

**CONVENTION
BETWEEN
AUSTRALIA
AND
THE SWISS CONFEDERATION
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME**

THE GOVERNMENT OF AUSTRALIA

AND

THE SWISS FEDERAL COUNCIL

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income

HAVE AGREED as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Persons covered

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

Article 2

Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State and, in the case of Switzerland, on behalf of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

a) in Australia:

the income tax, the fringe benefits tax and resource rent taxes imposed under the federal law of Australia;

(hereinafter referred to as "Australian tax");

b) in Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income)

(hereinafter referred to as "Swiss tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed under the federal laws of Australia or the laws of Switzerland after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

5. The Convention shall not apply to taxes withheld at source on prizes in a lottery.

CHAPTER II

DEFINITIONS

Article 3

General definitions

1. For the purposes of this Convention, 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 exclusive economic zone or the seabed and subsoil of the continental shelf;

- b) the term "Switzerland" means the Swiss Confederation;
- c) the term "person" includes an individual, a company, a trust and any other body of persons;
- d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- g) the term "competent authority" means:
 - (i) in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
 - (ii) in the case of Switzerland, the Head of the Federal Department of Finance or his or her authorised representative;
- h) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State;
 - (ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State;
- i) the term "pension scheme" means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State or, in the case of Australia, that is an Australian superannuation fund for the purposes of Australian tax, which is:
 - (i) regulated by that State; and
 - (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes.
- j) the term "tax" means Australian tax or Swiss 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;
- k) the term "recognised stock exchange" means:
 - (i) the Australian Securities Exchange and any other Australian stock exchange recognised as such under Australian law;
 - (ii) the SIX Swiss Exchange and any other Swiss stock exchange recognised as such under Swiss law;
 - (iii) the London Stock Exchange, the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Dusseldorf, Frankfurt, Hamburg, Hong Kong, Johannesburg, Lisbon, Luxembourg, Madrid, Mexico, Milan, New York, Paris, Sao Paulo, Seoul, Singapore, Stockholm, Toronto and Vienna, and the NASDAQ System; and
 - (iv) any other stock exchange agreed upon by the competent authorities.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax as a resident of that State, and also includes the Government of that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

- a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; if a permanent home is available in both States, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- b) if the State in which the centre of vital interests is situated cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which that individual has an habitual abode;
- c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

g) an agricultural, pastoral or forestry property.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

- a) carries on supervisory or consultancy activities in the other State for a period exceeding 12 months in connection with a building site or construction or installation project which is being undertaken in that other State;
- b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for an aggregate period of at least 6 months in any 24 month period; or
- c) operates substantial equipment in the other State (including as provided in subparagraph b)) for a period exceeding 12 months,

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

5. An enterprise shall not be deemed to have 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.

6. 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 7 applies - shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

- a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless that 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 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.

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

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

9. The principles set forth in paragraphs 1 to 8 inclusive shall be applied in determining for the purposes of this Agreement whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include:

- a) a lease of land or any other interest in or over land;
- b) property accessory to immovable property;
- c) livestock and equipment used in agriculture and forestry;
- d) rights to which the provisions of general law respecting landed property apply;
- e) usufruct of immovable property;
- f) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
- g) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

Ships and aircraft shall not be regarded as immovable property.

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

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

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise and to income from immovable 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 that permanent establishment.

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 therein, 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. 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.

Article 8

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that other State, or from leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises, then any profits which would, but for those conditions, have accrued 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 a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned 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 that other State shall make an appropriate adjustment to the amount of the taxes charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which, in the case of Australia, holds directly at least 10 per cent of the voting power in the company paying the dividends, or in the case of Switzerland, holds directly at least 10 per cent of the capital in the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company that is a resident of the other Contracting State that has held directly or indirectly through one or more residents of either Contracting State, shares representing 80 per cent or more, in the case of Australia, of the voting power, or in the case of Switzerland, of the capital of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:

