SYNTHESISED TEXT OF

THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

AND

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

General disclaimer on this Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Kingdom of the Netherlands and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol signed on 17 March 1976 as amended by the Second Protocol signed on 30 June 1986 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by the Netherlands and Australia on 7 June 2017.

The document was prepared on the basis of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and of the MLI position of Australia submitted to the Depositary 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 Agreement.

The authentic legal texts of the Agreement 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 Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention (as updated on 21 November 2017).

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 Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the authentic legal texts of the MLI).
- Agreement between the Kingdom of the Netherlands and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol signed on 17 March 1976 as amended by the Second Protocol signed on 30 June 1986
- Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the 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 the Netherlands and Australia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

29 March 2019 for the Netherlands and 26 September 2018 for Australia.

Entry into force of the MLI:

1 July 2019 for the Netherlands and 1 January 2019 for Australia.

Entry into Effect of the MLI Provisions

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure and Part VI Arbitration) have effect with respect to this Agreement:

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 2020; and

b) with respect to all other taxes levied by each State for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

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

In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Agreement:

a) with respect to cases presented to the competent authority of a State (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI), on or after 1 July 2019; and

b) with respect to cases presented to the competent authority of a State prior to 1 July 2019, on the date when both States have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 of the MLI, along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a State (as described in subparagraph a) of paragraph 1 of Article 19 of the MLI) according to the terms of that mutual agreement.

Agreement between the Kingdom of the Netherlands and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Government of the Kingdom of the Netherlands and the Government of Australia,

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

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

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,

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

Have agreed as follows:

CHAPTER I. Scope of the Agreement

Article 1. Personal Scope

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

The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARANT ENTITIES

For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either State shall be considered to be income of a resident of a State but only to the extent that the income is treated, for purposes of taxation by that States the income of a resident of that State. In no case shall the provisions of this paragraph be construed to affect a State's right to tax the residents of that State.

Article 2. Taxes Covered

(1) The existing taxes to which this Agreement shall apply are -

(a) in Australia:
the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;
(b) in the Netherlands:
the Inkomstenbelasting (income tax);
the Loonbelasting (wages tax);
the Vennootschapsbelasting (corporation tax);
the Dividendbelasting (dividend tax).

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by one of the States after the date of signature of this Agreement in addition to, or in place of, the existing taxes. At the end of each calendar year, the competent authority of each State shall notify the competent authority of the other State of any substantial changes which have been made in the taxation laws of his State to which this Agreement applies.

CHAPTER II. Definitions

Article 3. General Definitions

(1) In this Agreement, unless the context otherwise requires -

(a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes -
  (i) the Territory of Norfolk Island;
  (ii) the Territory of Christmas Island;
  (iii) the Territory of Cocos (Keeling) Islands;
  (iv) the Territory of Ashmore and Cartier Islands;
  (v) the Coral Sea Islands Territory; and
  (vi) any area adjacent to the territorial limits of Australia and the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and sub-soil of the continental shelf;
(b) the term "the Netherlands" means that part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its sub-soil under the North Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
(c) the terms "State", "one of the States" and "other State" mean Australia or the Netherlands, as the context requires;
(d) the term "person" means an individual, a company and any other body of persons;
(e) the term "company" means any body corporate or any entity which is assimilated to a body corporate for tax purposes;
(f) the term "tax" means Australian tax or Netherlands tax, as the context requires;
(g) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
(h) the term "Netherlands tax" means tax imposed by the Netherlands, being tax to which this Agreement applies by virtue of Article 2;
(i) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of the Netherlands, the Minister of Finance or his authorized representative;
(j) the terms "enterprise of one of the States" and "enterprise of the other State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of the Netherlands, as the context requires;
(k) words in the singular include the plural and words in the plural include the singular.

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

(3) As regards the application of this Agreement by either of the States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which this Agreement applies.

Article 4. Residence

(1) For the purposes of this Agreement, a person is a resident of one of the States -

(a) in the case of Australia, subject to paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and
(b) in the case of the Netherlands, if the person is a resident of the Netherlands for the purposes of Netherlands tax but not if he is liable to tax in the Netherlands in respect only of income from sources therein.

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

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

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

(4) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both States, then it shall be deemed to be a resident solely 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 Agreement:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Agreement a person other than an individual is a resident of both States, the competent authorities of the States shall endeavour to determine by mutual agreement the State of which such person shall be deemed to be a resident for the purposes of the Agreement, 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 Agreement.

