

Synthesised text of the MLI and the Convention between the United Kingdom of Great Britain and Northern Ireland and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains

This document presents the synthesised text for the application of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia with respect to Taxes on Income and on Capital Gains signed on 21 August 2003 (the “Convention”), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the “MLI”) signed by the United Kingdom of Great Britain and Northern Ireland and Australia on 7 June 2017.

This document was prepared in consultation with the Australian Tax Office and represents our shared understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of the United Kingdom submitted to the Depository upon ratification on 29 June 2018 and of the MLI position of Australia submitted to the Depository upon ratification on 26 September 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as “Covered Tax Agreement” and “Convention”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references to the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found at the following links:

The MLI:

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

In the United Kingdom:

http://www.legislation.gov.uk/ukxi/2003/3199/pdfs/ukxi_20033199_en.pdf

In Australia:

<http://www.austlii.edu.au/au/other/dfat/treaties/2003/22.html>

The MLI position of the United Kingdom of Great Britain and Northern Ireland submitted to the Depository upon ratification on 29 June 2018 and of the MLI position of Australia submitted to the Depository upon ratification on 26 September 2018 can be found on the [MLI Depository \(OECD\) webpage](#).

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by United Kingdom and Australia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 June 2018 for United Kingdom of Great Britain and Northern Ireland and 26 September 2018 for Australia.

Entry into force of the MLI: 1 October 2018 for the United Kingdom and 1 January 2019 for Australia.

Unless otherwise stated and in accordance with Article 35 of the MLI, the provisions of the MLI have effect with the respect to the Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2019;
- b) With respect to all other taxes levied by the United Kingdom, from 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax; and
- c) With respect to all other taxes levied by Australia, for taxes levied with respect to taxable periods beginning on or after 1 July 2019.

**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

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

*The following paragraph 3 of Article 6 of the MLI is included in the preamble of this
Convention:*

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-
operation in tax matters,

**[REPLACED by the preamble text included in paragraph 1 of Article 6 of
the MLI]** [Desiring to conclude a Convention for the avoidance of double taxation and
the prevention of fiscal evasion with respect to taxes on income and on capital gains,]

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an
intent to eliminate double taxation in the preamble of this Convention:*

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by [*the
Convention*] without creating opportunities for non-taxation or reduced taxation
through tax evasion or avoidance (including through treaty-shopping arrangements
aimed at obtaining reliefs provided [*the Convention*] for the indirect benefit of
residents of third jurisdictions),

Have agreed as follows:

ARTICLE 1

Persons covered

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

The following paragraph 1 of Article 3 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of [*the 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 [*Contracting State*], as the income of a resident of that [*Contracting State*].

The following paragraph 1 of Article 11 of the MLI replaces Article 24 of this Convention:

ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

[*The 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, or Articles 15, 18, 19, 22, 25, 26 and 28 of the Convention*].

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ARTICLE 2

Taxes covered

1. The existing taxes to which this Convention shall apply are:
 - (i) in the case of the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;
- (ii) in the case of Australia:

the income tax, the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, and the fringe benefits tax, imposed under the federal law of Australia.

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of the United Kingdom after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes that have been made in the law of their respective States relating to the taxes to which this Convention applies within a reasonable period of time after those changes.

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ARTICLE 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;
 - (b) the term “Australia”, when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;

- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory of Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the Continental Shelf;

- (c) the term “Australian tax” means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2;
- (d) the term “United Kingdom tax” means tax imposed by the United Kingdom, being tax to which this Convention applies by virtue of Article 2;
- (e) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Australia, as the context requires;
- (f) the term “person” includes an individual, a company and any other body of persons, but subject to paragraph 2 of this Article does not include a partnership;
- (g) the term “company” means any body corporate or anything that is treated as a company or body corporate for tax purposes;
- (h) the term “enterprise” applies to the carrying on of any business;
- (i) 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;

(j) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;

(k) the term “competent authority” means:

- (i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;
- (ii) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;

(l) the term “national” means:

- (i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that individual has the right of abode in the United Kingdom; and any company deriving its status as such from the law in force in the United Kingdom;
- (ii) in relation to Australia, an Australian citizen or an individual not possessing citizenship who has been granted permanent residency status; and any company deriving its status as such from the law in force in Australia;

(m) the term “business” includes the performance of professional services and of other activities of an independent character;

(n) the term “tax” means Australian tax or United Kingdom 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;

(o) the term “recognised stock exchange” means:

- (i) the Australian Stock Exchange and any other Australian stock exchange recognised as such under Australian law;
- (ii) the London Stock Exchange and any other United Kingdom investment exchange recognised under United Kingdom law; or

(iii) any other stock exchange agreed upon by the competent authorities.

2. A partnership deriving its status from Australian law as a limited partnership which is treated as a taxable unit under the law of Australia shall be treated as a person for the purposes of this Convention.

3. As regards the application of this 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 laws of that State for the purposes of the taxes to which this 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

Residence

1. For the purposes of this Convention, a person is a resident of a Contracting State:

(a) in the case of the United Kingdom, if the person is a resident of the United Kingdom for the purposes of United Kingdom tax; and

(b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

A Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of this Convention.

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

3. The status of an individual who, by reason of the preceding provisions of this Article is a resident of both Contracting States, shall be determined as follows:

(a) that individual shall be deemed to be a resident only of the Contracting State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, 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 Contracting State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;
- (c) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

4. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** [Where by reason of the preceding provisions of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.]

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph 4 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*the Convention*] 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 such 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 entitled to any relief or exemption from tax provided by [*the Convention*].

5. Notwithstanding paragraph 4 of this Article, where by reason of paragraph 1 of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

6. The term “dual listed company arrangement” as used in this Article means an arrangement pursuant to which two publicly listed companies, while maintaining their

separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

- (a) the appointment of common (or almost identical) boards of directors;
- (b) management of the operations of the two companies on a unified basis;
- (c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;
- (d) the shareholders of both companies voting in effect as a single decision making body on substantial issues affecting their combined interests; and
- (e) cross-guarantees as to, or similar financial support for, each other's material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

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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 relating to the exploration for or exploitation of natural resources; and

(g) an agricultural, pastoral or forestry property.

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

(a) it has a building site or construction or installation project in that State, or it undertakes a supervisory or consultancy activity in that State connected with such a site or project, but only if that site, project or activity lasts more than 12 months;

(b) it maintains substantial equipment for rental or other purposes within that other State (excluding equipment let under a hire-purchase agreement) for a period of more than 12 months; or

(c) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

4.

(a) The duration of activities under subparagraph (a) of paragraph 3 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

(b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

(c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by a third person or persons.

5. Notwithstanding the preceding provisions of this Article, an enterprise shall not be deemed to have a permanent establishment merely by reason of:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (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 collecting information, for the enterprise;
or
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 5 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

[Paragraph 5 of Article 5 of the Convention] 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 *[Article 5 of the Convention]*; 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.

6. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 7 of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of 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 that enterprise unless the activities of such person are limited to those mentioned in paragraph 5 of this Article 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.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such brokers or agents are acting in the ordinary course of their business as such.

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

The following paragraph 1 of Article 15 of the MLI applies to this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED
TO AN ENTERPRISE

For the purposes of [Article 5 of the Convention], 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 interest 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.

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ARTICLE 6

Income from real property

1. Income derived by a resident of a Contracting State from real property may be taxed in the Contracting State in which the real property is situated.
2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property is situated. The term shall in any case include:
 - (a) a lease of land or any other interest in or over land;
 - (b) property accessory to real property;
 - (c) livestock and equipment used in agriculture and forestry;
 - (d) usufruct of real property;
 - (e) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (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 or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

Ships and aircraft shall not be regarded as real property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, 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 of this Article shall apply to income derived from the direct use, letting, or use in any other form of real property.

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

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ARTICLE 7

Business profits

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

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

3. In 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, whether 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 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. In such cases that law shall be applied, having regard to the information that is available, 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. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

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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 of this Article, profits of an enterprise of a Contracting State from the operation of ships or aircraft may be taxed in the other Contracting State to the extent that they are profits derived from ship or aircraft operations confined solely to places in that other State.
3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:
 - (a) profits from the rental on a bareboat basis of ships or aircraft; and
 - (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

provided such rental or such use, maintenance or rental, as the case may be, is directly connected or ancillary to the operation of ships or aircraft in international traffic.

4. The provisions of paragraphs 1 and 2 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

5. For the purposes of this Article, profits derived from:

(a) the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at the same or another place in that State; or

(b) the use of a ship or aircraft for haulage, survey or dredging activities, or for exploration or extraction activities in relation to natural resources, where such activities are undertaken in a Contracting State;

shall be treated as profits from ship or aircraft operations confined solely to places in that State.

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ARTICLE 9

Associated enterprises

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which might, but for those conditions, 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 in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise. In such cases that law shall be applied, having regard to the information that is available, consistently with the principles of this Article.

3. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of the provisions of paragraphs 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax it has charged 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.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State for the purposes of its tax, being dividends beneficially owned by 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 for the purposes of its tax, and according to the law of that State, but the tax charged shall not exceed:
 - (a) 5 per cent of the gross amount of the dividends, if the beneficial owner of the dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and
 - (b) 15 per cent of the gross amount of the dividends in all other cases.
3. Notwithstanding the provisions of paragraph 2 of this Article, 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 is a company that is a resident of the other Contracting State that has owned shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:
 - (a) has its principal class of shares listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph (o) of paragraph 1 of Article 3 and regularly traded on one or more recognised stock exchanges;
 - (b) is owned directly or indirectly by one or more companies whose principal class of shares is listed on a recognised stock exchange specified in subparagraph (i) or (ii) of subparagraph (o) of paragraph 1 of Article 3 and regularly traded on one or more recognised stock exchanges; or
 - (c) does not meet the requirements of subparagraphs (a) or (b) of this paragraph but the competent authority of the first-mentioned Contracting State determines, in accordance with the law of that State, that the establishment, acquisition or

maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is 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 and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

6. 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 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 not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of the United Kingdom for the purposes of United Kingdom tax.

7. **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI¹]** [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in

¹ Refer to text box immediately following Article 28 of the Convention

respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]

8. For the purposes of paragraph 3 of this Article, the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the voting power and value of the company, the “principal class of shares” is that class or those classes that in the aggregate represent a majority of the voting power and value of the company.

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ARTICLE 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, that interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if:
 - (a) the interest is derived by a Contracting State or by a political or administrative sub-division or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or
 - (b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. 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.

4. Notwithstanding paragraph 3, interest referred to in subparagraph (b) of that paragraph 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 interest is 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.

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, and income from any other form of indebtedness. The term “interest” also includes 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. The term “interest” shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

6. The provisions of paragraphs 1 and 2, subparagraph (b) of paragraph 3 and paragraph 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 in that other State and the indebtedness in respect of which the interest is paid or credited is effectively connected with such permanent establishment. In such case, the provisions of Article 7 of this Convention shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then the 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 paid or credited exceeds, for whatever reason, the amount which might reasonably 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 amount of the interest paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

9. [REPLACED by paragraphs 1 and 4 of Article 7 of the MLI²] [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.]

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ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, those royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.
3. The term “royalties” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
 - (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
 - (b) the supply of scientific, technical, industrial or commercial knowledge or information;
 - (c) the supply of any ancillary and subsidiary assistance that is furnished as a means of enabling the application or enjoyment of any such item as is mentioned in subparagraph (a) or (b) of this paragraph;
 - (d) the use of or the right to use:
 - (i) motion picture films; or

² Refer to text box immediately following Article 28 of the Convention

- (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; or
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 of this Article 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 in that other State, and the right or property in respect of which the royalties are paid or credited is effectively connected with that permanent establishment. In that case the provisions of Article 7 of this Convention shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the 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 exceeds, for whatever reason, the amount which might reasonably 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 paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI³]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.]

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³ Refer to text box immediately following Article 28 of the Convention

ARTICLE 13

Alienation of property

1. Income or gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.
2. Income or gains from the alienation of property, other than real 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 or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Income or gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in that Contracting State.
4. Income or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to real property situated in the other Contracting State, may be taxed in that other State.
5. An individual who elects, under the taxation law of a Contracting State, to defer taxation on income or gains relating to property which would otherwise be taxed in that State upon the individual ceasing to be a resident of that State for the purposes of its tax, shall, if the individual is a resident of the other State, be taxable on income or gains from the subsequent alienation of that property only in that other State.
6. Nothing in this Convention affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.
7. In this Article, the term “real property” has the same meaning as it has in Article 6.

8. The situation of interests or rights referred to in paragraph 2 of Article 6 shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

9. The provisions of this Article shall not affect the right of the United Kingdom to levy according to its laws a tax chargeable in respect of income or gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the 6 years immediately preceding that year.

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ARTICLE 14

Income from employment

1. Subject to the provisions of Articles 17 and 18 of this Convention, 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 from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, 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 or year of income of that other State; 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 deductible in determining taxable profits of a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment 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. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if the references to an employer were references to the company.

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ARTICLE 15

Fringe benefits

1. Where, except for the application of this Article, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State which would have the primary taxing right over that benefit if the value of the benefit were paid to the employee as ordinary employment income.

2. For the purposes of this Article:

- (a) “fringe benefit” has the meaning it has under Australia’s *Fringe Benefits Tax Assessment Act 1986 (Commonwealth)*, as it may be amended from time to time, and does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;
- (b) a Contracting State has a “primary taxing right” to the extent that it has a taxing right under this Convention in respect of the remuneration for the relevant employment and the other Contracting State is required under this Convention to allow relief for any taxes imposed in respect of such remuneration by the first-mentioned Contracting State.

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ARTICLE 16

Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 7 and 14 of this Convention, 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 that person but to another person, that income may, notwithstanding the provisions of Articles 7 and 14 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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ARTICLE 17

Pensions and annuities

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

2. The term "annuity" means a stated sum payable periodically to an individual at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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ARTICLE 18

Government service

1. Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or local authority of that State to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a national of that State; or

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

2. The provisions of paragraph 1 of this Article shall not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with any

trade or business carried on by a Contracting State or a political subdivision or local authority of that State. In that case, the provisions of Article 14, 15 or 16, as the case may be, shall apply.

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ARTICLE 19

Students

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

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ARTICLE 20

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.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 of this Convention, derived by a resident of a Contracting State who 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 that case the provisions of Article 7 of this Convention shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

4. Where, by reason of a special relationship between the person referred to in paragraph 1 of this Article 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 reasonably have been expected to have been agreed upon between them in the absence of such a 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 applicable provisions of this Convention.

5. **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI⁴]** [A person may not rely on this Article to obtain relief from taxation if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is derived to take advantage of this Article by means of that creation or assignment.]

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ARTICLE 21

Source of income

Income or gains derived by a resident of the United Kingdom which, under any one or more of Articles 6 to 8 and 10 to 16 and 18, may be taxed in Australia shall for the purposes of the laws of Australia relating to its tax be deemed to arise from sources in Australia.

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ARTICLE 22

Elimination of double taxation

1. Subject to the provisions of the laws of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article):

- (a) United Kingdom tax paid under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income or gains derived by a person who is a resident of Australia from sources

⁴ Refer to text box immediately following Article 28 of the Convention

in the United Kingdom shall be allowed as a credit against Australian tax payable in respect of that income;

- (b) Where a company which is a resident of the United Kingdom and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly at least 10 per cent of the voting power of the first-mentioned company, the credit shall include the United Kingdom tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2. 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 (which shall not affect the general principle hereof):

- (a) Australian tax payable under the laws of Australia and in accordance with this Convention, whether directly or by deduction, on income or chargeable gains from sources within Australia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same income or chargeable gains by reference to which the Australian tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Australia to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Australian tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of paragraph 1 and 2 of this Article, income or 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 Contracting State.

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Limitation of relief

1. Where under this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, a person in respect of that income or those gains is taxed by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income or gains as is taxed in the other State.
2. Where under this Convention any income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual in respect of that income or those gains is exempt from tax by virtue of being a temporary resident of the other State within the meaning of the applicable tax laws of that other State, then the relief to be allowed under this Convention in the first-mentioned State shall not apply to the extent that that income or those gains are exempt from tax in the other State.

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[REPLACED by paragraph 1 of Article 11 of the MLI⁵]

[ARTICLE 24

Partnerships

Where a partnership is treated as a taxable unit under the law of a Contracting State and under any provision of this Convention is entitled, as a resident of that State, to relief from tax in the other Contracting State on any income or gains, that provision shall not be construed as restricting the right of that other State to tax any member of the partnership who is a resident of that other State on that member's share of such income or gains; but any such income or gains shall be treated for the purposes of Article 22 of this Convention as income or gains from sources in the first-mentioned State.]

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ARTICLE 25

⁵ Refer to second text box immediately following Article 1 of the Convention

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 in similar circumstances.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 or 9 of Article 11, paragraph 6 or 7 of Article 12, or paragraph 4 or 5 of Article 20 of this Convention 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.
4. 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 in similar circumstances are or may be subjected.
5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.
6. This Article shall not apply to any provision of the laws of a Contracting State which:
 - (a) is designed to prevent the avoidance or evasion of taxes;
 - (b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;

- (c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that Australian resident companies that are owned directly or indirectly by residents of the United Kingdom can access such consolidation treatment on the same terms and conditions as other Australian resident companies;
- (d) provides deductions to eligible taxpayers for expenditure on research and development; or
- (e) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Government of Australia and the Government of the United Kingdom.

7. The provisions of this Article shall apply to the taxes which are the subject of this Convention.

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ARTICLE 26

Mutual agreement procedure

1. **[REPLACED by paragraph 1 of Article 16 of the MLI]** [Where a person who is a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with this Convention, that person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which this Convention applies, present a case to the competent authority of the Contracting State of which that person is a resident or, if the case comes under paragraph 1 of Article 25 of this Convention, to that of the Contracting State of which that person is a national.]

