

**CONVENTION BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE STATE OF ISRAEL
FOR THE ELIMINATION OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE**

The Government of Australia and the Government of the State of Israel,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

Chapter I

SCOPE OF THE CONVENTION

ARTICLE 1

Persons Covered

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 9 (Associated Enterprises) and Articles 18 (Government Service), 19 (Professors, Teachers and Researchers), 20 (Students), 23 (Relief from Double Taxation), 24 (Non-discrimination), 25 (Mutual Agreement Procedure) and 27 (Members of Diplomatic Missions and Consular Posts).

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

a) in Israel:

- i) the income tax and company tax (including tax on capital gains);
- ii) the tax imposed on gains from the alienation of property according to the Real Estate Taxation Law; and
- iii) the tax imposed under the Petroleum Profits Taxation Law,
(hereinafter referred to as "Israeli tax");

b) in Australia:

- i) the income tax;
- ii) resource rent taxes; and
- iii) the fringe benefits tax,
imposed under the federal law of Australia
(hereinafter referred to as "Australian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal law of Australia or the law of Israel after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Chapter II
DEFINITIONS

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Israel" means the State of Israel and when used in a geographical sense includes its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, including seabed and subsoil thereof over which the State of Israel, under the laws of the State of Israel and in accordance with international law, exercises its sovereign or other rights and jurisdiction;
 - b) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Australia or Israel, as the context requires;
 - d) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
 - e) the term "competent authority" means:
 - (i) in Israel, the Minister of Finance or an authorised representative of the Minister of Finance;

- (ii) in Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
- f) the term "enterprise" applies to the carrying on of any business;
- g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term "international traffic" means any transport by a ship or aircraft except when such transport is solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
- i) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State;
- j) the term "person" includes an individual, a company and any other body of persons;
- k) the term "business" includes the performance of professional services and of other activities of an independent character;
- l) the term "tax" means Australian tax or Israel tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;
- m) the term "recognised pension fund" of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State or, in the case of Australia, an Australian superannuation fund for the purposes of Australian tax, and:
 - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subparagraph (i) or, in the case of Australia, to invest such funds, or the complying superannuation assets or segregated exempt assets of a life insurance company that is a resident of Australia, or any combination thereof.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax as a resident of that State or is liable to tax by reason of domicile, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:

- a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; if a permanent home is available in both States, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- b) if the State in which the centre of vital interests is situated cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which that individual has an habitual abode;
- c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under this Convention.

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, an oil or gas well, a quarry or any other place of exploration for, or extraction or exploitation of, natural resources; and
 - g) an agricultural, pastoral or forestry property.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:
 - a) carries on supervisory or consultancy activities in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period in connection with a building site or construction or installation project which is being undertaken in that other State;
 - b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for, or extraction or exploitation of, natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
 - c) operates substantial equipment in the other State (including as provided in subparagraph b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period,

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business,

would not make this place of business a permanent establishment under the provisions of that paragraph.

5. For the purpose of determining whether the periods referred to in paragraphs 3 and 4 have been exceeded,

- a) where an enterprise of a Contracting State carries on any of the activities referred to in paragraphs 3 and 4 in the other Contracting State, and
- b) connected activities are carried on in that other Contracting State during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on its activities.

6. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- 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 of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; or
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

7. Paragraph 6 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

8. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 9, where a person is acting in a Contracting State on behalf of an enterprise and

- a) in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (iii) for the provision of services by that enterprise, or
- b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. Paragraph 8 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

10. For the purpose of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interests in the other (or, in the case

of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

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

12. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 (Interest) and paragraph 5 of Article 12 (Royalties) whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

Chapter III
TAXATION OF INCOME

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include:

- a) property accessory to immovable property;
- b) livestock and equipment used in agriculture and forestry;
- c) rights to which the provisions of general law respecting landed property apply;
- d) usufruct of immovable property, including a lease of land and any other interest in or over land, whether improved or not;
- e) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources;
- f) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources; and
- g) any option or similar right to acquire immovable property.

Ships and aircraft shall not be regarded as immovable property.

