

**AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF
KIRIBATI FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME**

AUSTRALIA AND THE REPUBLIC OF KIRIBATI,

AFFIRMING their desire to maintain and strengthen trade, investment and private sector cooperation between the two countries, and

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

HAVE AGREED as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are:

(a) in Australia:

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

(b) in Kiribati, the income tax imposed under the law of Kiribati.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of Kiribati after the date of signature of this Agreement 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 which have been made in the laws of their respective States relating to the taxes to which this Agreement applies within a reasonable period of time after those changes.

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires:

(a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

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

and includes any area adjacent to the territorial limits of Australia (including 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;

(b) the term "Kiribati" means the Republic of Kiribati and includes all adjacent areas which, consistently with international law, have been, or may after the date of this Agreement be, designated under the laws of Kiribati as areas over which Kiribati has sovereignty, sovereign rights or jurisdiction in relation to the exploration for and exploitation of the resources of the sea, the seabed and its subsoil;

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

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Kiribati, as the context requires;

(g) the term "tax" means Australian tax or Kiribati 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

(h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

(i) the term "Kiribati tax" means tax imposed by the Republic of Kiribati, being tax to which this Agreement applies by virtue of Article 2;

(j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Kiribati, the Internal Revenue Board or an authorised representative of the Board.

2. In the application of this Agreement by one of the Contracting States, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force 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 Contracting States:

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

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

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

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:

(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

(c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's 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 Contracting States, then the person's status shall be determined as follows:

(a) it shall be deemed to be a resident of the Contracting State in which it is incorporated or otherwise constituted;

(b) if it is not incorporated or otherwise constituted in either of the Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent establishment

1. For the purposes of this Agreement, the term "permanent establishment", in relation to an enterprise, means a fixed place of business through 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, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property; and

(h) a building site or construction, installation or assembly project which exists for more than 90 days.

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; or

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or

(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; or

(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.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

(a) it carries on supervisory activities in that State for more than 90 days in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that State; or

(b) services are furnished in that State, including consultancy, management or administrative services through employees or other personnel engaged by the enterprise or an associated enterprise for such purposes, and those activities continue for the same or a connected project within that State for a period or periods

aggregating more than 90 days in any year of income or tax year, as the case may be;
or

(c) substantial equipment is being used in that State by, for or under contract with the enterprise.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting 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 firstmentioned State if:

(a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) notwithstanding the provisions of subparagraphs 3(a) and 3(b), the person has no such authority but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers in that State goods or merchandise on behalf of the enterprise; or

(c) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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

7. The fact that a company which is a resident of one of the Contracting States 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.

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

Income from real property

1. Income from real property may be taxed in the Contracting State in which the real property is situated.
2. In this Article, the term "real property", in relation to one of the Contracting States, has the meaning which it has under the laws of that State and includes:
 - (a) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (b) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.
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 paragraphs 1 and 3 shall also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

Article 7

Business profits

1. The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - (a) that permanent establishment; or
 - (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities within that other State of the same or a similar kind as those carried on, through that permanent establishment, if, on the basis of the information available to the competent authority of that other State, it may reasonably be concluded that those sales or business activities would not have

been made or carried on but for the existence of that permanent establishment or the continued provision by it of goods or services.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States 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 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, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. 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. Nothing in this Article shall affect the application of any law of one of the Contracting States 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, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, 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 one of the Contracting States relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. Where:

(a) a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, 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.

Article 8

Ships and aircraft

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

2. Profits from the operation of ships derived by a resident of one of the Contracting States may be taxed in that Contracting State and may also be taxed in the other State, but the tax so charged in the other State shall be reduced by an amount equal to one half of the amount which would be payable in respect of those profits but for this paragraph.

3. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State, where they are profits from the operation of aircraft confined solely to places in that other State; and notwithstanding the provisions of paragraph 2, such profits may be taxed in the other Contracting State without reduction, where they are profits from the operation of ships confined solely to places in that other State.

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

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

Article 9

Associated enterprises

1. Where:

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

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

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

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State 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 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 and for this purpose 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 one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. Those dividends may 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 so charged shall not exceed 20 per cent of the gross amount of the dividends.
3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.
4. The provisions of paragraph 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or 14, as the case may be, shall apply.
5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that 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 Kiribati for the purposes of Kiribati tax.

Article 11

Interest

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. That interest may 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. 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, interest from any other form of indebtedness and all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

4. The provisions of paragraph 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in one of the Contracting States when the payer is that State itself or a political subdivision or local authority of that State or a person who 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 one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

Article 12

Royalties

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

2. Those royalties may 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 15 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; or

(b) the use of, or the right to use, any industrial, commercial or scientific equipment; or

(c) the supply of scientific, technical, industrial or commercial knowledge or information; or

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or

(e) the use of, or the right to use:

(i) motion picture films; or

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(f) 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 paragraph 2 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in one of the Contracting States when the payer is that State itself or a political subdivision or local authority of that State or a person who 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 one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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 or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

Article 13

Alienation of property

1. Income, profits or gains derived by a resident of one of the Contracting States from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains 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 the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income, profits or gains derived by a resident of one of the Contracting States from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of one of the Contracting States relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of the preceding paragraphs of this Article apply.

