

AGREEMENT BETWEEN
THE AUSTRALIAN COMMERCE AND INDUSTRY OFFICE
AND
THE TAIPEI ECONOMIC AND CULTURAL OFFICE
CONCERNING THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

THE AUSTRALIAN COMMERCE AND INDUSTRY OFFICE AND THE TAIPEI ECONOMIC AND CULTURAL OFFICE,

DESIRING to conclude an agreement concerning 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 territories.

Article 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are:
 - (a) in the territory in which the taxation law administered by the Australian Taxation Office is applied:

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

- (b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:

the profit seeking enterprise income tax and the individual consolidated income tax, imposed under that law.

2. This Agreement shall apply also to any identical or substantially similar taxes on income, profits or gains which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities will notify each other as soon as practicable of any substantial changes which have been made in the taxation laws of their respective territories.

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires:
- (a) the term "territory" means the territory referred to in subparagraph 1(a) or 1(b) of Article 2, as the case requires;
 - (b) the term "person" includes an individual, a company and any other body of persons;
 - (c) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
 - (d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory or an enterprise carried on by a resident of the other territory, as the context requires;
 - (e) the term "tax" means tax imposed under the law of a territory, being a tax to which this Agreement applies by virtue of Article 2, but does not include any penalty or interest imposed under that law;
 - (f) the term "competent authority" means, in the case of the territory in which the taxation law administered by the Australian Taxation Office is

applied, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, the Director-General of the Department of Taxation or an authorised representative of the Director-General.

2. As regards the application of this Agreement at any time in a territory, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that territory concerning the taxes to which this Agreement applies, any meaning under the applicable tax law of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4

Residence

1. For the purposes of this Agreement, a person is a resident of a territory if the person is a resident of that territory for the purposes of its tax.

2. A person is not a resident of the territory in which the taxation law administered by the Australian Taxation Office is applied for the purposes of this Agreement if the person is liable to tax in that territory in respect only of income from sources in that territory.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both territories, 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 territory in which a permanent home is available to the person;
- (b) if a permanent home is available to the person in both territories, or in neither of them, the person shall be deemed to be a resident solely of the territory in which the person has an habitual abode;
- (c) if the person has an habitual abode in both territories or in neither of them, the person shall be deemed to be a resident solely of the territory with which the person's economic and personal relations are closer.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both territories, then it shall be deemed to be a resident solely of the territory in which its place of incorporation 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" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of 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 6 months; and
 - (i) the furnishing of services, including consultancy services in a territory by an enterprise of the other territory through employees or other personnel engaged by the enterprise for such purpose, but only where those activities (for the same or a connected project) within the first-mentioned territory continue for a period or periods aggregating more than 120 days within any twelve month period.
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 of 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 a territory and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that territory for more than 6 months in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that territory; or
- (b) substantial equipment is being used in that territory by, for or under contract with, the enterprise where that use continues for more than 3 months.

5. A person acting in a territory on behalf of an enterprise of the other territory--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 territory if:

- (a) the person has, and habitually exercises in that territory, 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) in so acting, the person manufactures or processes in that territory for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of a territory shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory 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 a territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (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 an enterprise, not being an enterprise of either territory, has a permanent establishment in a territory.

Article 6

Income from real property

1. Income from real property may be taxed in the territory in which the real property is situated.

2. In this Article, the term "real property":

(a) in the case of the territory in which the taxation law administered by the Australian Taxation Office is applied, has the meaning it has under the law of that territory, and includes:

(i) a lease of land and any other interest in or over land, whether improved or not; and

(ii) a right to receive variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the proceeds from the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

(b) in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, has the meaning it has under the law of that territory, and includes:

(i) property accessory to immovable property, livestock and equipment used in agriculture and forestry;

(ii) rights to which the provisions of the general law respecting landed property apply; and

(iii) usufruct of immovable property and rights to variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, sources and other natural resources; but

(c) shall not include ships, boats and aircraft.

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

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

5. The provisions of paragraphs 1 and 4 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 a territory shall be taxable only in that territory unless the enterprise carries on business in the other territory through a permanent establishment situated in that other territory. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other territory but only so much of them as is attributable to that permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses 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 territory 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 a territory 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 territory is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

6. Where profits include items of income or gains 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 a territory relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either territory at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the parties to this Agreement shall consult each other with a view to facilitating any amendment of this paragraph as may be appropriate.

8. Where:

- (a) a resident of a territory 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 territory 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 territory,

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

Article 8

Ships and aircraft

1. Profits derived by an enterprise of a territory from the operation of ships or aircraft shall be taxable only in that territory.
2. Notwithstanding the provisions of paragraph 1, such profits shall be taxed in the other territory to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other territory.
3. The profits to which the provisions of paragraphs 1 and 2 apply shall include profits from:
 - (a) the lease of ships or aircraft on a full time, voyage or bareboat basis, and of containers and related equipment, which is merely incidental to the international operation of ships or aircraft by the lessor, provided that the leased ships or aircraft, or the containers and related equipment, are used in international operations by the lessee; and
 - (b) the operation of ships or aircraft derived through participation in a pool, a joint business or an international operating agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a territory and discharged at a place in that territory shall be treated as profits from ship or aircraft operations confined solely to places in that territory.

Article 9

Associated enterprises

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

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. Nothing in this Article shall affect the application of any law of a territory 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 territory is inadequate to determine the profits 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 a territory has been charged to tax in that territory are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other territory and charged to tax in that other territory, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other territory 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 territory shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned territory. In determining such an adjustment, due regard shall be had to the other provisions of this [Agreement](#) and for this purpose the competent authorities shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a territory for the purposes of its tax, being dividends to which a resident of the other territory is beneficially entitled, may be taxed in that other territory.

2. However, those dividends may also be taxed in the territory of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that territory, but the tax so charged shall not exceed:

- (a) in the territory in which the taxation law administered by the [Australian Taxation](#) Office is applied:
 - (i) 10 per cent of the gross amount of the dividends, to the extent to which the dividends have been fully "franked" in accordance with the federal law of that territory relating to its [income](#) tax; and

- (ii) 15 per cent of the gross amount of the dividends in all other cases;
and
- (b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:
 - (i) 10 per cent of the gross amount of the dividends, where the dividends are paid to a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; and
 - (ii) 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either territory at the date of signature of this Agreement is varied, otherwise than in minor respects so as to not affect its general character, the parties to this Agreement shall consult each other with a view to facilitating any amendment of this paragraph as may be appropriate.

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 territory of which the company making the distribution is a resident for the purposes of its tax.