Article 5. Permanent Establishment

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

(2) The term "permanent establishment" shall include especially -

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, quarry or other place of extraction of natural resources;
(g) an agricultural, pastoral or forestry property;
(h) a building site or construction, installation or assembly project which exists for more than twelve months.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

The following paragraph 2 of Article 13 of the MLI applies to paragraph 3 of article 5 of this Agreement:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)

Notwithstanding Article 5 of the Agreement, the term "permanent establishment" shall be deemed not to include:
a) the activities specifically listed in paragraph 3 of Article 5 of this Agreement as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

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

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:

Paragraph 3 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI 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 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 Agreement; 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.

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

(a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or
(b) substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the periods referred to in paragraph 2, subparagraph h, and paragraph 4 of Article 5 of the Agreement has been exceeded:

a) where an enterprise of a State carries on activities in the other State at a place that constitutes a building site or construction, installation project or other specific project identified in paragraph 2, subparagraph h, and paragraph 4 of Article 5 of the Agreement or carries on supervisory activities in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months; and

b) where connected activities are carried on in that other State at (or, where subparagraph h, and paragraph 4 of Article 5 of the Agreement applies to supervisory activities in connection with) the same building site, construction project, installation project or other specific project identified in paragraph 2, subparagraph h, and paragraph 4 of Article 5 of the Agreement during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, installation or other specific project identified in paragraph 2, subparagraph h, and paragraph 4 of Article 5 of the Agreement.

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

(a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
(b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

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

(7) The fact that a company which is a resident of one of the States controls or is controlled by a company which

is a resident of the other State, or which carries-on business in that other State (whether through a permanent establishment or otherwise) shall not of itself make either company a permanent establishment of the other.

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

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

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

For the purposes of the provisions of Article 5 of the Agreement, 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.

CHAPTER III. Taxation of income

Article 6. Income from Real Property

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

(2) Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property. However, income from ships, boats or aircraft shall not be regarded as income from real property.

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

Article 7. Business Profits

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

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

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

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

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

Article 8. Shipping and Air Transport

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

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

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

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

(5) The amount which shall be charged to tax in one of the States as profits from the operation of ships or aircraft in respect of which a resident of the other State may be taxed in the firstmentioned State under paragraph (2) or (3) shall not exceed 5 per cent of the amount paid or payable (net of rebates) in respect of carriage in such operations.

(6) Paragraph (5) shall not apply to profits derived from the operation of ships or aircraft by a resident of one of the States whose principal place of business is in the other State, nor shall it apply to profits derived from the operation of ships or aircraft by a resident of a State if those profits are derived otherwise than from the carriage of passengers, livestock, mail, goods or merchandise.

Article 9. Associated Enterprises

(1) Where -

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

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

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

Article 10. Dividends

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

(2) Such dividends may be taxed in the State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" in this Article means -

(a) in the case of Australia, income from shares and other income assimilated to income from shares by the taxation law of Australia; and
(b) in the case of the Netherlands, income which is subject to dividend tax.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the States, carries on business through a permanent establishment situated in the other State, being the State of which the company paying the dividends is a resident, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Dividends paid by a company which is a resident of one of the States, being dividends to which a person who is not a resident of the other State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of the Netherlands for the purposes of Netherlands tax.

Article 11. Interest

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

(2) Such interest may be taxed in the 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) The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to interest or to income from money lent by the taxation law of the State in which the income arises. The term does not include income to which Article 10 applies.

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

(5) Interest shall be deemed to arise in a State when the payer is that State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State.

Where, however -

(a) the person paying the interest is a resident of one of the States and has in the other State or outside both States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by the permanent establishment, then the interest shall be deemed to arise where the permanent establishment is situated;
(b) the person paying the interest is not a resident of either of the States but has in one of the States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by the permanent establishment, then the interest shall be deemed to arise where the permanent establishment is situated.

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

Article 12. Royalties

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

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

(3) The term "royalties" in this Article means payments, whether periodical or not, and however described or computed, to the extent to which they are paid as consideration for the use of, or the right to use, any

copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance of an ancillary and subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies, and includes any payments to the extent to which they are paid as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

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

(5) Royalties shall be deemed to arise in a State when the payer is that State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State. Where, however -

(a) the person paying the royalties is a resident of one of the States and has in the other State or outside both States a permanent establishment in connection with which the liability to pay the royallies was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise where the permanent establishment is situated;
(b) the person paying the royalties is not a resident of either of the States but has in one of the 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, then the royalties shall be deemed to arise where the permanent establishment is situated.