- a) has its principal class of shares listed on a recognised stock exchange specified in subsubparagraph (1)k)(i) or (ii) of Article 3 and regularly traded on one or more recognised stock exchanges;
- b) is owned directly or indirectly by one or more companies:
 - (i) whose principal class of shares is listed on a recognised stock exchange specified in subsubparagraph (1)k)(i) or (ii) of Article 3 and regularly traded on one or more recognised stock exchanges; or
 - (ii) each of which, if it directly held the shares in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the State of which that company is a resident and the Contracting State of which the company paying the dividends is a resident; or
- c) does not meet the requirements of subparagraphs a) or b) of this paragraph but the competent authority of the first-mentioned Contracting State determines that paragraph 1 of the Protocol to this Convention does not apply. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. Notwithstanding the provisions of subparagraph 2b), dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds, in the case of Australia, directly no more than 10 per cent of the voting power in the company paying the dividends, or in the case of Switzerland, directly no more than 10 per cent of the capital of the company paying the dividends, and the beneficial owner is:

- a) a Contracting State, or political subdivision or a local authority thereof (including a government investment fund);
- b) a central bank of a Contracting State;
- c) in the case of Australia, a resident of Australia deriving such dividends from the carrying on of complying superannuation activities; or
- d) in the case of Switzerland, a pension scheme whose investment income is exempt from Swiss tax.

5. Paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident for the purposes of its tax.

7. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company—being dividends beneficially owned by a person who is not a resident of the other Contracting State—except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

9. Notwithstanding paragraph 8, dividends paid by a company that is deemed to be a resident only of one Contracting State pursuant to paragraph 3 of Article 4 may be taxed in the other Contracting State, but only to the extent that the dividends are paid out of profits arising in that State. Where such dividends are beneficially owned by a resident of the first-mentioned State, paragraph 2 of this Article shall apply as if the company paying the dividends were a resident only of the other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall not be taxed in the first-mentioned State if the interest is derived by:

- a) a Contracting State or by a political or administrative sub-division or a local authority thereof (including a government investment fund), or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State;
- b) a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance;
- c) in the case of Australia, a resident of Australia deriving such interest from the carrying on of complying superannuation activities; or
- d) in the case of Switzerland, a pension scheme whose investment income is exempt from Swiss tax.

4. Notwithstanding paragraph 3,

- a) interest referred to in subparagraph b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans; and

b) interest referred to in subparagraphs a), c) or d) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the beneficial owner of the interest participates directly or indirectly in the management, control or capital, or has an existing or contingent right to participate in the financial, operating or policy decisions, of the issuer of the debt-claim.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, interest from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.

6. The provisions of paragraphs 1 and 2, subparagraph b) of paragraph 3 and paragraph 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid or credited to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- b) the supply of scientific, technical, industrial or commercial knowledge or information;

- c) the supply of any 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) or any such knowledge or information as is mentioned in subparagraph b);
- d) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting; or
- e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or a 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 such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Alienation of property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

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

3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains of a capital nature from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent personal services

1. Income derived by an individual, who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless a fixed base is regularly available to that 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 that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as 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 a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

4. Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States, the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary or wages from the employment to which the benefit relates. A Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with this Convention and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

Article 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity 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 and sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised. The provisions of the preceding sentence shall not apply if it is established that neither the entertainer or the sportsperson, nor persons related to the entertainer or the sportsperson, participate directly or indirectly in the profits of such person.

3. Paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if such income is derived, directly or indirectly, wholly or mainly from public funds of the other Contracting State, a political subdivision or a local authority thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions, social security payments and annuities paid to a resident of a Contracting State shall be taxable only in that State. However, where such income arises in the other Contracting State and the recipient is not liable to tax in the first-mentioned State in respect of that income, the income may be taxed in that other Contracting State.

2. Subject to the provisions of paragraph 2 of Article 19, lump sums arising in a Contracting State and paid to a resident of the other Contracting State under a pension scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, may be taxed in the first-mentioned State.

3. 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.
 - a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
 - a) Pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State and is not also a national of the first-mentioned State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

Source of income

Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, 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 arise from sources in that other Contracting State.