6. In this Article, the term "real property" has the same meaning as it has in Article 6.

7. The situation of real property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

Article 14

Independent personal services

1. Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:

(a) a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities. If such a fixed base is available to the individual, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base; or

(b) the income is derived from a resident of that other Contracting State or a permanent establishment in that other Contracting State and exceeds an amount of \$A8,000 or its equivalent in any other currency in any one 12 month period. In that case so much of the income as is derived from that individual's activities in that other Contracting State may be taxed in that State; or

(c) that individual's stay in that other Contracting State exceeds an aggregate of 90 days in any year of income or tax year, as the case may be, of that other State. In that case so much of the income as is derived from that individual's activities in that other Contracting State may be taxed in that State.

2. The Treasurer of Australia and the Minister of Finance and Economic Planning of Kiribati may mutually determine in letters exchanged for the purpose variations in the

amount specified in subparagraph 1(b) and any variations so determined shall have effect according to the tenor of the letters.

3. The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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, remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned State if:

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 90 days in the year of income or tax 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 taxable profits of a permanent establishment or a fixed base which the employer has in that other State; and

(d) the remuneration is, or upon the application of this Article will be, subject to tax in the firstmentioned State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that State.

Article 16

Directors' fees

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

Article 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 Contracting State in which these activities are exercised.
2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

Article 18

Pensions and annuities

1. Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States 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.
3. Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

Article 19

Government service

1. Remuneration, other than a pension or annuity, paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such 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 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. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In that case, the provisions of Article 15 or 16, as the case may be, shall apply.

Article 20

Students and trainees

Where a student or trainee, who is a resident of one of the Contracting States 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 or trainee's education or training, receives payments from sources outside that other State for the purpose of the student's or trainee's maintenance, education, or training, those payments shall be exempt from tax in that other State.

Article 21

Income not expressly mentioned

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.

Article 22

Source of income

1. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 19 and 21, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

2. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 19 and 21, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the firstmentioned Contracting State relating to its tax be deemed to be income from sources in the other Contracting State.

Article 23

Methods of elimination of double taxation

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 of this Article), Kiribati tax paid under the law of Kiribati and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Kiribati shall be allowed as a credit against Australian tax payable in respect of that income.

2. Where a company which is a resident of Kiribati 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 not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in paragraph 1 shall include the Kiribati tax paid by that firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

3. For the purpose of paragraphs 1 and 2, Kiribati tax paid shall include an amount equivalent to any Kiribati tax forgone.

4. In paragraph 3, the term "Kiribati tax forgone" means the amount which, under the law of Kiribati relating to Kiribati tax and in accordance with this Agreement, would have been payable as Kiribati tax on income or a payment but for an exemption from, or reduction of, Kiribati tax on that income or payment resulting from the operation of:

(a) section 82 and Schedule 8 or section 90(4) of the Income Tax Act 1990 in so far as those provisions were in force on, and have not been modified since, the date of

signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or

(b) any other provision which may subsequently be made granting an exemption from or reduction of tax which the authorised representatives of the Government of Australia and of the Government of Kiribati mutually determine in writing to be of a substantially similar character, provided that such provisions are not modified thereafter or are modified only in minor respects so as not to affect their general character.

5. The provisions of paragraphs 3 and 4 shall not apply in respect of income or a payment attributable to the provision of services provided directly or indirectly to a person who is a resident of Australia, except where the services are in the nature of tourism or communication services or services provided to manufacturing, mining, construction, fishing or agricultural activities carried on in Kiribati.

6. The provisions of paragraphs 3, 4 and 5 shall apply only in relation to income or a payment derived in any of the first 10 years of income in relation to which this Agreement has effect by virtue of subparagraph (a)(ii) of Article 27 and in any later year of income that may be mutually determined in an exchange of letters for this purpose by the authorised representatives of the Government of Australia and of the Government of Kiribati.

7. In the case of Kiribati, subject to the provisions of the law of Kiribati from time to time in force which relate to the allowance of a credit against Kiribati tax of tax paid in a country outside Kiribati (which shall not affect the general principle of this Article), Australian tax paid under the law of Australia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Kiribati from sources in Australia shall be allowed as a credit against Kiribati tax payable in respect of that income.

Article 24

Mutual agreement procedure

1. Where a person who is a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within 3 years from the first

notification of the action giving rise to taxation not in accordance with this Agreement.

2. The competent authority shall endeavour, if the 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 Contracting 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 Contracting States.

3. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

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

Article 25

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the national laws of the Contracting States concerning the taxes to which this Agreement applies in so far as the taxation under those laws is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of one of the Contracting States shall be treated as secret in the same manner as information obtained under the national 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 the competent authority of one of the Contracting States 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; or

(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 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.

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 international agreements.

Article 27

Entry into force

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each 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 Kiribati,[\[1\]](#) as the case may be, and, in that event, this Agreement shall have effect:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July next following the date on which the Agreement enters into force;

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Agreement enters into force;

(b) in Kiribati:

in respect of Kiribati tax, in relation to income, profits or gains of any tax year beginning on or after 1 January next following the date on which the Agreement enters into force.

Article 28

Termination

This Agreement shall continue in effect indefinitely, but either of the Contracting States 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 to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July next following the date on which the notice of termination is given;

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the notice of termination is given;

(b) in Kiribati:

in respect of Kiribati tax, in relation to income, profits or gains of any tax year beginning on or after 1 January next following the date on 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 twenty-fifth day of March, One thousand nine hundred and ninety-one in the English language.

FOR AUSTRALIA: FOR THE REPUBLIC OF KIRIBATI:

[Signed:] [Signed:]

PAUL KEATING TEATAO TEANNAKI