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

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

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated 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 determining 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
5. 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.
6. Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. Notwithstanding the preceding provisions of this Article, profits of an enterprise of a Contracting State from carrying on business of any form of insurance may be taxed in the other Contracting State in accordance with the law of that other State, provided that if the law in force in either Contracting State at the date of signature of the 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.
8. Where:

- a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5 (Permanent Establishment), have a permanent establishment in that other State,

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

9. A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after the expiration of seven years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of ten years, an audit into the profits of the enterprise has been initiated by either State.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, or from leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

ARTICLE 9

Associated Enterprises

1. Where:

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

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

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

3. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions existing between the enterprises had been those which might have been expected to have existed between independent enterprises dealing wholly independently with one another, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

4. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after the expiration of seven years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of ten years, an audit into the profits of an enterprise has been initiated by that State.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a Real Estate Investment Fund which is a resident of Israel) which holds directly at least 10 per cent of the voting power in the company paying the dividends throughout a 365 day period that includes the day of payment of the dividend (for the purposes of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
- b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Distributions made by an Israeli REIT to a resident of Australia may be taxed in Australia. However, such distributions may also be taxed in Israel and according to the laws of Israel, but if the beneficial owner of these distributions is a resident of Australia and holds directly less than 10 per cent of the capital of that Israeli REIT the tax so charged shall not exceed 15 per cent of the gross amount of the distributions.

This paragraph shall not affect the taxation of the Israeli REIT in respect of the profits out of which the distributions are made.

4. Notwithstanding the provisions of subparagraph b) of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds directly less than 10 per cent of the voting power in the company paying the dividends, and the beneficial owner is:

- a) a Contracting State, or political subdivision or a local authority thereof (including a government investment fund);
- b) the Reserve Bank of Australia or the Bank of Israel;
- c) in the case of Australia, a recognised pension fund of Australia, or a resident of Australia, deriving such dividends from the carrying on of complying superannuation activities; or

- d) in the case of Israel, a recognised pension fund of Israel whose income is exempt from Israeli tax or a resident of Israel deriving such dividends in respect of a pension plan that has been approved in accordance with the provisions of the Control of Financial Services Act (Provident Funds) 2005 as a pension Provident Fund and those dividends, in effect, are not taxed in Israel.

5. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares, or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident for the purposes of its tax.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends or of the distributions by an Israeli REIT, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends or the Israeli REIT making the distributions is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends or distributions are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company - being dividends beneficially owned by a person who is not a resident of the other Contracting State - except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

This paragraph shall apply also to distributions made by an Israeli REIT.

8. Notwithstanding paragraph 7, dividends paid by a company that is deemed to be a resident only of one Contracting State pursuant to paragraph 3 of Article 4 (Resident) may be taxed in the other Contracting State, but only to the extent that the dividends are paid out of profits arising in that other Contracting State. Where such dividends are beneficially owned by a resident of the first-mentioned State, paragraph 2 of this Article shall apply as if the company paying the dividends were a resident only of the other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the interest if the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer, provided that the interest is not paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance;
- b) 5 per cent of the gross amount of the interest if the interest is derived by:
 - (i) in the case of Australia, a recognised pension fund of Australia, or a resident of Australia, deriving such interest from the carrying on of complying superannuation activities; or
 - (ii) in the case of Israel, a recognised pension fund of Israel whose income is exempt from Israeli tax or a resident of Israel deriving such interest in respect of a pension plan that has been approved in accordance with the provisions of the Control of Financial Services Act (Provident Funds) 2005 as a pension Provident Fund and such interest, in effect, is not taxed in Israel; and
- c) 10 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State if the interest is derived by a Contracting State or a political or administrative sub-division or a local authority thereof (including a government investment fund), or the Reserve Bank of Australia or the Bank of Israel.

4. Notwithstanding the provisions of subparagraph b) of paragraph 2 and paragraph 3, interest referred to in those provisions may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the beneficial owner of the interest is in a position to control or influence the key decision-making of the issuer of the debt-claim.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.