CHAPTER IV

RELIEF FROM DOUBLE TAXATION

Article 22

Elimination of double taxation

1. Subject to the provisions of the laws of Australia 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), Swiss tax paid under the laws of Switzerland and in accordance with this Convention, in respect of income derived by a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income.

2. In the case of Switzerland, double taxation shall be avoided as follows:

- a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Australia, Switzerland shall, subject to the provisions of subparagraph b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in Australia is demonstrated.
- b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 or 12, may be taxed in Australia, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Australia in accordance with the provisions of Articles 10, 11 or 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Australia; or
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Australia from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

3. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Australia shall be entitled, for the purposes of taxation in Switzerland with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

CHAPTER V

SPECIAL PROVISIONS

Article 23

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Convention, the person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The

case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision or the competent authorities and the persons directly affected by the case agree on a different solution within six months after the decision has been communicated to them, the arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

6. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations of disclosure described in paragraph 2 of Article 25 with respect to the information so released.

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

Article 25

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of

the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. 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, or 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 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 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 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

Article 26

Members of diplomatic missions and consular posts

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

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- a) in accordance with international law the individual is not liable to tax in the receiving Contracting State in respect of income from sources outside that State and
- b) the individual is liable in the sending State to the same obligations in relation to tax on the total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

CHAPTER VI

FINAL PROVISIONS

Article 27

Entry into force

1. Each Contracting State shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date on which the later of those notifications has been received.

2. The provisions of the Convention shall have effect:

- a) in the case of Australia:
 - (i) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which this Convention enters into force;
 - (ii) in respect of withholding tax on income that is derived by a resident of Switzerland, in relation to income derived on or after the first day of January of the calendar year next following the date on which the Convention enters into force;
 - (iii) in respect of other Australian tax, in relation to income, profits or gains of any income year beginning on or after 1 July next following the date on which the Convention enters into force;
- b) in the case of Switzerland:
 - i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following the entry into force of the Convention;
 - ii) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention;

- c) in respect to Article 25, to information that relates to taxation years or business years in course on, or beginning on or after, the first day of January of the calendar year next following the entry into force of the Convention.

3. The Agreement between Australia and Switzerland for the avoidance of double taxation with respect to taxes on income, with Protocol, signed at Canberra on 28 February, 1980 shall terminate upon the entry into force of this Convention. However, the provisions of the first-mentioned Agreement shall continue to have effect for taxable years and periods which expired before the time at which the provisions of this Convention shall be effective.

Article 28

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following that in which the notice was given;
- b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the notice was given.

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

Done in duplicate at this day of , 2013, in the German and English languages, both texts being equally authentic.

For the Government of Australia:

For the Swiss Federal Council:

PROTOCOL

THE GOVERNMENT OF AUSTRALIA
AND
THE SWISS FEDERAL COUNCIL

Have agreed at the signing at Sydney on the 30th of July, 2013, of the Convention between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Convention.

1. In general

The benefits of this Convention shall not apply if it was one of the principal purposes of any person concerned with the creation or assignment of the property or right in respect of which the income is paid, or if a person has become a resident of a Contracting State, to take advantage of the provisions of the Convention by means of such creation, assignment or residence.

2. ad Article 3

It is understood that the term "pension scheme" in subparagraph i) of paragraph 1 includes the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of this Convention:

- a) in Australia, a fund that is
 - (i) an approved deposit fund as defined in the *Income Tax Assessment Act 1997*;
 - (ii) a pooled superannuation trust as defined in the *Income Tax Assessment Act 1997*;
- b) in Switzerland, any pension schemes covered by
 - (i) the Federal Act on old age and survivors' insurance, of 20 December 1946;
 - (ii) the Federal Act on disabled persons' insurance of 19 June 1959;
 - (iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;
 - (iv) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans and the forms of individual recognised pension schemes comparable with the occupational pension plans.