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

Article 13. Alienation of Property

(1) Income from the alienation of real property may be taxed in the State in which that property is situated.

(2) For the purposes of this Article -

(a) the term "real property" shall include -
  (i) a lease of land or any other direct interest in or over land;
  (ii) rights to exploit, or to explore for, natural resources; and
  (iii) shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the States or of rights to exploit, or to explore for, natural resources in one of the States;
(b) real property shall be deemed to be situated -
  (i) where it consists of direct interests in or over land - in the State in which the land is situated;
  (ii) where it consists of rights to exploit, or to explore for, natural resources - in the State in which the natural resources are situated or the exploration may take place; and
  (iii) where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the States or of rights to exploit, or to explore for, natural resources in one of the States - in the State in which the assets or the principal assets of the company are situated.

The following paragraph 1 of Article 9 of the MLI applies to paragraph 1 and paragraph 2, subparagraph a(iii) and b(iii) of Article 13 of this Agreement:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATTION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

Paragraph 1 and paragraph 2, subparagraph a(iii) and b(iii) of Article 13 of the Agreement:

a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the

extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of the Agreement.

(3) Gains from the alienation of shares or "jouissance" rights in a company the capital of which is wholly or partly divided into shares and which is a resident of the Netherlands for the purposes of Netherlands tax, derived by an individual who is a resident of Australia, may be taxed in the Netherlands.

Article 14. Independent Personal Services

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

Article 15. Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

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

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or the fiscal year, as the case may be, of that other State; and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
(c) the remuneration is not deductible in determining the taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that State.

Article 16. Directors' Remuneration

(1) Where a resident of the Netherlands is a "director" of a company, which is a resident of Australia, and derives from that company fees and other remuneration in respect of his services to the company, such fees and other remuneration may be taxed in Australia.

(2) Where a resident of Australia is a "bestuurder" or a "commissaris" of a company, which is a resident of the Netherlands, and derives from that company fees and other remuneration in respect of his services to the company, such fees and other remuneration may be taxed in the Netherlands.

(3) Where the remuneration mentioned in paragraph (1) or (2) is derived by a person who exercises activities of a regular and substantial character in a permanent establishment situated in the State other than the State of which the company is a resident and the remuneration is deductible in determining the taxable profits of that permanent establishment then, notwithstanding the provisions of paragraph (1) or (2) of this Article, the remuneration, to the extent to which it is so deductible, shall be taxable only in the State in which the permanent establishment is situated.

Article 17. Entertainers

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

(2) Notwithstanding anything contained in Articles 5 and 7, where the services of an entertainer mentioned in paragraph (1) are provided in one of the States by an enterprise of the other State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State if the entertainer performing the services of a relative of such person, controls, directly or indirectly, that enterprise.

(3) The term "relative" in this Article means a brother, sister, spouse, ancestor or descendant.

Article 18. Pensions and Annuities

(1) Pensions, including pensions provided under the provisions of a public social security system, but not including pensions to which Article 19 applies, paid to a resident of one of the States, and annuities so paid, shall be taxable only in that State.

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

Article 19. Government Service

(1) Remuneration (including a pension) paid to any individual in respect of services rendered in the discharge of governmental functions to one of the States or to a political sub-division of one of the States or to a local authority of one of the States may be taxed in that State. However, any such remuneration, not being a pension, shall be taxable only in the other State if the services are rendered in that other State and the recipient is a resident of that other State who -

(a) is a citizen or national of that State; or
(b) did not become a resident of that State solely for the purpose of performing the services.

(2) This Article shall not apply to remuneration (including a pension) in respect of services rendered in connection with any trade or business carried on by one of the States or a political sub-division of one of the States or a local authority of one of the States. In such a case, the provisions of Articles 15, 16 and 18 shall apply.

Article 20. Professors and Teachers

(1) Remuneration which a professor or teacher who is a resident of one of the States and who visits the other State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the first-mentioned State.

(2) This Article shall not apply to remuneration which he receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 21. Students

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

Article 22. Income of Dual Resident

Where a person, who by reason of the provisions of paragraph (1) of Article 4 is a resident of both States but by reason of the provisions of paragraph (3) or (4) of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the States, derives income from sources in that State or from sources outside both States, that income shall be taxable only in that State.

CHAPTER IV. Methods of elimination of double taxation

Article 23

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

(2) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which according to the provisions of this Agreement may be taxed in Australia.