6. The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State, or the payer is a resident of the other Contracting State under paragraphs 2 or 3 of Article 4 (Resident) and the interest is allowed as a deduction for the payer in the first-mentioned State against income derived in that first-mentioned State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid or credited to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
 - a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
 - b) the supply of scientific, technical, industrial or commercial knowledge or information;
 - c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph a) or any such knowledge or information as is mentioned in subparagraph b);
 - d) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;
 - e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State;
 - f) the use of, or the right to use, industrial, commercial or scientific equipment; or
 - g) not supplying or granting to another person any property or right referred to in this paragraph.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State, or the payer is a resident of the other Contracting State under paragraphs 2 or 3 of Article 4 (Resident) and the royalties are allowed as a deduction for the payer in the first-mentioned State against income derived in that first-mentioned State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by the permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Alienation of Property

1. Income derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Immovable Property) and situated in the other Contracting State may be taxed in that other State.
2. Income derived by a resident of a Contracting State from the alienation of any shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6 (Income from Immovable Property), situated in that other State.
3. Income from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such income from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
4. Income that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident, unless the alienator is not the beneficial owner of the gains. In such cases, the gains from the alienation of property in the other Contracting State may be taxed in that other Contracting State.
6. The provisions of this Article shall not affect the right of a Contracting State to tax, in accordance with its laws, income from the alienation of any property derived by a person who is a resident of that State at any time during the year of income in which the property is alienated, or has been so resident at any time during the 5 years immediately preceding that year.

ARTICLE 14

Income from Employment

1. Subject to the provisions of Articles 15 (Directors' Fees), 17 (Pensions), 18 (Government Service) and 19 (Professors, Teachers and Researchers), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

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

3. Notwithstanding the preceding provisions of this Article and Article 1 (Persons Covered), remuneration derived by an individual, whether a resident of a Contracting State or not, in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

4. A severance payment derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State unless all or part of the employment is exercised in the other Contracting State. If the employment is so exercised, the part of the severance payment that accords to the period of employment exercised in that other State may be taxed in that other State.

5. Where, except for the application of this paragraph, a fringe benefit is taxable in a Contracting State in the hands of an individual in respect of employment exercised by that individual and is also taxable in the other Contracting State in the hands of that individual's employer, the fringe benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary, wages or other similar remuneration from the employment to which the fringe benefit relates. A Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary, wages or other similar remuneration from the relevant employment is allocated to that State in accordance with this Convention and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

ARTICLE 15

Directors' Fees

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

ARTICLE 16

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Income from Employment), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Income from Employment), be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State by an entertainer or sportsperson of the other Contracting State if the visit to the first mentioned Contracting State is wholly or mainly supported by public funds of the other Contracting State or a political subdivision or local authorities thereof. In such a case, the income is taxable only in the Contracting State in which the entertainer or the sportsperson is a resident.

ARTICLE 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18 (Government Service), pensions and other similar periodic remuneration paid to a resident of a Contracting State shall be taxable only in that State.

2. Subject to the provisions of paragraph 2 of Article 18 (Government Service), lump sums arising in a Contracting State and paid to a resident of the other Contracting State from a recognised pension fund, under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, may be taxed in the first-mentioned State.

ARTICLE 18

Government Service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14 (Income from Employment), 15 (Directors' Fees), 16 (Artistes and Sportspersons) and 17 (Pensions) shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Professors, Teachers and Researchers

1. A professor, teacher or researcher who visits one of the Contracting States, for a period not exceeding two years, for the purpose of teaching or engaging in research at a university, college, school or other recognised educational institution in that Contracting State, and who immediately before that visit was a resident of the other Contracting State, shall, for a period not exceeding two years from the date of first arrival in that first-mentioned State for that purpose, be exempt from tax in that first-mentioned State on the remuneration for such teaching or research, to the extent that the remuneration is subject to tax in the other Contracting State.