The following first sentence of paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 26 of this Convention:⁶

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURES

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the

⁶ In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 January 2019, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

provisions of [*this Convention*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

*The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention.*⁷

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 [*this Convention*].

2. The competent authority shall endeavour, if the case 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 this Convention.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention.*⁸

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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 jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

⁷ In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 January 2019, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

⁸ In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 January 2019, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

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.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

The following Part VI of the MLI applies to the Convention:

PART VI OF THE MLI – ARBITRATION

[Article 19 (Mandatory Binding Arbitration) of the MLI]

1. Where:

- (a) under *[paragraph 1 of Article 26 of the Convention]*, a person has presented a case to the competent authority of a *[Contracting State]* on the basis that the actions of one or both of the *[Contracting States]* have resulted for that person in taxation not in accordance with the provisions of *[the Convention]*; and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to *[paragraph 2 of Article 26 of the Convention]*, within a period of two years beginning on the start date referred to in paragraph 8 or 9 *[of Article 19 of the MLI]*, as the case may be (unless, prior to the expiration of that period the competent authorities of the *[Contracting States]* have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in *[Part VI of the MLI]*, according to any rules or procedures agreed upon by the competent

authorities of the [*Contracting States*] pursuant to the provisions [*of paragraph 10 of Article 19 of the MLI*].

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 [*of Article 19 of the MLI*] because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] will stop running until the suspension has been lifted.
3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*], the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.
4.
 - (a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 [*of Article 19 of the MLI*]. The arbitration decision shall be final.
 - (b) The arbitration decision shall be binding on both [*Contracting States*] except in the following cases:
 - (i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing

the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

(ii) if a final decision of the courts of one of the [*Contracting States*] holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 [*of Article 19 of the MLI*] shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings)) [*of the MLI*]. In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

(iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 [*of Article 19 of the MLI*] shall, within two calendar months of receiving the request:

- (a) send a notification to the person who presented the case that it has received the request; and
- (b) send a notification of that request, along with a copy of the request, to the competent authority of the other [*Contracting State*].

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other [*Contracting State*]) it shall either:

- (a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- (b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

(a) that it has received the requested information; or

(b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

(a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 [*of Article 19 of the MLI*]; and

(b) the date that is three calendar months after the notification to the competent authority of the other [*Contracting State*] pursuant to subparagraph b) of paragraph 5 [*of Article 19 of the MLI*].

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

(a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 [*of Article 19 of the MLI*]; and

(b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7 [*of Article 19 of the MLI*], such

notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 [of Article 19 of the MLI].

10. The competent authorities of the [Contracting States] shall by mutual agreement (pursuant to [Article 26 of this Convention]) settle the mode of application of the provisions contained in [Part VI of the MLI], including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.
11. *Omitted*
12.
 - (a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by this Convention shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either [Contracting State];
 - (b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [Contracting States], a decision concerning the issue is rendered by a court or administrative tribunal of one of the [Contracting States], the arbitration process shall terminate.

[Article 20 (Appointment of Arbitrators) of the MLI]

1. Except to the extent that the competent authorities of the [Contracting States] mutually agree on different rules, paragraphs 2 through 4 [of Article 20 of the MLI] shall apply for the purposes of [Part VI of the MLI].
2. The following rules shall govern the appointment of the members of an arbitration panel:
 - (a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
 - (b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 [of the MLI]. The two panel members so appointed shall,

within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either [*Contracting State*].

(c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the [*Contracting States*] and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a [*Contracting State*] fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].
4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

Article 21 (Confidentiality of Arbitration Proceeding) of the MLI

1. Solely for the purposes of the application of the provisions of [*Part VI of the MLI*] and of the provisions of [*the Convention*] and of the domestic laws of the [*Contracting States*] related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel

shall be considered information that is exchanged under the provisions of [*the Convention*] related to the exchange of information and administrative assistance.

2. The competent authorities of the [*Contracting States*] shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of [*the Convention*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting States*].

Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI

For the purposes of [*Part VI of the MLI*] and the provisions of [*the Convention*] that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*]:

- (a) the competent authorities of the [*Contracting States*] reach a mutual agreement to resolve the case; or
- (b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 (Type of Arbitration Process) of the MLI

1. Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to [*Part VI of the MLI*]:
 - (a) After a case is submitted to arbitration, the competent authority of each [*Contracting State*] shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the [*Contracting States*]). The proposed resolution shall be limited to a

disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to [*the Convention*], for each adjustment or similar issue in the case. In a case in which the competent authorities of the [*Contracting States*] have been unable to reach agreement on an issue regarding the conditions for application of a provision of [*the Convention*] (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

- (b) The competent authority of each [*Contracting State*] may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- (c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the [*Contracting States*]. The arbitration decision shall have no precedential value.

