SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN

AUSTRALIA AND THE KINGDOM OF BELGIUM

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

SIGNED AT CANBERRA ON 13 OCTOBER 1977 AS AMENDED BY THE PROTOCOL SIGNED AT CANBERRA ON 20 MARCH 1984

(Paris, 24 June 2009)

Not yet in force

[2009] ATNIF 17

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT CANBERRA ON 13 OCTOBER 1977 AS AMENDED BY THE PROTOCOL SIGNED AT CANBERRA ON 20 MARCH 1984

Australia and the Kingdom of Belgium,

Desiring to amend the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984 (hereinafter referred to as the "Agreement "),

Have agreed as follows:

ARTICLE I

The text of Article 26 of the Agreement is deleted and replaced by the following:

*"1.	The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.*

*2.	Any information received under paragraph 1 by a Contracting 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, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.*

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

(a)   *to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;*

(b)   *to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;*

(c)   *to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).*

4.   *If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.*

5.   *In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. To the extent necessary to obtain such information, the tax administration of the requested Contracting State shall have the power to require the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws."*

ARTICLE II

1.   Each of the Contracting States shall notify the other Contracting State, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

a)   with respect to taxes due at source on income credited or payable on or after 1 January 2010;

b)   with respect to other taxes charged on income of taxable periods beginning on or after
        1 January 2010;

c)   with respect to any other taxes imposed by or on behalf of the Contracting States, on any other tax due in respect of taxable events taking place on or after 1 January 2010.

2.   Notwithstanding paragraph 1, the provisions of Article 26 (Exchange of Information) shall have effect with respect to criminal tax matters from the date of entry into force of the Protocol, without regard to the taxable period to which the matter relates.

The term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting State.

ARTICLE III

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned duly authorized thereto by their respective governments, have signed this Protocol.

DONE in duplicate at Paris, on this 24th day of June 2009 in the English language.

FOR THE GOVERNMENT OF	FOR THE GOVERNMENT OF
AUSTRALIA:	THE KINGDOM OF BELGIUM:
The Hon. Simon Crean	H.E. Didier Reynders
Minister for Trade	Minister for Finance