2. No exemption shall be granted under paragraph 1 with respect to any remuneration for research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

Other Income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State unless the income arises in the other Contracting State. If the income arises in the other Contracting State, the income may be taxed in that other State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property), if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might have been expected to have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 22

Limitation on Benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

Chapter IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23

Relief from Double Taxation

1. In the case of Israel double taxation shall be avoided as follows:
 - a) Where a resident of Israel derives income which, in accordance with the provisions of this Convention, may be taxed in Australia (except to the extent that the provisions of this Convention allow taxation by Australia solely because the income is also income derived by a resident of Australia), Israel shall (subject to the laws of Israel regarding the allowance of a credit of foreign taxes, which shall not affect the general principle contained in this paragraph) allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Australia.
 - b) Such deductions shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Australia.
2. Subject to the provisions of the laws of Australia which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), Israeli tax paid under the laws of Israel and in accordance with this Convention (except to the extent that the provisions of this Convention allow taxation by Israel solely because the income is also income derived by a resident of Israel), in respect of income derived by a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income.
3. For the purposes of paragraphs 1 and 2, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

Chapter V
SPECIAL PROVISIONS

ARTICLE 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties) or paragraph 3 of Article 21 (Other Income), apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall apply to the taxes referred to in Article 2 (Taxes Covered) of this Convention.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Convention, the person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24 (Non-discrimination), of that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes covered by this Convention imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (Persons Covered).

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes of every kind and description, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of International Law or under the provisions of special agreements.

Chapter VI
FINAL PROVISIONS

ARTICLE 28

Protocol

The attached Protocol shall be an integral part of this Convention.

ARTICLE 29

Entry into Force

The Contracting States shall notify each other in writing, through the diplomatic channels, of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the Convention shall have effect:

- a) in the case of Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January next following the date on which the Convention enters into force;
 - (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which this Convention enters into force;
 - (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Convention enters into force;
- b) in the case of Israel:
 - i) with respect of taxes withheld at source, on amounts paid on or after the first day of January of the calendar year following the year in which the Convention entered into force;
 - ii) with respect of other taxes, on taxes levied for periods beginning on or after the first day of January of the calendar year following the year in which the Convention entered into force.

ARTICLE 30

Termination

This Convention shall continue in effect indefinitely, but either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination, through the diplomatic channel, to the other State at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

- a) in the case of Australia:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January next following the date on which the notice of termination is given;
 - (ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the notice of termination is given;
 - (iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the notice of termination is given;
- b) in the case of Israel:
 - i) in respect of taxes withheld at source, on amounts paid on or after the first day of January of the calendar year following the year in which the notice is given;
 - ii) in respect of other taxes, on taxes levied for periods beginning on or after the first day of January of the calendar year following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at this day of 20...., which corresponds to the day of,, of the Hebrew Calendar, in duplicate, in the Hebrew and English languages, both texts being equally authentic. In case of any divergence of the provisions of this Convention, or their interpretation or application, the English text shall prevail.

For the Government of
Australia

For the Government of the
State of Israel

PROTOCOL

At the signing of the Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, the Government of Australia and the Government of the State of Israel have agreed that the following provisions shall be an integral part of the Convention.

1. In general:

Nothing in this Convention shall prevent the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes, including:

- a) measures designed to address thin capitalisation and dividend stripping;
- b) measures designed to address transfer pricing;
- c) controlled foreign company and transferor trust rules;
- d) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures;
- e) foreign occupational company rules;
- f) in the case of Australia, Part IVA of the *Income Tax Assessment Act 1936* or section 67 of the *Fringe Benefits Tax Assessment Act 1986*;
- g) in the case of Israel, Article 86 of the Income Tax Ordinance 5721-1961.

2. With reference to paragraph 2 of Article 1 (Persons Covered), paragraph 6 of Article 7 (Business Profits) and Article 13 (Alienation of Property) of the Convention:

The term "income" has a wide meaning and includes profits and gains.

3. With reference to paragraph 8 of Article 7 (Business Profits) of the Convention:

It is understood that paragraph 8 does not prevent Israel from taxing trusts according to its laws.

4. With reference to paragraphs 1 and 3 of Article 9 (Associated enterprises) of the Convention:

The Contracting States note that the expression "dealing wholly independently with one another" is included to conform to Australia's consistent treaty practice and to address Australia's concerns that the appropriate benchmark for determining the conditions that exist, or are made or imposed, between the associated enterprises

should have regard to whether those dealings between the enterprises occurred on a truly independent basis.

5. With reference to Article 10 (Dividends) of the Convention:

- a) The term "Israeli REIT" means a "Real Estate Investment Fund" according to Article 64A2 of the Israeli Income Tax Ordinance.
- b) The term "dividends" does not include "distributions by an Israeli REIT".
- c) With reference to paragraph 7, it is understood that a Contracting State is not required to provide a benefit under the Convention to a resident of the other Contracting State in relation to taxation by that other State of dividends that are not paid to, but are beneficially owned by, the resident.

6. With reference to Articles 10 (Dividends) and 11 (Interest) of the Convention:

It is understood that dividends and interest will be regarded as being derived by a Contracting State, political subdivision, local authority or government investment fund if the dividends or interest are derived from the investment of monies that are and will remain public funds.

7. With reference to subparagraph a) of paragraph 2 of Article 11 (Interest) of the Convention:

It is understood that the term "Financial Institution" does not include an insurance company, "a lending fund", a corporate treasury or a member of a group that performs the financing services of the group.

For the purposes of this paragraph, it is understood that the term "lending fund" means an entity that is formed by investors and has the primary purpose of making investments through interest bearing loans.

8. With reference to subparagraph f) of paragraph 3 of Article 12 (Royalties) of the Convention:

The term "royalties" as used in this Article shall not include payments or credits made as consideration for the use of any equipment used in the transport of goods or merchandise if such use is directly connected or ancillary to the operation of ships or aircraft in international traffic. In such cases, the provisions of paragraph 4 of Article 8 (Shipping and Air Transport) of this Convention shall apply.

9. With reference to paragraph 5 of Article 13 (Alienation of Property) of the Convention:

It is understood that paragraph 5 does not prevent a Contracting State from taxing a person who was its resident and has become a resident of the other Contracting State in respect of income, profits or gains that the person is treated as having derived up to the time of the change of residency, in accordance with the domestic law of the first-mentioned state.

10. With reference to paragraph 2 of Article 17 (Pensions) of the Convention:

The term "retirement benefit scheme" means an arrangement in which the individual participates in order to secure retirement benefits. In the case of lump sums arising in Australia:

- a) a retirement benefit scheme includes:
 - (i) a "retirement savings account" as defined in the *Retirement Savings Accounts Act 1997*;
 - (ii) a "complying superannuation life insurance policy" as defined in the *Income Tax Assessment Act 1997*; and
 - (iii) an "exempt life insurance policy" as defined in the *Income Tax Assessment Act 1997*, other than a policy referred to in subparagraphs (e)(i) or (iii) of subsection 320-246(1) of that Act; and
- b) a payment by the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* shall be treated as a lump sum paid under a retirement benefit scheme.

11. With reference to Article 18 (Government Services) of the Convention:

The term "pensions and other similar remuneration" as used in this Article includes both periodic payments and lump sum payments.

12. With reference to paragraph 1 of Article 25 (Mutual Agreement Procedure) of the Convention:

It is agreed that the competent authority of each Contracting State will implement a notification process for cases that are presented by a person to a competent authority under paragraph 1. This process is to be used when the competent authority to which a case is presented does not consider the person's objection to be justified. In such circumstances, the competent authority must notify the other competent authority of the case.

13. The Contracting States note that departures from the Model Tax Convention on Income and Capital were included in the following provisions of the Convention to conform to Australia's consistent treaty practice:

- a) Subparagraph b) of paragraph 8 of Article 5 (Permanent Establishment);
- b) Subparagraphs e) and f) of paragraph 2, and paragraph 3 of Article 6 (Income from Immovable Property);
- c) The phrase "or with other enterprises with which it deals" in paragraph 2 of Article 7 (Business Profits);
- d) Paragraph 8 of Article 7 (Business Profits);
- e) Subparagraphs c) and g) of paragraph 3 of Article 12 (Royalties); and

- f) References to "income" (which includes profits and gains) in Article 13 (Alienation of Property).

14. The Contracting States note subparagraph f) of paragraph 3 of Article 12 (Royalties) is included to conform to Israel's consistent treaty practice.

Done at this day of 20...., which corresponds to the day of,, of the Hebrew Calendar, in duplicate, in the Hebrew and English languages, both texts being equally authentic. In case of any divergence of the provisions of this Convention, or their interpretation or application, the English text shall prevail.

For the Government of
Australia

For the Government of the
State of Israel