2. *Omitted*

3. *Omitted*

4. *Omitted*

5. Prior to the beginning of arbitration proceedings, the competent authorities of the [*Contracting States*] shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under [*the Convention*], as well as the arbitration proceeding under [*Part VI of the MLI*], with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a person that presented the case or one of that person's advisors materially breaches that agreement.

6. *Omitted*

7. *Omitted*

Article 24 (Agreement on a Different Resolution) of the MLI

Omitted

Article 25 (Costs of Arbitration Proceedings) of the MLI

In an arbitration proceeding under [*Part VI of the MLI*], the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the [*Contracting States*], shall be borne by the [*Contracting States*] in a manner to be settled by mutual agreement between the competent authorities of the [*Contracting States*]. In the absence of such agreement, each [*Contracting State*] shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the [*Contracting States*] in equal shares.

Article 26 (Compatibility) of the MLI

1. *Omitted*

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in [*Part VI of the MLI*] shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has

previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. [Nothing] in [Part VI of the MLI] shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the [Contracting States] are or will become parties.
4. *Omitted*

Subparagraph a) of paragraph 2 of Article 28 of the MLI

Pursuant to Subparagraph a) of paragraph 2 of Article 28 of the MLI, Australia formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI:

Australia reserves the right to exclude from the scope of Part VI [of the MLI] any case to the extent that it involves the application of Australia's general anti-avoidance rules contained in Part IVA of the Income Tax Assessment Act 1936 and section 67 of the Fringe Benefits Tax Assessment Act 1986. Australia also reserves the right to extend the scope of the exclusion for Australia's general anti-avoidance rules to any provisions replacing, amending or updating those rules. Australia shall notify the Depositary of any such provisions that involve substantial changes.

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ARTICLE 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which this Convention applies insofar as the taxation under those laws is not contrary to this Convention. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall

be treated as secret in the same manner as information obtained under the domestic law 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, or the determination of appeals in relation to, the taxes to which this Convention applies. 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.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax.

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

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

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ARTICLE 28

Members of diplomatic missions or permanent missions and consular posts

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

The following paragraph 1 of Article 7 of the MLI applies and superseded the provisions of this Convention:

ARTICLE 7 OF THE MLI – ENTITLEMENT TO BENEFITS

(Principal purposes test provision)

Notwithstanding any provisions of [*this Convention*], a benefit under [*this Convention*] shall not be granted in respect of an item of income or capital 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*].

The following paragraph 4 of Article 7 of the MLI applies to paragraph 1 of Article 7 of the MLI:

Where a benefit under [*this Convention*] is denied to a person under provisions of [*paragraph 1 of Article 7 of the MLI*], the competent authority of the [*Contracting State*] that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in [*paragraph 1 of Article 7 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under this paragraph by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before rejecting the request.

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ARTICLE 29

Entry into force

1. Each of the Contracting States shall notify the other in writing through the diplomatic channel of the completion of the procedures required by its law for the entry into force of this Convention. This Convention shall enter into force on the date of the later notification, and shall thereupon 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 July next following the date on which this 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 or gains of any year of income beginning on or after 1 July next following the date on which this Convention enters into force;

(b) in the case of the United Kingdom:

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 July next following the date on which this Convention enters into force;
- (ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6 April next following the date on which this Convention enters into force;

- (iii) in respect of corporation tax, for any financial year beginning on or after 1 April next following the date on which this Convention enters into force.

2. The Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland signed at Canberra on 7 December 1967 (as amended by the Protocol signed at Canberra on 29 January 1980) (“the Agreement”) shall be terminated and shall cease to have effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph 1 of this Article. In relation to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, the Agreement shall be terminated and shall cease to have effect in respect of dividends paid on or after 1 July next following the date on which this Convention enters into force.

3. Notwithstanding the entry into force of this Convention, an individual who is entitled to the benefits of Article 16 of the Agreement at the time of the entry into force of this Convention shall continue to be entitled to such benefits until such time as the individual would have ceased to be entitled to such benefits if the Agreement had remained in force.