(3) Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral

regulations for the avoidance of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph (2) of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income which is included in the basis mentioned in paragraph (2) of this Article and may be taxed in Australia according to Articles 6 and 7, paragraphs (2) and (3) of Article 8, paragraph (4) of Article 10, paragraph (4) of Article 11, paragraph (4) of Article 12, paragraph (1) of Article 13, Article 14, paragraph (1) of Article 15, paragraph (1) of Article 16 and Article 19 of this Agreement bears to the total income which forms the basis mentioned in paragraph (2) of this Article.

The following paragraph 2 of Article 5 of the MLI applies to Paragraph 3, first sentence of Article 23 of this Agreement with respect to the residents of the Netherlands:

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION
(*Option A*)

Paragraph 3, first sentence, of Article 23 of the Agreement shall not apply where Australia applies the provisions of the Agreement to exempt income derived by a resident of a Netherlands from tax or to limit the rate at which such income may be taxed. In the latter case, the Netherlands shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in Australia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in the Australia.

Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as may be taxed in Australia according to paragraph (2) of Article 10, paragraph (2) of Article 11, paragraph (2) of Article 12 and Article 17, and are included in the basis mentioned in paragraph (2) of this Article. The amount of this deduction shall be the lesser of the following amounts:

(a) the amount equal to the Australian tax;
(b) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph (2) of this Article, as the amount of the said items of income bears to the amount of income which forms the basis mentioned in paragraph (2) of this Article.

The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARANT ENTITIES

Article 23 of the Agreement shall not apply to the extent that the provisions of the Agreement allow taxation by that other State solely because the income is also income derived by a resident of that other State.

CHAPTER V. Special provisions

Article 24. Mutual Agreement Procedure

(1) Where a resident of a State considers that the actions of the competent authority of one or both of the States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the first notification of the action.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 24 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either State.

(2) The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the States.

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

to the interpretation or application of this Agreement.

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

The following Part VI of the MLI applies to this Agreement:

PART VI OF THE MLI (ARBITRATION)

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under paragraph 1 of Article 24 of this Agreement, a person has presented a case to the competent authority of a State on the basis that the actions of one or both of the States have resulted for that person in taxation not in accordance with the provisions of the Agreement; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 24 of the Agreement, 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 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 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 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 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 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 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 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 States shall by mutual agreement pursuant to Article 25 of the MLI 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.

12. a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by the MLI shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either 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 State, a decision concerning the issue is rendered by a court or administrative tribunal of one of the 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 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 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 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 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 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 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 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 State.

Article 21 (Confidentiality of Arbitration Proceedings) 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 Agreement and of the domestic laws of the 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 Agreement related to the exchange of information and administrative assistance.

2. The competent authorities of the 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 Agreement related to exchange of information and administrative assistance and under the applicable laws of the 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 Agreement 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 States:

a) the competent authorities of the 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 States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

a) After a case is submitted to arbitration, the competent authority of each 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 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 Agreement, for each adjustment or similar issue in the case. In a case in which the competent authorities of the States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Agreement (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 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 States. The arbitration decision shall have no precedential value.

5. Prior to the beginning of arbitration proceedings, the competent authorities of the 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 Agreement, as well as the arbitration proceeding under this Part, 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 States, a person that presented the case or one of that person's advisors materially breaches that agreement.

Article 25 (Costs of Arbitration Proceedings) of the MLI

In an arbitration proceeding under this Part, 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 States, shall be borne by the States in a manner to be settled by mutual agreement between the competent authorities of the States. In the absence of such agreement, each 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 States in equal shares.

Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part 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 conventions that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Nothing in this Part 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 States are or will become parties.

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

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

1. Australia reserves the right to exclude from the scope of Part VI 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.

Article 25. Exchange of Information

(1) The competent authorities of the States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

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

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

Article 26. Diplomatic and Consular Officials

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

Article 27. Regulations

The competent authority of the Netherlands may prescribe regulations necessary to carry out in the Netherlands the provisions of this Agreement.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or

indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

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 Agreement is denied to a person under provisions of paragraph 1 of Article 7 of the MLI that deny all or part of the benefits that would otherwise be provided under this Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits, the competent authority of the 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, 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 State to which a request has been made under this paragraph by a resident of the other State shall consult with the competent authority of that other State before rejecting the request.

