Papua, New Guinea and Norfolk Island;

(c) the term "United States" means the United States of America and when used in a geographical sense includes only the States thereof, the Territories of Alaska and Hawaii, and the District of Columbia;

(d) the term "tax" means Australian tax or United States tax, as the context requires;

(e) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a United States resident or an Australian resident, as the context requires;

(f) the term "Australian resident" means any person (other than a citizen of the United States or a United States corporation) who is a resident of Australia and not resident in the United States for the purposes of United States tax, but a corporation (other than a United States corporation) which is a resident of Australia shall not be deemed to be resident in the United States even though that corporation is engaged in trade or business within the United States;

(g) the term "United States resident" means any individual who is resident in the United States for the purposes of United States tax and not a resident of Australia, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not a resident of Australia;

(h) the term "resident of Australia" has the meaning which it has under the laws of Australia relating to Australian tax;

SECOND SCHEDULE—*continued.*

- (i) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a United States enterprise or an Australian enterprise, as the context requires;
- (j) the term "Australian enterprise" means an industrial or commercial enterprise or undertaking carried on by an Australian resident;
- (k) the term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a United States resident;
- (l) the term "company" has the meaning which it has under Australian law relating to Australian tax;
- (m) the term "United States corporation" means a corporation, association or other like entity created or organized in or under the laws of the United States;
- (n) the term "industrial or commercial profits" includes the profits of an industrial or commercial enterprise or undertaking but does not include income in the form of dividends, interest, rent, royalties, management charges, remuneration for personal services, or income from the operation of ships or aircraft;
- (o) the term "permanent establishment" means a branch, agency, management or fixed place of business and includes a factory, workshop, mine, oilwell, office or agricultural or pastoral property, or the use or installation of substantial equipment or machinery by, for, or under contract with, an enterprise of one of the Contracting States. Where an enterprise or a resident of one of the Contracting States—
  - (i) carries on business dealings in the other Contracting State through a bona fide commission agent or broker acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at the rate customary in the class of business in question; or
  - (ii) maintains in that other State a fixed place of business exclusively for the purchase of goods or merchandise; or
  - (iii) has a subsidiary corporation which is engaged in trade or business in that other State, whether through a permanent establishment or otherwise; or
  - (iv) has an agent in that other State (other than an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of that enterprise, or regularly fills orders on its behalf from a stock of goods or merchandise located in that other State),
 that enterprise or resident shall not, merely by reason thereof, be deemed to have a permanent establishment in that other State;
- (p) the term "taxation authority" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury and, in the case of Australia, the Commissioner of Taxation or his authorized representative.

(2) In the application of the provisions of this Convention by one of the Contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

## ARTICLE III

(1) An Australian enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment in the United States. If it is so engaged, United States tax may be imposed upon the entire income of that enterprise from sources within the United States.

(2) A United States enterprise shall not be subject to Australian tax in respect of its industrial or commercial profits unless it is engaged in trade or business in Australia through a permanent establishment in Australia. If it is so engaged, Australian tax may be imposed upon the entire income of that enterprise from sources within Australia.

SECOND SCHEDULE—*continued.*

(3) There shall be allowed in determining the industrial or commercial profits attributable to a permanent establishment in one of the Contracting States all expenses of a type allowed as a deduction by that State and which are reasonably attributable to the permanent establishment, including executive and general administrative expenses so attributable, except that, in the case of Australia, there shall be applied the principle underlying section 38 of the Australian Income Tax and Social Services Contribution Assessment Act 1936-1953.

(4) Where an enterprise of one of the Contracting States is engaged in trade or business in the other Contracting State through a permanent establishment in that other State, there shall be attributed to that permanent establishment the industrial or commercial profits which that enterprise might be expected to derive in that other State if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income of that permanent establishment and shall be taxed accordingly.

(5) If the information available to the taxation authority of the Contracting State concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of any law of that State in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that State: *Provided*, That the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this Article.

(6) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the Contracting States shall be attributed to a permanent establishment in the other Contracting State by reason of the mere purchase by that enterprise of the goods or merchandise within that other Contracting State.