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ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give written notice of termination through the diplomatic channel and, in that event, the Convention shall cease to 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 in the calendar year next following that in 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 in the calendar year next following that in which the notice of termination is given;
- (iii) in respect of other Australian tax, in relation to income or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in the case of the United Kingdom:

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 January in the calendar year next following that in which the notice of termination is given;
- (ii) in respect of income tax not described in clause (i) of this subparagraph and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice of termination is given;
- (iii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this 21st day of August 2003

FOR THE GOVERNMENT OF

FOR THE GOVERNMENT OF

THE UNITED KINGDOM OF
GREAT BRITAIN AND

AUSTRALIA:

NORTHERN IRELAND:

Alastair Goodlad

Peter Costello

EXCHANGE OF NOTES

No []

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission to Australia and has the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today (the "Convention").

The Department has the honour to make the following proposals on behalf of the Government of Australia:

1. *With reference generally to the application of the Convention (including these Notes),*

the Contracting States agree that:

- (a) the term "income or gains" includes "profits";
- (b) the term "laws" includes the full body of law, and is not limited to statutory law;
- (c) the terms "paid or credited" and "payments or credits" shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;
- (d) the expression "any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes" includes:
 - (i) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
 - (ii) controlled foreign company, transferor trust and foreign investment fund rules;
 - (iii) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and

- (e) nothing in the Convention shall be construed as restricting, in any manner, the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes.

2. *With reference to Article 5 (Permanent Establishment),*

the Contracting States agree that the term "permanent establishment" fully encompasses the concept of a "fixed base" used in other double tax treaties in the context of independent personal services.

3. *With reference to Article 7 (Business profits),*

the Contracting States agree that:

- (a) nothing in paragraph 3 of the Article shall permit the deduction of an expense which would not be deductible if the permanent establishment were an independent enterprise which incurred the expense; and
- (b) where:
 - (i) 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
 - (ii) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

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

4. *With reference to Article 9 (Associated enterprises),*

the Contracting States note that the expression "dealing wholly independently with one another" is included in paragraph 1 of the Article to conform to Australia's consistent treaty practice and to address Australia's concerns that the appropriate benchmark for determining the conditions operating 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),*

the Contracting States agree that if the relevant law 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 each other with a view to agreeing to any amendment of paragraph 2 and 3 of the Article as may be appropriate.

6. *With reference to Article 11 (Interest),* the Contracting States agree that:

- (a) the term "financial institution" shall not include a corporate treasury or a member of a corporate group performing financing services for the group; and
- (b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any interest paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment.

7. *With reference to Article 12 (Royalties),*

the Contracting States agree that

- (a) the term "royalties" shall not include payments for the use of spectrum licences. The provisions of Article 7 of the Convention shall apply to such payments; and

- (b) nothing in the Convention shall have the effect of subjecting to tax in a

Contracting State any royalties paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment.

8. *With reference to Article 14 (Income from employment),*

the Contracting States agree that:

- (a) income or gains derived by employees in relation to share option schemes shall be treated as "other similar remuneration" for the purposes of Article 14;

- (b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and
- (c) where a resident of a Contracting State derives such income or gains, and
 - (i) the period of employment to which the share option relates is the period between grant and vesting of the option;
 - (ii) the employee remains in that employment at the date of alienation or exercise of the option; and
 - (iii) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

the proportion of the income or gain which shall be attributable to employment exercised in the other Contracting State shall be determined in accordance with the ratio of the number of days of employment exercised in that State between grant and vesting of the option to the total number of days of employment exercised between grant and vesting of the option.

9. *With reference to Article 25 (Non-discrimination), the Contracting States agree that:*

- (a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled "directly or indirectly" includes cases where the capital is held through a chain of companies or other entities; and
- (b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

10. *With reference to Article 26 (Mutual agreement procedure) and Article 27 (Exchange of information),*

The Contracting States agree that the provisions of the Articles shall have effect from the date of entry into force of the Convention, without regard to the date of the relevant transactions or the taxable or chargeable period to which the matter relates.

11. *With reference to Article 26 (Mutual agreement procedure),*

the Contracting States agree that in relation to paragraph 1 of the Article, the applicable time limits in the domestic laws bearing on the time available for presenting a case to the relevant competent authority shall apply, whether or not those applicable time limits specifically refer to the competent authority process.

12. Miscellaneous

The Contracting States agree that the two Governments shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Department has the honour to propose that the present Note and the High Commission's confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great

Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the British High Commission to Australia the assurances of its highest consideration.

CANBERRA

21 August 2003

The British High Commission to Australia presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No [] of [date] which reads as follows:

" The Department of Foreign Affairs and Trade presents its compliments to the British High Commission to Australia and has the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today (the "Convention").