Article 28. Territorial extension

(1) This Agreement may be extended, either in its entirety or with any necessary modifications, to the part of the Kingdom of the Netherlands which is not situated in Europe and which imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through the diplomatic channel.

(2) Unless otherwise agreed, the termination of this Agreement shall not also terminate the application of the Agreement to the part of the Kingdom of the Netherlands to which it has been extended under this Article.

Article 29. Entry into Force

This Agreement shall come into force on the date on which the Government of Australia and the Government of the Kingdom of the Netherlands exchange notes through the diplomatic channel notifying reach other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in the Netherlands, as the case may be, and thereupon this Agreement shall have effect -

(a) in both States, in respect of withholding tax on dividends and interest, on dividends and interest derived on or after 1 July 1975;
(b) in Australia, in respect of tax on income of any year of income beginning on or after 1 July 1975;
(c) in the Netherlands, in respect of taxes, other than the dividend tax, for taxable years and periods beginning on or after 1 January 1975.

Article 30. Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of the Kingdom of the Netherlands may, on or before 30 June in any calendar year after the year 1979, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective -

(a) in both States, in respect of withholding tax on dividends, interest and royalties, on dividends, interests and royalties derived on or after 1 July in the calendar year next following that in which the notice of termination is given;
(b) in Australia, in respect of tax on income 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;
(c) in the Netherlands, in respect of taxes, other than withholding taxes referred to in sub-paragraph (a), for taxable years and periods beginning after the end of the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Canberra this seventeenth day of March, one thousand nine hundred and seventy-six, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the

Kingdom of the Netherlands:

(sd.) PEKELHARING

For the Government of

Australia:

(sd.) PHILLIP LYNCH

Protocol

The Government of the Kingdom of the Netherlands and the Government of Australia have agreed at the signing of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

(1) With reference to Articles 6 to 8 and 10 to 17,
income derived by a resident of the Netherlands which under those Articles may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

(2) With reference to Articles 7 and 9,
where the information available to the competent authority of a State is inadequate to determine the profits of an enterprise on which tax may be imposed in that State in accordance with Article 7 or Article 9, nothing in those Articles shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of those Articles.

(3) With reference to Articles 7 and 23,
profits of an enterprise of one of the States from carrying on a business of any form of insurance other than life insurance may be taxed in the other State in accordance with the law of that other State relating specifically to the taxation of any person who carries on such business, and Article 23 shall apply for the elimination of double taxation as if the profits so taxed were attributable to a permanent establishment of the enterprise in the State imposing the tax.

(4) With reference to Articles 10,11 and 12,
applications for the restitution of tax levied by the Netherlands contrary to the provisions of those Articles must be lodged with the competent authority of the Netherlands within a period of three years after the expiration of the calendar year in which the tax has been levied.

(5) With reference to Article 23,
   (a) where income derived by a resident of Australia may, under the provisions of Articles 6 to 8 and 10 to 17, be taxed in the Netherlands such income shall, for the purposes of paragraph (1) of Article 23 and of the provisions of the income tax law of Australia dealing with the avoidance of double taxation, be deemed to be income from sources in the Netherlands;
   (b) in so far as the Netherlands income tax or company tax is concerned, the basis mentioned in paragraph (2) of Article 23 is the 'onzuivere inkomen' or 'winst' in terms of the Netherlands income tax law or company tax law, respectively.

(6) General.
   (a) Where one of the States is entitled to tax the profits of an enterprise, that State may treat as profits of the enterprise, profits from the alienation of capital assets of the enterprise, not being profits that consist of income to which paragraph (1) of Article 13 applies.
   (b) If, in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third State being a State that at the date of signature of this Protocol is a member of the Organisation for Economic Co-operation and Development, Australia shall agree to limit the rate of its taxation -

      (i) on dividends paid by a company which is a resident of Australia for the purposes of Australian tax to which a company s a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 10; or
      (ii) on interest arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or
      (iii) on royalties arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12,

   the Government of Australia shall immediately inform the Government of the Kingdom of the Netherlands in writing through the diplomatic channel and shall enter into negotiations with the Government of the Kingdom of the Netherlands to review the provisions specified in sub-paragraphs (i), (ii) and (iii) above in order to provide the same treatment for the Netherlands as that provided for the third State.

DONE in duplicate at Canberra this seventeenth day of March, one thousand nine hundred and seventy-six, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the

Kingdom of the Netherlands:

(sd.) PEKELHARING

For the Government of

Australia:

(sd.) PHILLIP LYNCH