## ARTICLE IV

(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
- (c) in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,

then, if by reason of those circumstances profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise engaged in the same or similar activities and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the Contracting States under paragraph (1) of this Article shall, subject to the provisions of Article XX of this Convention, be deemed to be income of that enterprise and shall be taxed accordingly.

(3) If the information available to the taxation authority of the Contracting State concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that State: *Provided*, That the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this Article.

## SECOND SCHEDULE—continued.

## ARTICLE V

(1) Profits which an Australian resident derives from operating ships or aircraft registered in Australia shall be exempt from United States tax.

(2) Profits which a citizen of the United States who is not a resident of Australia or a United States corporation which is not a resident of Australia derives from operating ships or aircraft registered under the laws of the United States shall be exempt from Australian tax.

## ARTICLE VI

(1) A dividend paid to a United States resident by a United States corporation which is not a resident of Australia shall be exempt from Australian tax.

(2) A dividend paid to an Australian resident by a company which is a resident of Australia (other than a United States corporation) shall be exempt from United States tax.

## ARTICLE VII

(1) The amount of Australian tax on dividends paid by a company which is a resident of Australia to a United States resident who is liable for United States tax thereon and is not engaged in trade or business in Australia through a permanent establishment in Australia shall not exceed 15 per centum of the dividend.

(2) The rate of United States tax on dividends derived from sources within the United States by an Australian resident who is liable for Australian tax thereon and is not engaged in trade or business in the United States through a permanent establishment in the United States shall not exceed 15 per centum.

## ARTICLE VIII

Any additional tax assessable—

(a) in respect of the undistributed amount of the distributable income of a company which is a private company for purposes of Australian tax ; or

(b) under the laws of the United States with respect to undistributed profits of corporations,

as the case may be, shall be the amount which would have been assessable if Articles VI and VII had not been included in this Convention.

## ARTICLE IX

(1) An individual who is an Australian resident shall be exempt from United States tax on remuneration or other income received, in respect of personal (including professional) services performed in the United States, on or after the effective date of this Convention if—

(a) during the taxable year in which the services are performed he is present in the United States for a period or periods not exceeding in the aggregate 183 days ; and

(b) the services are performed for or on behalf of an Australian resident.

(2) An individual who is a United States resident shall be exempt from Australian tax on remuneration or other income received, in respect of personal (including professional) services performed in Australia, on or after the effective date of this Convention if—

(a) during the year of income in which the services are performed he is present in Australia for a period or periods not exceeding in the aggregate 183 days ; and

(b) the services are performed for or on behalf of a United States resident.

(3) In determining, for the purposes of this Article, whether a person for, or on behalf of, whom services are performed is a resident of one of the Contracting States that person shall not be considered a resident of the other Contracting State solely by reason of the fact that he is engaged in trade or business in that other State through a permanent establishment in that other State.

## ARTICLE X

Royalties (not being royalties in relation to motion picture films or the reproduction by any means of images or sound produced directly or indirectly from those films) for the use, production or reproduction of, or for the privilege of using, producing or reproducing, a literary, dramatic, musical or artistic work in which copyright subsists, being royalties derived from sources within one of the Contracting States by a resident of the other Contracting State not engaged in trade or business in the former State through a permanent establishment in that State, shall be exempt from tax by the former State.

SECOND SCHEDULE—*continued.*

## ARTICLE XI

A resident of one of the Contracting States deriving from sources within the other Contracting State—

- (a) royalties in respect of the exploitation of mines, quarries or other natural resources ; or
- (b) rentals from real property,

may elect for any taxable year to be subject to the tax of the other State on a net basis as if that resident were engaged in trade or business within the other State through a permanent establishment in that State.

## ARTICLE XII

(1) A pension (including a Government pension) and an annuity, derived from sources within one of the Contracting States by a resident of the other Contracting State, shall be exempt from tax by the former 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 consideration of money paid.

## ARTICLE XIII

Where a professor or teacher, who is a resident of one of the Contracting States, is temporarily present in the other Contracting State for the purpose of teaching during a period not exceeding two years at a university, college, school or other educational institution in that other State, remuneration derived by him for so teaching for that period shall be exempt from tax by that other State.

## ARTICLE XIV

Income derived from sources within one of the Contracting States by a religious, scientific, educational, or charitable organization of the other Contracting State shall be exempt from taxation by the State from which the income is derived if, within the meaning of the laws of that State, that organization would, if established in that State, be exempt in respect of that income, and if within the meaning of the laws of the other State it would be exempt in respect of income derived from sources within that other State.

## ARTICLE XV

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the date of signature of this Convention, Australian tax shall be allowed as a credit against United States tax.

(2) Subject to any provisions of the law of Australia which may from time to time be in force and which—

- (a) relate to the allowance of a credit against Australian tax of tax payable outside Australia ; and
- (b) do not affect the general principle of this paragraph,

United States tax payable in respect of income derived by a resident of Australia from sources in the United States shall be allowed as a credit against Australian tax payable in respect of that income.

(3) For the purposes of this Article—

- (a) profits, remuneration or other income in respect of personal (including professional) services performed in one of the Contracting States shall be deemed to be income derived from sources in that State ;
- (b) subject to the provisions of paragraph (1) of this Article, an amount included in taxable income under Division 14 or 15 of Part III. of the Australian Income Tax and Social Services Contribution Assessment Act 1936-1953, or that Act as amended from time to time, or the corresponding provisions of a statute substituted for that Act, shall be deemed to be income derived from sources in Australia ; and

(c) the terms “ Australian tax ” and “ United States tax ” do not include any tax payable in Australia or the United States which represents a penalty imposed under the law of either Contracting State relating to the taxes which are the subject of this Convention.

SECOND SCHEDULE—*continued.*

## ARTICLE XVI

Each Contracting State shall, so far as it is practicable to do so, collect, and pay to the other Contracting State, amounts equivalent to amounts due to the other Contracting State by way of taxes which are the subject of this Convention, being amounts the collection of which is necessary in order to ensure that the benefit of exemptions from tax, or of reductions in rates of tax, provided for by this Convention is not received by persons not entitled to that benefit.

## ARTICLE XVII

Where a taxpayer shows proof that the action of the taxation authority of one of the Contracting States has resulted, or is likely to result, in double taxation contrary to the provisions of this Convention, he shall be entitled to present the facts to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation or other entity, to the State in which it is created or organized and, should the taxpayer's claim be deemed worthy of consideration, the taxation authority of that State shall endeavour to come to an agreement with the taxation authority of the other State with a view to avoidance of the double taxation in question.

## ARTICLE XVIII

(1) The taxation authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes which are the subject of this Convention.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or a reviewing authority) concerned with the assessment or collection of the taxes, which are the subject of this Convention, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

## ARTICLE XIX

The taxation authority of each Contracting State may communicate directly with the taxation authority of the other Contracting State for the purpose of giving effect to the provisions of this Convention.

## ARTICLE XX

The provisions of this Convention shall not—

- (a) be construed as restricting in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in the determination of the tax payable to that State; or
- (b) affect the operation of Divisions 14 and 15 of Part III. of the Australian Income Tax and Social Services Contribution Assessment Act 1936–1953, or that Act as amended from time to time, relating to film business controlled abroad and insurance with non-residents, or the corresponding provisions of any statute substituted for that Act.

## ARTICLE XXI

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Canberra as soon as possible.

(2) This Convention shall become effective—

- (a) in the case of United States tax, on the first day of January in the year in which the exchange of instruments of ratification takes place; and
- (b) in the case of Australian tax, for the year of income commencing on the first day of July next succeeding the date upon which this Convention becomes effective in the case of United States tax.

SECOND SCHEDULE—*continued.*

(3) This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any year after 1955, give to the other Contracting State notice of termination and, in that event, this Convention shall cease to be effective—

- (a) in the case of United States tax, on and after the first day of January next following the giving of that notice of termination ; and
- (b) in the case of Australian tax, for the year of income commencing on the first day of July next succeeding the date on which this Convention ceases to be effective in the case of United States tax, and for all subsequent years.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE at Washington, in duplicate, on the fourteenth day of May, one thousand nine hundred and fifty-three.

FOR THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA :

PERCY C. SPENDER (L.S.)

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

WALTER BEDELL SMITH (L.S.)

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