The Department has the honour to make the following proposals on behalf of the Government of Australia:

1. *With reference generally to the application of the Convention (including these Notes),*

the Contracting States agree that:

- (a) the term "income or gains" includes "profits";
- (b) the term "laws" includes the full body of law, and is not limited to statutory law;
- (c) the terms "paid or credited" and "payments or credits" shall not include the recording of internal transactions between a permanent establishment and another part of the same enterprise;
- (d) the expression "any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes" includes:
 - (iv) measures designed to address thin capitalisation, dividend stripping and transfer pricing;
 - (v) controlled foreign company, transferor trust and foreign investment fund rules;
 - (vi) measures designed to ensure that taxes can be effectively recovered (conservancy measures); and

- (e) nothing in the Convention shall be construed as restricting, in any manner, the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes.

3. *With reference to Article 5 (Permanent establishment),*

the Contracting States agree that the term "permanent establishment" fully encompasses the concept of a "fixed base" used in other double tax treaties in the context of independent personal services.

3. *With reference to Article 7 (Business profits),*

the Contracting States agree that:

- (a) nothing in paragraph 3 of the Article shall permit the deduction of an expense which would not be deductible if the permanent establishment were an independent enterprise which incurred the expense; and
- (b) where:
 - (i) 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
 - (ii) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

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

4. *With reference to Article 9 (Associated enterprises),*

the Contracting States note that the expression "dealing wholly independently with one another" is included in paragraph 1 of the Article to conform to Australia's consistent treaty practice and to address Australia's concerns that the appropriate benchmark for determining the conditions operating 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),*

the Contracting States agree that if the relevant law 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 each other with a view to agreeing to any amendment of paragraph 2 and 3 of the Article as may be appropriate.

6. *With reference to Article 11 (Interest),* the Contracting States agree that:

- (b) the term "financial institution" shall not include a corporate treasury or a member of a corporate group performing financing services for the group; and
- (b) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any interest paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment.

9. *With reference to Article 12 (Royalties),*

the Contracting States agree that

- (d) the term "royalties" shall not include payments for the use of spectrum licences. The provisions of Article 7 of the Convention shall apply to such payments; and
- (e) nothing in the Convention shall have the effect of subjecting to tax in a Contracting State any royalties paid by a resident of that State to a resident of the other State where the payer has outside both Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment.

10. *With reference to Article 14 (Income from employment),*

the Contracting States agree that:

- (b) income or gains derived by employees in relation to share option schemes shall be treated as “other similar remuneration” for the purposes of Article 14;
- (b) unless the facts otherwise indicate, the period of employment to which the option relates shall be taken to be the period between the grant of the option and the date on which all the conditions for its exercise have been satisfied (the vesting of the option); and
- (f) where a resident of a Contracting State derives such income or gains, and
 - (iv) the period of employment to which the share option relates is the period between grant and vesting of the option;
 - (v) the employee remains in that employment at the date of alienation or exercise of the option; and
 - (vi) that employment has been exercised by the employee in the other Contracting State during all or part of the period between grant and vesting of the option;

the proportion of the income or gain which shall be attributable to employment exercised in the other Contracting State shall be determined in accordance with the ratio of the number of days of employment exercised in that State between grant and vesting of the option to the total number of days of employment exercised between grant and vesting of the option. 9. *With reference to Article 25 (Non-discrimination), the Contracting States agree that:*

- (a) in relation to paragraph 4 and subparagraph 6(c) of the Article, the reference to capital being owned or controlled "directly or indirectly" includes cases where the capital is held through a chain of companies or other entities; and
- (b) nothing in the Article shall be construed as obliging a Contracting State to allow tax rebates and credits in relation to dividends received by a person who is a resident of the other Contracting State.

10. *With reference to Article 26 (Mutual agreement procedure) and Article 27 (Exchange of information),*

the Contracting States agree that the provisions of the Articles shall have effect from the date of entry into force of the Convention, without regard to the date of the relevant

transactions or the taxable or chargeable period to which the matter relates. 11. *With reference to Article 26 (Mutual agreement procedure),*

the Contracting States agree that in relation to paragraph 1 of the Article, the applicable time limits in the domestic laws bearing on the time available for presenting a case to the relevant competent authority shall apply, whether or not those applicable time limits specifically refer to the competent authority process.

12. *Miscellaneous*

The Contracting States agree that the two Governments shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Department has the honour to propose that the present Note and the High Commission's confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great

Britain and Northern Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.”

The High Commission has the honour to advise that the Department's proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that the Department's Note and this confirmatory Note in reply shall constitute an Agreement on certain matters between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for the

Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, which shall enter into force at the same time as the entry into force of the Convention.

The British High Commission to Australia avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

CANBERRA

21 August 2003