

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
FOR
THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN INCOME OF
INDIVIDUALS**

(London, 27 October 2008)

Not yet in force

[2008] ATNIF 19

The Government of Australia and the Government of the British Virgin Islands ("the Contracting Parties"):

Recognising that the two Governments have concluded an Agreement for the Exchange of Information Relating to Taxes; and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals;

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

ARTICLE 2

TAXES COVERED

- 1 The existing taxes to which this Agreement shall apply are:
 - (a) in Australia, the income tax imposed under the federal law of Australia (hereinafter referred to as "Australian tax").

- (b) in the British Virgin Islands, such taxes on income or profits as imposed by law (hereinafter referred to as "British Virgin Islands tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Contracting Party.

ARTICLE 3

DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

- (a) 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 only 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 and the seabed and subsoil of the continental shelf;

- (b) the term "British Virgin Islands " means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (c) the term "competent authority" means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing;
- (d) the term "Contracting Party" means Australia or the British Virgin Islands, as the context requires;
- (e) the term "national" means
 - (i) in relation to Australia , any person who is an Australian citizen;
 - (ii) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands or is a permanent resident of the British Virgin Islands;
- (f) the term "person", wherever used, refers to an individual;
- (g) the term "tax" means Australian tax or British Virgin Islands tax as the context requires.

2 As regards the application of this Agreement at any time by a Contracting Party, 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 Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 4

RESIDENT

1 For the purposes of this Agreement, the term "resident of a Contracting Party" means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of

Australian tax; and

- (b) in the case of the British Virgin Islands, a person who is liable to pay tax under British Virgin Islands law.

2 A person is not a resident of a Contracting Party for the purposes of this Agreement if the person is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting Parties, then the person's status shall be determined as follows:

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

ARTICLE 5

GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Contracting Party and the individual is a resident of that Contracting Party who:

- (i) is a national of that Contracting Party; or
- (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Contracting Party.

ARTICLE 6

STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is temporarily present in the first-mentioned Contracting Party 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 Contracting Party, provided such payments arise from sources outside that Contracting Party.

ARTICLE 7

EXCHANGE OF INFORMATION

The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be

exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information Relating to Taxes concluded by the Contracting Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Contracting Party).

ARTICLE 8

ENTRY INTO FORCE

The Contracting Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information Relating to Taxes is in force between the Contracting Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 9

TERMINATION

1 This Agreement shall continue in force indefinitely, but either of the Contracting Parties may, give to the other Contracting Party through the appropriate channel written notice of termination

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the

calendar year next following that in which the notice of termination is given;

- (b) in respect of British Virgin Islands tax, for any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the appropriate channel of written notice of termination of the Agreement for the Exchange of Information Relating to Taxes between the Contracting Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notice.

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

DONE at London, this twenty-seventh day of October 2008 in the English language.

FOR THE GOVERNMENT OF
AUSTRALIA:

H.E. John Cecil Dauth LVO
High Commissioner

FOR THE GOVERNMENT OF THE
BRITISH VIRGIN ISLANDS:

Hon. Ralph T O'Neal
Premier