3. ad Article 4

- a) In respect of paragraph 1 of Article 4, it is understood that the term "resident of a Contracting State" includes, in particular, a person that is:
 - (i) a pension scheme established in that State; and
 - (ii) an organization that is established and is operated exclusively for religious, charitable, scientific, cultural, sporting, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income, profits or gains may be exempt from tax under the domestic law of that State.
- b) Where under this Convention any income, profits or gains are relieved from tax in Switzerland and, under the law in force in Australia, an individual in respect of that income or those profits or gains is exempt from tax by virtue of being a temporary resident of Australia within the meaning of the applicable tax laws of Australia, then the relief to be allowed under this Convention in Switzerland shall not apply to the extent that that income or those profits or gains are exempt from tax in Australia.

4. ad Articles 5 and 7

For the purposes of preventing misuse of Articles 5 and 7, in determining the duration of activities under paragraphs 3 and 4 of Article 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise (other than enterprises of that Contracting State) may be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

5. ad Article 7

- a) This Article shall not apply to profits of an enterprise from carrying on a business of any form of insurance, other than life insurance.
- b) Where:
 - (i) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
 - (ii) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

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

6. ad Articles 7 and 9

Where the information available to the competent authority of one of the Contracting States 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 of the Convention, nothing in those Articles shall affect the application of any law of that State relating to the determination of the tax liability of an enterprise in

special circumstances, 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.

7. ad Articles 7, 8, 12 and 14

It is understood that payments received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment constitute profits covered by Articles 7, 8 or 14.

8. ad Articles 10, 11 and 12

- a) It is understood that for dividends and interest arising in Switzerland and derived by an Australian pension scheme, that pension scheme shall be regarded as the beneficial owner of such income where that income is treated as the income of that pension scheme for the purposes of Australian tax.
- b) It is understood that for dividends, interest and royalties arising in Switzerland and derived by or through a discretionary trust, the trustee of that trust shall not be regarded as the beneficial owner of such income where the trustee subsequently distributes that income to a beneficiary that is not a resident of Australia, unless that income is subject to tax in Australia in the hands of the trustee and the Australian tax paid by the trustee is not subsequently refunded to that beneficiary.

9. ad Article 11

It is understood that subparagraph b) of paragraph 4 is intended to ensure that the exemptions prescribed in subparagraphs a), c) and d) of paragraph 3 apply only where the beneficial owner of the interest holds a portfolio-like interest in the issuer of the debt-claim and will not apply where the beneficial owner is associated with, or in a position to control or influence the key decision-making of, the issuer of the debt-claim.

10. ad Article 13

The provisions of Article 13 shall not affect the right of Australia to tax, in accordance with its laws, income, profits or gains from the alienation of any movable property derived by an individual who is a resident of Australia at any time during the year of income in which the property is alienated, or has been so resident at any time during the 4 years immediately preceding the year of alienation.

11. ad Article 18

With respect to paragraph 2, it is understood that in the case of payments arising in Australia, "a pension scheme" includes a retirement savings account, and a payment by the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* shall be treated as a lump sum paid under a pension scheme.

12. ad Article 19

It is understood that the term "pensions and other similar remuneration" as used in Article 19 includes both periodic payments and lump sum payments.

13. ad Article 23

This Article shall not apply to any provision of the laws of a Contracting State which are intended to prevent tax abuse, address thin capitalisation or to ensure that taxes can be effectively collected or recovered.

14. ad Article 25

- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has pursued all reasonable means available under its internal taxation procedure to obtain the information.
- b) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25:
 - (i) the identity of the person under examination or investigation;
 - (ii) the period of time for which the information is requested;
 - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (iv) the tax purpose for which the information is sought;
 - (v) to the extent known, the name and address of any person believed to be in possession of the requested information.

The purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While this subparagraph contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) nevertheless need to be interpreted with a view not to frustrate effective exchange of information.

- c) Although Article 25 does not restrict the possible methods for exchanging information, it is understood that the Article does not require the Contracting States to exchange information on an automatic or a spontaneous basis.
- d) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

15. ad Article 27

It is understood that in the case of Australia, the references to "taxation years" in subparagraph c) of paragraph 2 and to "taxable years" in paragraph 3 refer to "income years" or "fringe benefits tax years" as required.

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

Done in duplicate at this day of , 2013, in the German and English languages, both texts being equally authentic.

For the Government of Australia:

For the Swiss Federal Council: