# CONVENTION

# BETWEEN

# AUSTRALIA

# AND

# THE REPUBLIC OF SLOVENIA

# FOR

# THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

# AND

# THE PREVENTION OF TAX EVASION AND AVOIDANCE

Australia and the Republic of Slovenia,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

## CHAPTER I

## SCOPE OF THE CONVENTION

### *Article 1*

### PERSONS COVERED

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

2. For the purposes of this Convention, income (including profits or gains) derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

*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 Slovenia, also 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:

      (i) the income tax;

      (ii) resource rent taxes; and

      (iii) the fringe benefits tax,

   imposed under the federal law of Australia

   (hereinafter referred to as "Australian tax");

   (b) in Slovenia:

      (i) the tax on income of legal persons; and

      (ii) the tax on income of individuals,

   (hereinafter referred to as "Slovenian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal law of Australia or the law of the Republic of Slovenia 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 significant changes that have been made in their taxation laws.

## 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, means the territory of the Commonwealth of Australia and 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 "Slovenia" means the Republic of Slovenia and, when used in a geographical sense, means the territory of Slovenia as well as those maritime areas over which Slovenia may exercise sovereign or jurisdictional rights in accordance with its internal legislation and international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean Australia or Slovenia, as the context requires;

(d) the term "business" includes the performance of professional services and of other activities of an independent character;

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

(f) the term "competent authority" means:

(i) in Australia, the Commissioner of Taxation or an authorised representative of the Commissioner; and

(ii) in Slovenia, the Ministry of Finance of the Republic of Slovenia or its authorised representative;

(g) the term "enterprise" applies to the carrying on of any business;

(h) 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;

(i) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;

(j) the term "national", in relation to a Contracting State, means:

(i) in the case of Australia, any individual possessing the nationality or citizenship of Australia, and in the case of Slovenia, any individual possessing the nationality of Slovenia, and

(ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State;

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

(l) the term "tax" means Australian tax or Slovenian 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;

(m) the term "recognised pension fund" of a Contracting State means an entity or arrangement established in that State or, in the case of Australia, an Australian superannuation fund for the purposes of Australian tax, and in the case of Slovenia, a Slovenian pension fund according to the law of Slovenia, and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in clause (i) of this subparagraph or, to invest such funds, or the complying superannuation assets or segregated exempt assets of a life insurance company that is a resident of one of the Contracting States, or any combination thereof.

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 or is liable to tax therein by reason of the person's domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. 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 the 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 that 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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention.

*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) a fixed place that is an agricultural or forestry property.

3. A building site or construction, assembly or installation project constitutes a permanent establishment only if it lasts more than nine 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 or periods exceeding in the aggregate nine months in any 12 month period in connection with a building site or construction, assembly 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 a period or periods exceeding in the aggregate 90 days in any 12 month period; or

   (c) operates substantial equipment in the other State (including as provided in subparagraph (b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period,

   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 6 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. For the sole purpose of determining whether the periods referred to in paragraphs 3 and 4 have been exceeded:

(a) where an enterprise of a Contracting State carries on any of the activities referred to in paragraphs 3 and 4 in the other Contracting State during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the aggregate period of time referred to in paragraphs 3 and 4; and

(b) connected activities are carried on in that other Contracting State during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on its activities.

6. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

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

7. Paragraph 6 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article; or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

8. Notwithstanding the provisions of paragraphs 1 and 2, but subject to the provisions of paragraph 9, where a person is acting in a Contracting State on behalf of an enterprise and:

(a) in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

(i) in the name of the enterprise; or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

(iii) for the provision of services by that enterprise; or

(b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 7 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. Paragraph 8 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

10. 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.

11. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

## 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) property accessory to immovable property;

   (b) livestock and equipment used in agriculture and forestry;

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

   (d) usufruct of immovable property;

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

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

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

*Article 7*

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State 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 a Contracting State 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 determining 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. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Notwithstanding the preceding provisions of this Article, profits of an enterprise of a Contracting State from carrying on business of any form of insurance may be taxed in the other Contracting State in accordance with the law of that other State.

8. Where:

   (a) 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

(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

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

*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 paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

*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 are made or imposed between the two enterprises in their commercial or financial relations which differ from those which might be expected to be made

between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to 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 made between the two enterprises had been those which might have been expected to have been made between independent enterprises dealing wholly independently with one another, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. 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, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State 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 resident of Australia paying the dividends, or in the case of Slovenia, holds directly at least 10 per cent of the capital of the company resident of Slovenia paying the dividends, throughout a 365 day period that includes the day of payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

   (b) 10 per cent of the gross amount of the dividends in all other cases.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of subparagraph (b) of paragraph 2, 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, in the case of Australia, holds directly less than 10 per cent of the voting power in the company resident of Australia paying the dividends, or in the case of Slovenia,

holds directly less than 10 per cent of the capital of the company resident of Slovenia paying the dividends, the beneficial owner is not able to directly or indirectly determine the identity of one or more persons who make the decisions that comprise the control and direction of the operations of the company paying the dividends, and the beneficial owner is:

(a) in the case of Australia, a recognised pension fund of Australia, or a resident of Australia, deriving such dividends from the carrying on of complying superannuation activities; or

(b) in the case of Slovenia, a recognised pension fund of Slovenia whose income is exempt from Slovenian tax.

4. The term "dividends" as used in this Article means income from 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 Contracting State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1 and 2 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. 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 the dividends are paid is effectively connected with a permanent establishment 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.

7. Notwithstanding the provisions of paragraph 6, 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 other Contracting State. Where such dividends are beneficially owned by a resident of the firstmentioned 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, interest arising in a Contracting State may also be taxed in that State 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:

   (a) 5 per cent of the gross amount of the interest if the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer, provided that the interest is not 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;

   (b) 10 per cent of the gross amount of the interest in all other cases.

3. 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.

4. Notwithstanding the provisions of 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:

   (a) is derived by a Contracting State or a political subdivision or a local authority thereof;

   (b) is derived by the Reserve Bank of Australia or the Bank of Slovenia (Banka Slovenije);

   (c) is derived by:

      (i) in the case of Australia, a recognised pension fund of Australia, or a resident of Australia, deriving such interest from the carrying on of complying superannuation activities;

      (ii) in the case of Slovenia, a recognised pension fund of Slovenia whose income is exempt from Slovenian tax;

   (d) is derived by:

      (i) in the case of Slovenia, SID Bank (SID – Slovenska izvozna in razvojna banka);

      (ii) in the case of Australia, Export Finance Australia, or a public authority that manages the investments of the Future Fund; or

      (iii) any similar institution as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes.

5. Notwithstanding the provisions of paragraph 4, interest referred to in subparagraphs (a), (b), (c) and (d) of that paragraph may be taxed in the Contracting 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 is able to directly or indirectly determine the identity of one or more persons who make the decisions that comprise the control and direction of the operations of the issuer of the debt-claim.

6. 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, income 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. However, the term interest does not include income dealt within Article 10.

7. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8. 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 a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

9. Where, by reason of a special relationship between the payer and the beneficial owner 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, royalties arising in a Contracting State may also be taxed in that State 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 10 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;

(e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State; or

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of 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 and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner 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, including such income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Income, profits or gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of 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, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated 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.

6. The provisions of this Article shall not affect the right of a Contracting State to tax, in accordance with its laws, income, profits or gains from the alienation of any property derived by a person who ceased to be a resident of that State at any time during the year of income in which the property is alienated, or was a resident at any time during the 5 years immediately preceding that year, where that property was held by that person immediately before ceasing to be a resident of that State.

7. Paragraph 6 shall not apply to income, profits or gains derived by the person who ceased to be or was a resident of a Contracting State as provided in that paragraph from the alienation of:

   (a) immovable property referred to in Article 6, if the immovable property is situated in the other Contracting State and the alienation of that property is taxable in that other State; or

   (b) shares or comparable interests, such as interests in a partnership or trust, if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, and the immovable property is situated in the other

Contracting State, and the alienation of those shares or comparable interests is taxable in that other State.

*Article 14*

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17, 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 any twelve month period commencing or ending 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article and Article 1, remuneration derived by an individual, whether a resident of a Contracting State or not, in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State. Where, however, such remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

4. Where, except for the application of this paragraph, a fringe benefit is taxable in a Contracting State in the hands of an individual in respect of employment exercised by that individual and is also taxable in the other Contracting State in the hands of that individual’s employer, the fringe benefit shall be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary, wages or other similar remuneration from the employment to which the fringe benefit relates. A Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary, wages or other similar remuneration 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 15*

## 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 or of a similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

*Article 16*

## ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 14, 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 resident'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 acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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

*Article 17*

## PENSIONS AND ALIMONIES

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1:

   (a) lump sums arising in a Contracting State and paid to a resident of the other Contracting State from a recognised pension fund, under a retirement benefit 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;

(b) pensions and other similar remuneration paid under the social security legislation of a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State but the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

*Article 18*

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) Notwithstanding the provisions of paragraph 1, pensions 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 shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, 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 19*

PROFESSORS, TEACHERS AND RESEARCHERS

1. A professor, teacher or researcher who visits one of the Contracting States, for a period not exceeding two years, for the purpose of teaching or engaging in research at a university, college, school or other recognised educational institution in that Contracting State, and who immediately before that visit was a resident of the other Contracting State, shall, for a period not exceeding two years from the date of first arrival in that first-mentioned State for that purpose, be exempt from tax in that first-mentioned State on the remuneration for such teaching or research, to the extent that the remuneration is subject to tax in the other Contracting State. An individual shall be entitled to the benefits of this Article only once.

2. No exemption shall be granted under paragraph 1 with respect to any remuneration for research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

*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 the individual's education or training receives for the purpose of the individual's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

*Article 21*

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## CHAPTER IV

## METHODS FOR ELIMINATION OF DOUBLE TAXATION

*Article 22*

RELIEF FROM DOUBLE TAXATION

Double taxation shall be relieved as follows:

1. In Australia:

   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), Slovenian tax paid under the laws of Slovenia and in accordance with this Convention (except to the extent that the provisions of this Convention allow taxation by Slovenia solely because the income is also income derived by a resident of Slovenia), 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 Slovenia:

   (a) Where a resident of Slovenia derives income which may be taxed in Australia in accordance with the provisions of this Convention (except to the extent that the provisions of this Convention allow taxation by Australia solely because the income is also income derived by a resident of Australia), Slovenia shall allow as deduction from the tax on the income of that resident, an amount equal to the income tax paid in Australia. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Australia.

   (b) Where in accordance with any provision of the Convention income derived by a resident of Slovenia is exempt from tax in Slovenia, Slovenia may nevertheless, in calculating the

amount of tax on the remaining income of such resident, take into account the exempted income.

## 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 9 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 apply only to the taxes covered by Article 2.

*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, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of the Contracting State of which the person is a resident or, if the person's 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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 date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

   any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. 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 the competent authorities agree on a different solution within three months after the decision has been communicated to them or a person directly affected by the

case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting 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. 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, 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.

*Article 26*

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, and in the case of Slovenia, also on behalf of its political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even

if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

   (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or

   (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

   the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

   (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

   (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

   (e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

*Article 27*

## MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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.

*Article 28*

## LIMITATION ON BENEFITS

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income, profits or gains if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

2. Where an item of income, profits or gains derived by an individual is exempt from tax in a Contracting State by reason only of the status of that individual as a temporary resident under the applicable laws of that State, no relief or exemption from tax shall be available under this Convention in the other Contracting State in respect of that item of income, profits or gains.

## CHAPTER VI

## FINAL PROVISIONS

*Article 29*

ENTRY INTO FORCE

The Contracting States shall notify each other in writing through the diplomatic channels of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the Convention shall have effect:

(a) in the case of Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January next following the date on which the Convention enters into force;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April 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 year of income beginning on or after 1 July next following the date on which the Convention enters into force;

(b) in the case of Slovenia:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Convention enters into force;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Convention enters into force.

*Article 30*

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 written notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

(a) in the case of Australia:

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

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April of the calendar year next following the year in which the notice of termination is given;

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

(b) in the case of Slovenia:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given.

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

Done at ..... this ..... day of ..... 20..., in duplicate in the English and Slovenian languages, both texts being equally authentic.

**For Australia:** **For the Republic of Slovenia:**

# PROTOCOL TO THE CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF SLOVENIA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

Australia and the Republic of Slovenia have in addition to the Convention between Australia and the Republic of Slovenia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as "the Convention") agreed on the following Protocol, which shall form an integral part of the Convention:

1. With reference generally to the application of the Convention:

   (a) Nothing in this Convention shall prevent the application of any provision of the laws of a Contracting State which is designed to prevent the avoidance or evasion of taxes, including:

      (i) measures designed to address thin capitalisation and dividend stripping;

      (ii) measures designed to address transfer pricing;

      (iii) controlled foreign company and transferor trust rules;

      (iv) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures;

      (v) in the case of Australia, Part IVA of the *Income Tax Assessment Act 1936* and section 67 of the *Fringe Benefits Tax Assessment Act 1986*; and

      (vi) in the case of Slovenia, such provisions contained in the Acts regulating income tax or tax procedure;

   (b) In line with the general principle – according to which income tax conventions do not restrict Contracting States' right to tax their own residents except where this is intended – this Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9, Articles 17, 18, 19, 20, 22, 23, 24 and 27.

2. With reference to subparagraph (k) of paragraph 1 of Article 3 of the Convention:

It is understood that in the case of Slovenia, the term "person" also includes a mutual pension fund (vzajemni pokojninski sklad) and an umbrella pension fund (krovni pokojninski sklad).

3. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention:

It is understood that the term "Slovenian pension fund according to the law of Slovenia" includes any pension fund covered by:

   (a) the *Pension and Invalidity Insurance Act (Zakon o pokojninskem in invalidskem zavarovanju), of 4 December 2012*, as amended;

(b) the *First Pension Fund of the Republic of Slovenia and Transformation of Authorized Investment Corporations Act (Zakon o prvem pokojninskem skladu Republike Slovenije in preoblikovanju pooblaščenih investicijskih družb), of 10 June 1999*, as amended; and

(c) the *Collective Supplementary Pension Insurance for Public Servants Act (Zakon o kolektivnem dodatnem pokojninskem zavarovanju za javne uslužbence), of 28 November 2003*, as amended,

and any future amendments thereto, including a mutual pension fund (vzajemni pokojninski sklad), an umbrella pension fund (krovni pokojninski sklad) and a liability fund (kritni sklad).

4. With reference to paragraph 5 of Article 5 of the Convention:

It is understood that while paragraph 5 of Article 5 of the Convention addresses abuse of exceptions in paragraphs 3 and 4 of Article 5, paragraph 1 of Article 28 may also address such abuses.

5. With reference to paragraph 2 of Article 6 of the Convention:

Any interest or right 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. This shall also apply to the income from immovable property of an enterprise.

6. With reference to Article 9 of the Convention:

It is understood that references to conditions "made or imposed" between enterprises are to be interpreted broadly and include any conditions that operate between those enterprises.

7. With reference to subparagraph (a) of paragraph 3 of Article 10 and clause (i) of subparagraph (c) of paragraph 4 of Article 11 of the Convention:

It is understood that the term "complying superannuation activities" means:

(a) those activities undertaken by an entity that is subject to concessional tax treatment because it complies with all applicable regulatory provisions under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997*, including an entity that is:
   (i) a complying superannuation entity;
   (ii) an RSA provider (a retirement savings account provider); or

(b) those activities that generate income from segregated exempt assets or the complying superannuation class of taxable income of a life insurance company that is subject to concessional tax treatment.

8. With reference to subparagraph (b) of paragraph 3 of Article 10 and clause (ii) of subparagraph (c) of paragraph 4 of Article 11 of the Convention:

It is understood that a recognised pension fund of Slovenia whose income is exempt from Slovenian tax includes a recognised pension fund of Slovenia which is not liable to corporate income tax in Slovenia.

9. With reference to subparagraph (f) of paragraph 3 of Article 12 of the Convention:

It is understood that the term "forbearance in respect of the use or supply of any property or right" applies to cases where the holder of any property or right is paid or credited, as consideration, for not making such property or right available to another person.

10. With reference to paragraph 2 and 3 of Article 13 of the Convention:

It is understood that the term “movable property” means property that is not immovable property.

11. With reference to subparagraph (a) of paragraph 2 of Article 17 of the Convention:

(a) It is understood that "a retirement benefit scheme" means an arrangement in which the individual participates in order to secure retirement benefits;

(b) It is also understood that in the case of lump sums arising in Australia:

(i) a retirement benefit scheme includes:

(A) a "retirement savings account" as defined in the *Retirement Savings Accounts Act 1997*;

(B) a "complying superannuation life insurance policy" as defined in the *Income Tax Assessment Act 1997*; and

(C) an "exempt life insurance policy" as defined in the *Income Tax Assessment Act 1997*, other than a policy referred to in subparagraphs (e)(i) or (iii) of subsection 320246(1) of that Act; and

(ii) a payment by the Commissioner of Taxation under *the Superannuation (Unclaimed Money and Lost Members) Act 1999* shall be treated as a lump sum paid under a retirement benefit scheme.

12. With reference to Article 23 of the Convention:

It is understood that Article 23 shall not apply to a law of Australia relating to a rate of taxation in respect of an individual who is a working holiday maker under Australian law.

13. With reference to paragraph 5 of Article 24 of the Convention:

(a) The Contracting States may release to the arbitration panel, established under the provisions of paragraph 5 of Article 24, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration panel shall be subject to the limitations of disclosure described in paragraph 2 of Article 25 of the Convention with respect to the information so released. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure and the arbitration proceedings related to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a person that presented the case or one of that person’s advisors materially breaches that agreement.

(b) Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 of Article 24 because a case with respect to one or more of the same

issues is pending before a court or administrative tribunal, the period provided in subparagraph (b) of paragraph 5 of Article 24 shall stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. Also, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph (b) of paragraph 5 of Article 24 shall stop running until the suspension has been lifted.

(c) Where a case in respect of which a request for arbitration has been made is pending in litigation or appeal, the mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by the person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by the relevant court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement. In this case, the case shall not be eligible for any further consideration by the competent authorities of the Contracting States.

(d) It is also understood that the arbitration decision shall not be binding on both Contracting States if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

(e) Where at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision on a case to the competent authorities of the Contracting States:

(i) the competent authorities of the Contracting States reach a mutual agreement to resolve the case pursuant to paragraph 2 of Article 24; or

(ii) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure,

the mutual agreement procedure and the arbitration proceedings in respect of the case shall terminate.

(f) If, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision on a case to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

(g) Paragraph 5 of Article 24 shall not apply to an unresolved issue in the following cases:

(i) concerning items of income, profits or gains that are not taxed by a Contracting State because they are not included in the taxable base in that Contracting State or because they are subject to an exemption or zero tax rate provided only under the domestic tax law of that Contracting State and that is specific to such item of income, profits or gains;

(ii) involving conduct for which the taxpayer, a person acting on its behalf, or a related person:

(A) has been found guilty by a court of a criminal tax offence; or

(B) has been subject to a serious penalty for tax fraud, evasion or avoidance or promotion and implementation of schemes;

(iii) involving the application of any provision of the laws of a Contracting State which is designed to prevent evasion or avoidance of taxes. It is understood that the term

‘any provision of the laws of a Contracting State which is designed to prevent evasion or avoidance of taxes’ includes clauses (i) to (vi) of subparagraph (a) of paragraph 1 of the Protocol.

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

Done at ..... this ..... day of ..... 20..., in duplicate in the English and Slovenian languages, both texts being equally authentic.

**For Australia:** **For the Republic of Slovenia**:

# KONVENCIJA

# MED

# AVSTRALIJO

# IN

# REPUBLIKO SLOVENIJO

# O

# ODPRAVI DVOJNEGA OBDAVČEVANJA V ZVEZI Z DAVKI OD DOHODKA

# TER

# O PREPREČEVANJU DAVČNIH UTAJ IN IZOGIBANJA DAVKOM

Avstralija in Republika Slovenija sta se,

v želji, da še naprej razvijata gospodarske odnose in krepita sodelovanje pri davčnih zadevah,

z namenom, da skleneta konvencijo o odpravi dvojnega obdavčevanja v zvezi z davki od dohodka, ne da bi ustvarili možnosti za neobdavčitev ali zmanjšanje obdavčitve z davčnimi utajami ali izogibanjem davkom (vključno z izkoriščanjem ugodnejših mednarodnih sporazumov zaradi pridobitve ugodnosti, ki jih zagotavlja ta konvencija, za posredne koristi rezidentov tretjih držav),

sporazumeli:

## I. POGLAVJE

## PODROČJE UPORABE KONVENCIJE

*1. člen*

### OSEBE, ZA KATERE SE UPORABLJA KONVENCIJA

1. Ta konvencija se uporablja za osebe, ki so rezidenti ene države pogodbenice ali obeh držav pogodbenic.

2. Za namene te konvencije se dohodek (vključno z dobički ali dobički iz premoženja), ki ga doseže subjekt ali dogovor ali je dosežen prek subjekta ali dogovora, ki se obravnava kot v celoti ali delno davčno transparenten po davčni zakonodaji ene ali druge države pogodbenice, šteje za dohodek rezidenta države pogodbenice, vendar le, če ta država za namene obdavčitve dohodek obravnava kot dohodek rezidenta te države.

*2. člen*

## DAVKI, ZA KATERE SE UPORABLJA KONVENCIJA

1. Ta konvencija se uporablja za davke od dohodka, ki se uvedejo v imenu države pogodbenice in v primeru Slovenije tudi v imenu njenih političnih enot ali lokalnih oblasti, ne glede na način njihove uvedbe.

2. Za davke od dohodka se štejejo vsi davki, uvedeni na celotni dohodek ali sestavine dohodka, vključno z davki od dobička iz odtujitve premičnin ali nepremičnin, davki na skupne zneske mezd ali plač, ki jih plačujejo podjetja, in davki na zvišanje vrednosti kapitala.

3. Obstoječi davki, za katere se uporablja ta konvencija, so zlasti:

   (a) v Avstraliji:

      (i) davek od dohodka,

      (ii) davki od rente iz virov in

      (iii) davek na bonitete,

   uvedeni po zveznem pravu Avstralije

   (v nadaljnjem besedilu: avstralski davek);

   (b) v Sloveniji:

      (i) davek od dohodkov pravnih oseb in

      (ii) dohodnina

   (v nadaljnjem besedilu: slovenski davek).

4. Konvencija se uporablja tudi za enake ali vsebinsko podobne davke, ki se po dnevu podpisa konvencije uvedejo po zveznem pravu Avstralije ali pravu Republike Slovenije poleg obstoječih davkov ali namesto njih. Pristojna organa držav pogodbenic drug drugega uradno obvestita o vseh pomembnih spremembah njunih davčnih zakonodaj.

## II. POGLAVJE

## OPREDELITEV IZRAZOV

*3. člen*

OPREDELITEV TEMELJNIH IZRAZOV

1. V tej konvenciji, razen če sobesedilo ne zahteva drugače:

(a) izraz "Avstralija", kadar se uporablja v geografskem pomenu, pomeni ozemlje Avstralske zveze in ne vključuje zunanjih ozemelj, razen:

(i) Ozemlja Norfolški otok;

(ii) Ozemlja Božični otok;

(iii) Ozemlja Kokosovi (Keelingovi) otoki;

(iv) Ozemlja Otočje Ashmore in Cartier;

(v) Ozemlja Heardov otok in McDonaldovi otoki in

(vi) Ozemlja Otoki Koralnega morja,

ter vključuje vsa območja, ki mejijo na ozemeljske meje Avstralije (vključno z ozemlji, navedenimi v tem pododstavku), za katera trenutno velja, v skladu z mednarodnim pravom, avstralski zakon, ki ureja raziskovanje ali izkoriščanje katerega koli od naravnih virov izključne ekonomske cone ali morskega dna ter podzemlja epikontinentalnega pasu;

(b) izraz ''Slovenija'' pomeni Republiko Slovenijo, in kadar se uporablja v geografskem pomenu, ozemlje Slovenije ter tista morska območja, na katerih lahko Slovenija izvaja svoje suverene pravice ali jurisdikcijo v skladu s svojo notranjo zakonodajo in mednarodnim pravom;

(c) izraza "država pogodbenica" in "druga država pogodbenica" pomenita Avstralijo ali Slovenijo, kakor zahteva sobesedilo;

(d) izraz "poslovanje" vključuje opravljanje poklicnih storitev in drugih samostojnih dejavnosti;

(e) izraz "družba" pomeni katero koli korporacijo ali kateri koli subjekt, ki se za davčne namene obravnava kot družba ali korporacija;

(f) izraz "pristojni organ" pomeni:

(i) v Avstraliji: davčnega komisarja ali pooblaščenega predstavnika davčnega komisarja in

(ii) v Sloveniji: Ministrstvo za finance Republike Slovenije ali njegovega pooblaščenega predstavnika;

(g) izraz "podjetje" se uporablja za kakršno koli poslovanje;

(h) izraza "podjetje države pogodbenice" in "podjetje druge države pogodbenice" pomenita podjetje, ki ga upravlja rezident države pogodbenice, oziroma podjetje, ki ga upravlja rezident druge države pogodbenice;

(i) izraz "mednarodni promet" pomeni kakršen koli prevoz z ladjo ali zrakoplovom, razen če se z ladjo ali zrakoplovom opravljajo prevozi samo med kraji v državi pogodbenici in podjetje, ki opravlja prevoze z ladjo ali zrakoplovom, ni podjetje te države;

(j) izraz "državljan" v zvezi z državo pogodbenico pomeni:

(i) v primeru Avstralije posameznika, ki ima državljanstvo Avstralije, v primeru Slovenije pa posameznika, ki ima državljanstvo Slovenije, ter

(ii) pravno osebo, družbo, partnerstvo ali združenje, katerih status izhaja iz veljavne zakonodaje v tej državi pogodbenici;

(k) izraz "oseba" vključuje posameznika, družbo in katero koli drugo telo, ki združuje več oseb;

(l) izraz "davek" pomeni avstralski davek ali slovenski davek, kot zahteva sobesedilo, vendar ne vključuje kazni ali obresti, naloženih po pravu katere od držav pogodbenic v zvezi z njenim davkom;

(m) izraz "priznani pokojninski sklad" države pogodbenice pomeni subjekt ali dogovor, ki je vzpostavljen v tej državi oziroma v primeru Avstralije avstralski pokojninski sklad za namene avstralskega davka in v primeru Slovenije slovenski pokojninski sklad v skladu s pravom Slovenije ter:

(i) je vzpostavljen in deluje izključno ali skoraj izključno zaradi upravljanja ali zagotavljanja pokojninskih prejemkov in dopolnilnih ali povezanih prejemkov posameznikom ter ga kot takega ureja ta država ali ena od njenih političnih enot ali lokalnih oblasti ali

(ii) je vzpostavljen in deluje izključno ali skoraj izključno zaradi vlaganja sredstev v korist subjektov ali dogovorov iz točke (i) tega pododstavka ali zaradi vlaganja takih sredstev ali pokojninskih sredstev, skladnih z zahtevami, ali ločenih izvzetih sredstev življenjske zavarovalnice, ki je rezident ene od držav pogodbenic, ali katere koli kombinacije navedenega.

2. Kadar država pogodbenica uporabi konvencijo, ima kateri koli izraz, ki v njej ni opredeljen, razen če sobesedilo ne zahteva drugače, pomen, ki ga ima takrat po pravu te države za namene davkov, za katere se konvencija uporablja, pri čemer kateri koli pomen po veljavni davčni zakonodaji te države prevlada nad pomenom izraza po drugi zakonodaji te države.

*4. člen*

## REZIDENT

1. V tej konvenciji izraz "rezident države pogodbenice" pomeni osebo, ki mora po zakonodaji te države plačevati davke v njej kot rezident te države ali mora v njej plačevati davke zaradi svojega stalnega prebivališča, prebivališča, sedeža uprave ali katerega koli drugega podobnega merila, in vključuje tudi to državo in katero koli njeno politično enoto ali lokalno oblast ter priznani pokojninski sklad te države. Ta izraz pa ne vključuje osebe, ki mora plačevati davke v tej državi samo v zvezi z dohodki iz virov v tej državi.

2. Kadar je zaradi določb prvega odstavka posameznik rezident obeh držav pogodbenic, se njegov status določi tako:

   (a) posameznik se šteje samo za rezidenta države, v kateri ima na voljo stalni dom; če ima stalni dom na voljo v obeh državah, se posameznik šteje samo za rezidenta države, s katero ima tesnejše osebne in ekonomske stike (središče življenjskih interesov);

   (b) če ni mogoče opredeliti države, v kateri ima središče življenjskih interesov, ali če posamezniku v nobeni od držav ni na voljo stalni dom, se posameznik šteje samo za rezidenta države, v kateri ima običajno bivališče;

   (c) če ima posameznik običajno bivališče v obeh državah ali v nobeni od njiju, se šteje samo za rezidenta države, katere državljan je;

   (d) če je posameznik državljan obeh držav ali nobene od njiju, si pristojna organa držav pogodbenic prizadevata rešiti vprašanje s skupnim dogovorom.

3. Kadar je zaradi določb prvega odstavka oseba, ki ni posameznik, rezident obeh držav pogodbenic, si pristojna organa držav pogodbenic prizadevata s skupnim dogovorom določiti državo pogodbenico, za katero se bo štelo, da je ta oseba njen rezident za namene konvencije, ob upoštevanju njenega sedeža dejanske uprave, kraja ustanovitve ali drugačnega oblikovanja in katerih koli drugih ustreznih dejavnikov. Če takega dogovora ni, ta oseba ni upravičena do olajšav ali oprostitev davka po tej konvenciji.

*5. člen*

## STALNA POSLOVNA ENOTA

1. V tej konvenciji izraz "stalna poslovna enota" pomeni stalno mesto poslovanja, prek katerega v celoti ali delno potekajo posli podjetja.

2 Izraz "stalna poslovna enota" vključuje zlasti:

(a) sedež uprave,

(b) podružnico,

(c) pisarno,

(d) tovarno,

(e) delavnico,

(f) rudnik, naftno ali plinsko vrtino, kamnolom ali kateri koli drug kraj pridobivanja naravnih virov in

(g) stalno mesto, ki je kmetijska ali gozdna posest.

3. Gradbišče ali projekt gradnje, montaže ali namestitve je stalna poslovna enota samo, če traja več kakor devet mesecev.

4. Ne glede na določbe prvega, drugega in tretjega odstavka se, če podjetje države pogodbenice:

(a) opravlja nadzorne ali svetovalne dejavnosti v drugi državi v obdobju ali obdobjih, ki skupaj presegajo devet mesecev v katerem koli 12-mesečnem obdobju, v zvezi z gradbiščem ali projektom gradnje, montaže ali namestitve, ki se izvaja v tej drugi državi;

(b) v drugi državi opravlja dejavnosti (vključno z upravljanjem pomembne opreme) pri raziskovanju ali izkoriščanju naravnih virov, ki so v tej drugi državi, v obdobju ali obdobjih, ki skupaj presegajo 90 dni v katerem koli 12-mesečnem obdobju, ali

(c) v drugi državi upravlja pomembno opremo (vključno kot navedeno v pododstavku (b)) v obdobju ali obdobjih, ki skupaj presegajo 183 dni v katerem koli 12-mesečnem obdobju,

šteje, da se take dejavnosti opravljajo prek stalne poslovne enote podjetja, ki je v tej drugi državi, razen če so dejavnosti omejene na tiste iz šestega odstavka, zaradi katerih se, če bi se opravljale prek stalnega mesta poslovanja, to mesto poslovanja po določbah navedenega odstavka ne bi štelo za stalno poslovno enoto.

5. Izključno zaradi ugotavljanja, ali so bila obdobja iz tretjega in četrtega odstavka presežena, se:

(a) če podjetje države pogodbenice opravlja katero koli dejavnost iz tretjega in četrtega odstavka v drugi državi pogodbenici v enem obdobju ali več obdobjih, ki skupaj presegajo 30 dni, ne da bi bilo preseženo skupno obdobje iz tretjega in četrtega odstavka, in

(b) kadar eno podjetje ali več podjetij, ki so s prvim navedenim podjetjem tesno povezana, opravlja povezane dejavnosti v tej drugi državi pogodbenici v različnih obdobjih, pri čemer vsako od njih presega 30 dni,

ta različna obdobja prištejejo k obdobju, v katerem je prvo navedeno podjetje opravljalo svoje dejavnosti.

6. Ne glede na prejšnje določbe tega člena se šteje, da izraz "stalna poslovna enota" ne vključuje:

(a) uporabe prostorov samo za skladiščenje, razstavljanje ali dostavo dobrin ali blaga, ki pripada podjetju;

(b) vzdrževanja zaloge dobrin ali blaga, ki pripada podjetju, samo za skladiščenje, razstavljanje ali dostavo;

(c) vzdrževanja zaloge dobrin ali blaga, ki pripada podjetju, samo za predelavo, ki jo opravi drugo podjetje;

(d) vzdrževanja stalnega mesta poslovanja samo za nakup dobrin ali blaga za podjetje ali zbiranje informacij za podjetje;

(e) vzdrževanja stalnega mesta poslovanja samo za opravljanje katere koli druge dejavnosti za podjetje;

(f) vzdrževanja stalnega mesta poslovanja samo za kakršno koli kombinacijo dejavnosti, navedenih v pododstavkih (a) do (e),

če je taka dejavnost ali v primeru pododstavka (f) celotna dejavnost stalnega mesta poslovanja pripravljalna ali pomožna.

7. Šesti odstavek ne velja za stalno mesto poslovanja, ki ga uporablja ali vzdržuje podjetje, če to podjetje ali tesno povezano podjetje opravlja poslovne dejavnosti na istem ali drugem mestu v isti državi pogodbenici in:

(a) to mesto ali drugo mesto pomeni stalno poslovno enoto za podjetje ali tesno povezano podjetje v skladu z določbami tega člena ali

(b) celotna dejavnost, ki je posledica kombinacije dejavnosti, ki jih opravljata ti dve podjetji na istem mestu ali isto podjetje ali tesno povezana podjetja na dveh mestih, ni pripravljalna ali pomožna,

pod pogojem, da so poslovne dejavnosti, ki jih opravljata ti dve podjetji na istem mestu ali isto podjetje ali tesno povezana podjetja na dveh mestih, dopolnilne funkcije, ki so del celovitega poslovanja.

8. Ne glede na določbe prvega in drugega odstavka, vendar pa ob upoštevanju določb devetega odstavka, se, kadar oseba deluje v državi pogodbenici za podjetje in:

(a) pri tem običajno sklepa pogodbe ali običajno odločilno prispeva k sklepanju pogodb, ki se sklepajo rutinsko, ne da bi jih podjetje bistveno spreminjalo, in so te pogodbe:

(i) v imenu podjetja ali

(ii) za prenos lastništva nad premoženjem ali za podelitev pravice do uporabe premoženja, ki ga ima to podjetje v lasti oziroma ga lahko uporablja, ali

(iii) za storitve, ki jih to podjetje opravlja, ali

(b) v državi pogodbenici za podjetje proizvaja ali predeluje dobrine ali blago, ki pripada podjetju,

za to podjetje šteje, da ima stalno poslovno enoto v tej državi v zvezi s katerimi koli dejavnostmi, ki jih ta oseba prevzame za podjetje, razen če so dejavnosti te osebe omejene na tiste iz šestega odstavka, zaradi katerih se, če bi se opravljale prek stalnega mesta poslovanja (ki ni stalno mesto

poslovanja, za katero bi se uporabljal sedmi odstavek), to stalno mesto poslovanja po določbah navedenega odstavka ne bi štelo za stalno poslovno enoto.

9. Osmi odstavek se ne uporablja, če oseba, ki deluje v državi pogodbenici za podjetje druge države pogodbenice, posluje v prvi navedeni državi kot neodvisni zastopnik in deluje za podjetje v okviru tega običajnega poslovanja. Če oseba deluje izključno ali skoraj izključno za eno podjetje ali več podjetij, s katerimi je tesno povezana, pa ta oseba v zvezi s katerim koli takim podjetjem ne velja za neodvisnega zastopnika v smislu tega odstavka.

10. Dejstvo, da družba, ki je rezident države pogodbenice, nadzoruje družbo ali je pod nadzorom družbe, ki je rezident druge države pogodbenice, ali posluje v tej drugi državi (prek stalne poslovne enote ali drugače), še ne pomeni, da je ena od družb stalna poslovna enota druge.

11. Za namene tega člena je oseba ali podjetje tesno povezano s podjetjem, če ima na podlagi vseh ustreznih dejstev in okoliščin eno nadzor nad drugim ali pa sta obe pod nadzorom istih oseb ali podjetij. V vsakem primeru se oseba ali podjetje šteje za tesno povezano s podjetjem, če ima eno neposredno ali posredno več kakor 50 odstotkov upravičenega deleža v drugem (ali v primeru družbe več kakor 50 odstotkov seštevka glasov in vrednosti delnic družbe ali upravičenega lastniškega deleža v družbi) ali če ima druga oseba ali podjetje neposredno ali posredno več kakor 50 odstotkov upravičenega deleža (ali v primeru družbe več kakor 50 odstotkov seštevka glasov in vrednosti delnic družbe ali upravičenega lastniškega deleža v družbi) v osebi in podjetju ali teh dveh podjetjih.

## III. POGLAVJE

## OBDAVČEVANJE DOHODKA

*6. člen*

### DOHODEK IZ NEPREMIČNIN

1. Dohodek rezidenta države pogodbenice iz nepremičnin (vključno z dohodkom iz kmetijstva ali gozdarstva), ki so v drugi državi pogodbenici, se lahko obdavči v tej drugi državi.

2. Izraz "nepremičnine" pomeni enako kakor po pravu države pogodbenice, v kateri so te nepremičnine. Izraz vedno vključuje:

   (a) premoženje, ki je sestavni del nepremičnin;

   (b) živino in opremo, ki se uporablja v kmetijstvu in gozdarstvu;

(c) pravice, za katere se uporabljajo določbe splošnega prava v zvezi z zemljiško lastnino;

(d) užitek na nepremičninah;

(e) zakup zemljišča in vsa druga upravičenja na zemljišču ali v zvezi z njim, ne glede na to, ali je izboljšano;

(f) pravico do raziskovanja nahajališč rudnin, nafte ali plina ali drugih naravnih virov in pravico do izkoriščanja teh nahajališč ali virov ter

(g) pravico do prejemanja spremenljivih ali stalnih plačil kot nadomestilo za izkoriščanje ali v zvezi z njim oziroma pravico do raziskovanja ali izkoriščanja nahajališč rudnin, nafte ali plina, kamnolomov ali drugih krajev pridobivanja ali izkoriščanja naravnih virov.

Ladje in zrakoplovi se ne štejejo za nepremičnine.

3. Določbe prvega odstavka se uporabljajo za dohodek, ki se ustvari z neposredno uporabo, dajanjem v najem ali katero koli drugo obliko uporabe nepremičnine.

4. Določbe prvega in tretjega odstavka se uporabljajo tudi za dohodek iz nepremičnin podjetja.

*7. člen*

## POSLOVNI DOBIČEK

1. Dobiček podjetja države pogodbenice se obdavči samo v tej državi, razen če podjetje ne posluje v drugi državi pogodbenici prek stalne poslovne enote v njej. Če podjetje posluje, kakor je prej navedeno, se dobiček podjetja lahko obdavči v drugi državi, vendar samo toliko dobička, kolikor se pripiše tej stalni poslovni enoti.

2. Kadar podjetje države pogodbenice posluje v drugi državi pogodbenici prek stalne poslovne enote v njej, se ob upoštevanju določb tretjega odstavka v vsaki državi pogodbenici tej stalni poslovni enoti pripiše dobiček, za katerega bi se lahko pričakovalo, da bi ga imela, če bi bila samostojno in ločeno podjetje, ki opravlja enake ali podobne dejavnosti pod enakimi ali podobnimi pogoji ter popolnoma neodvisno posluje s podjetjem, katerega stalna poslovna enota je, ali z drugimi podjetji, s katerimi posluje.

3. Pri ugotavljanju dobička stalne poslovne enote je dovoljeno odšteti stroške podjetja, ki so stroški, nastali za namene stalne poslovne enote (vključno s stroški poslovodenja in splošnega upravljanja), in ki bi se odšteli, če bi bila stalna poslovna enota neodvisni subjekt, ki bi te stroške plačal, ne glede na to, ali so nastali v državi pogodbenici, v kateri je stalna poslovna enota, ali drugje.

4. Stalni poslovni enoti se ne pripiše dobiček samo zato, ker nakupuje dobrine ali blago za podjetje.

5. Za namene prejšnjih odstavkov se dobiček, ki se pripiše stalni poslovni enoti, vsako leto ugotavlja po enaki metodi, razen če ni upravičenega in zadostnega razloga za nasprotno.

6. Kadar dobiček vključuje dele dohodka ali dobička iz premoženja, ki so posebej obravnavani v drugih členih te konvencije, določbe tega člena ne vplivajo na določbe tistih členov.

7. Ne glede na prejšnje določbe tega člena se dobiček podjetja države pogodbenice iz opravljanja dejavnosti katere koli vrste zavarovanja lahko obdavči v drugi državi pogodbenici v skladu s pravom te druge države.

8. Kadar:

   (a) je rezident države pogodbenice neposredno ali po enem vmesnem skrbniškem skladu ali več vmesnih skrbniških skladih upravičen do deleža poslovnih dobičkov podjetja, ki ga v drugi državi pogodbenici upravlja skrbnik skrbniškega sklada, ki ni skrbniški sklad, ki se za davčne namene obravnava kot družba, in

   (b) bi imel v skladu z načeli iz 5. člena ta skrbnik v zvezi s tem podjetjem stalno poslovno enoto v tej drugi državi,

   se podjetje, ki ga upravlja skrbnik, šteje za poslovanje tega rezidenta v drugi državi prek stalne poslovne enote v njej in se ta delež poslovnega dobička pripiše tej stalni poslovni enoti.

*8. člen*

## LADIJSKI IN ZRAČNI PREVOZ

1. Dobiček podjetja države pogodbenice iz opravljanja ladijskih ali zračnih prevozov v mednarodnem prometu se obdavči samo v tej državi.

2. Ne glede na določbe prvega odstavka se dobiček podjetja države pogodbenice, dosežen s prevozom potnikov, živine, pošte, dobrin ali blaga, ki se vkrcajo v drugi državi pogodbenici in izkrcajo v kraju v tej drugi državi, z ladjami ali zrakoplovom ali z dajanjem ladje ali zrakoplova v popolni zakup za tak prevoz, lahko obdavči v tej drugi državi.

3. Določbe prvega in drugega odstavka se uporabljajo tudi za dobiček iz udeležbe v interesnem združenju, skupnem poslovanju ali mednarodni prevozni agenciji.

4. Za namene tega člena dobiček iz opravljanja ladijskih ali zračnih prevozov v mednarodnem prometu vključuje dobiček od uporabe, vzdrževanja ali dajanja v najem zabojnikov (vključno s priklopniki in pripadajočo opremo za prevoz zabojnikov), ki se uporabljajo pri prevozu dobrin ali blaga, pod pogojem, da je taka uporaba, vzdrževanje ali dajanje v najem neposredno povezano z opravljanjem ladijskih ali zračnih prevozov v mednarodnem prometu ali pa so to pomožne dejavnosti.

*9. člen*

## POVEZANA PODJETJA

1. Kadar:

   (a) je podjetje države pogodbenice neposredno ali posredno udeleženo pri upravljanju, nadzorovanju ali v kapitalu podjetja druge države pogodbenice ali

   (b) so iste osebe neposredno ali posredno udeležene pri upravljanju, nadzorovanju ali v kapitalu podjetja države pogodbenice in podjetja druge države pogodbenice

   ter se v obeh primerih med podjetjema v njunih komercialnih ali finančnih odnosih vzpostavijo ali določijo pogoji, drugačni od tistih, za katere se lahko pričakuje, da bi se vzpostavili med neodvisnima podjetjema, ki med seboj poslujeta popolnoma neodvisno, se lahko kakršen koli dobiček, za katerega bi se lahko pričakovalo, da bi prirastel enemu od podjetij, če takih pogojev ne bi bilo, vendar prav zaradi takih pogojev ni prirastel, vključi v dobiček tega podjetja in ustrezno obdavči.

2. Kadar država pogodbenica v dobiček podjetja te države vključi – in ustrezno obdavči – dobiček, za katerega je bilo že obdavčeno podjetje druge države pogodbenice v tej drugi državi, in je tako vključeni dobiček tisti dobiček, za katerega bi se lahko pričakovalo, da bi prirastel podjetju prve navedene države, če bi bili pogoji, vzpostavljeni med podjetjema, taki, za katere bi se lahko pričakovalo, da bi se vzpostavili med neodvisnima podjetjema, ki med seboj poslujeta popolnoma neodvisno, ta druga država ustrezno prilagodi znesek davka, ki se v njej obračuna od tega dobička, če meni, da je prilagoditev upravičena. Pri določanju take prilagoditve je treba upoštevati druge določbe te konvencije, pristojna organa držav pogodbenic pa se po potrebi med seboj posvetujeta.

*10. člen*

## DIVIDENDE

1. Dividende, ki jih družba, ki je rezident države pogodbenice, plača rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Dividende, ki jih plača družba, ki je rezident države pogodbenice, pa se lahko obdavčijo tudi v tej državi v skladu z zakonodajo te države, vendar če je upravičeni lastnik dividend rezident druge države pogodbenice, tako obračunani davek ne sme presegati:

   (a) 5 odstotkov bruto zneska dividend, če je upravičeni lastnik družba, ki ima, v primeru Avstralije, neposredno najmanj 10 odstotkov glasov v družbi, ki je rezident Avstralije in plača dividende, ali, v primeru Slovenije, neposredno najmanj 10 odstotkov kapitala

družbe, ki je rezident Slovenije in plača dividende, in sicer ves čas 365-dnevnega obdobja, ki vključuje dan plačila dividend (za namene izračuna tega obdobja se ne upoštevajo spremembe lastništva, ki bi nastale neposredno zaradi korporativne reorganizacije, kot je združitev ali razdružitev družbe, ki ima delnice ali plačuje dividende);

(b) 10 odstotkov bruto zneska dividend v vseh drugih primerih.

Ta odstavek ne vpliva na obdavčenje družbe v zvezi z dobičkom, iz katerega se plačajo dividende.

3. Ne glede na določbe pododstavka (b) drugega odstavka se dividende ne obdavčijo v državi pogodbenici, katere rezident je družba, ki dividende plača, če ima upravičeni lastnik dividend, v primeru Avstralije, neposredno manj kakor 10 odstotkov glasov v družbi, ki je rezident Avstralije in plača dividende, ali, v primeru Slovenije, neposredno manj kakor 10 odstotkov kapitala družbe, ki je rezident Slovenije in plača dividende, upravičeni lastnik pa ne more neposredno ali posredno ugotoviti identitete ene osebe ali več oseb, ki odločajo v okviru nadzorovanja in usmerjanja poslovanja družbe, ki plača dividende, ter je upravičeni lastnik:

(a) v primeru Avstralije priznani pokojninski sklad Avstralije ali rezident Avstralije, ki take dividende dosega z opravljanjem pokojninskih dejavnosti, skladnih z zahtevami, ali

(b) v primeru Slovenije priznani pokojninski sklad Slovenije, katerega dohodki so oproščeni slovenskega davka.

4. Izraz "dividende", kakor je uporabljen v tem členu, pomeni dohodek iz delnic ali drugih pravic do udeležbe pri dobičku, ki niso terjatve, in tudi druge zneske, ki se davčno obravnavajo enako kakor dohodek iz delnic po zakonodaji države pogodbenice, katere rezident za davčne namene je družba, ki dividende deli.

5. Določbe prvega in drugega odstavka se ne uporabljajo, če upravičeni lastnik dividend, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici, katere rezident je družba, ki dividende plačuje, prek stalne poslovne enote v njej in je delež, v zvezi s katerim se dividende plačajo, dejansko povezan s tako stalno poslovno enoto. V takem primeru se uporabljajo določbe 7. člena.

6. Kadar dobiček ali dohodek družbe, ki je rezident države pogodbenice, izvira iz druge države pogodbenice, ta druga država ne sme uvesti nobenega davka na dividende, ki jih plača družba – pri čemer so te v upravičeni lasti osebe, ki ni rezident druge države pogodbenice –, razen če je delež, v zvezi s katerim se dividende plačajo, dejansko povezan s stalno poslovno enoto v tej drugi državi, niti ne sme obdavčiti nerazdeljenega dobička družbe z davkom na nerazdeljeni dobiček družbe, tudi če so plačane dividende ali nerazdeljeni dobiček v celoti ali delno sestavljeni iz dobička ali dohodka, ki nastane v tej drugi državi.

7. Ne glede na določbe šestega odstavka se dividende, ki jih plača družba, ki se v skladu s tretjim odstavkom 4. člena šteje za rezidenta samo ene države pogodbenice, lahko obdavčijo v drugi državi pogodbenici, vendar le, če so dividende plačane iz dobička, ki nastane v tej drugi državi pogodbenici. Kadar so te dividende v upravičeni lasti rezidenta prve navedene države, se uporablja drugi odstavek tega člena, kot če bi bila družba, ki dividende plača, rezident samo druge države.

*11. člen*

OBRESTI

1. Obresti, ki nastanejo v državi pogodbenici in se plačajo rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Obresti, ki nastanejo v državi pogodbenici, pa se lahko obdavčijo tudi v tej državi v skladu z zakonodajo te države, vendar če je upravičeni lastnik obresti rezident druge države pogodbenice, tako obračunani davek ne sme presegati:

   (a) 5 odstotkov bruto zneska obresti, če jih doseže finančna institucija, ki ni povezana s plačnikom in z njim popolnoma neodvisno posluje, pod pogojem, da se obresti ne plačajo kot del dogovora, ki vključuje kritna posojila, ali drugega dogovora, ki je ekonomsko enakovreden in naj bi imel podoben učinek kot kritna posojila;

   (b) 10 odstotkov bruto zneska obresti v vseh drugih primerih.

3. V tem členu izraz "finančna institucija" pomeni banko ali drugo podjetje, ki dosega svoj dobiček pretežno s pridobivanjem dolžniškega financiranja na finančnih trgih ali s sprejemanjem depozitov z obrestmi in uporabo teh sredstev pri opravljanju dejavnosti zagotavljanja financiranja.

4. Ne glede na določbe drugega odstavka se obresti, ki nastanejo v državi pogodbenici in so v upravičeni lasti rezidenta druge države pogodbenice, ne obdavčijo v prvi navedeni državi, če obresti:

   (a) doseže država pogodbenica ali njena politična enota ali lokalna oblast;

   (b) doseže avstralska centralna banka (Reserve Bank of Australia) ali Banka Slovenije;

   (c) doseže:

      (i) v primeru Avstralije priznani pokojninski sklad Avstralije ali rezident Avstralije, ki take obresti dosega z opravljanjem pokojninskih dejavnosti, skladnih z zahtevami;

      (ii) v primeru Slovenije priznani pokojninski sklad Slovenije, katerega dohodki so oproščeni slovenskega davka;

   d) doseže:

      (i) v primeru Slovenije SID banka (Slovenska izvozna in razvojna banka);

      (ii) v primeru Avstralije avstralska vladna agencija za izvozne podpore (Export Finance Australia) ali javni organ, ki upravlja naložbe sklada Future Fund, ali

      (iii) katera koli podobna institucija, za katero se lahko občasno dogovorita vladi držav pogodbenic z izmenjavo diplomatskih not.

5. Ne glede na določbe četrtega odstavka se obresti iz pododstavkov (a), (b), (c) in (d) navedenega odstavka lahko obdavčijo v državi pogodbenici, v kateri nastanejo, po stopnji, ki ne presega 10 odstotkov bruto zneska obresti, če upravičeni lastnik obresti lahko neposredno ali posredno ugotovi identiteto ene osebe ali več oseb, ki odločajo v okviru nadzorovanja in usmerjanja poslovanja izdajatelja terjatve.

6. Izraz "obresti", kakor je uporabljen v tem členu, pomeni dohodek iz vseh vrst terjatev ne glede na to, ali so zavarovane s hipoteko, in ne glede na to, ali dajejo pravico do udeležbe pri dolžnikovem dobičku, zlasti pa dohodek iz državnih vrednostnih papirjev in dohodek iz obveznic ali zadolžnic ter dohodek, ki se davčno obravnava enako kakor dohodek od posojenega denarja po pravu države pogodbenice, v kateri dohodek nastane. Vendar pa izraz "obresti" ne vključuje dohodka, obravnavanega v 10. členu.

7. Določbe prvega in drugega odstavka se ne uporabljajo, če upravičeni lastnik obresti, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici, v kateri obresti nastanejo, prek stalne poslovne enote v njej, in je terjatev, v zvezi s katero se obresti plačajo, dejansko povezana s to stalno poslovno enoto. V takem primeru se uporabljajo določbe 7. člena.

8. Šteje se, da obresti nastanejo v državi pogodbenici, kadar je plačnik rezident te države za davčne namene. Kadar pa ima oseba, ki plačuje obresti, ne glede na to, ali je oseba rezident države pogodbenice, v državi pogodbenici stalno poslovno enoto, v zvezi s katero je nastala zadolženost, za katero se plačajo obresti, in take obresti krije taka stalna poslovna enota, se šteje, da take obresti nastanejo v državi, v kateri je stalna poslovna enota.

9. Kadar zaradi posebnega odnosa med plačnikom in upravičenim lastnikom ali med njima in drugo osebo znesek obresti glede na terjatev, za katero se plačajo, presega znesek, za katerega bi se lahko pričakovalo, da bi se o njem sporazumela plačnik in upravičeni lastnik, če takega odnosa ne bi bilo, se določbe tega člena uporabljajo samo za zadnji navedeni znesek. V takem primeru se presežni del plačil še naprej obdavčuje v skladu z zakonodajo vsake države pogodbenice, pri čemer je treba upoštevati druge določbe te konvencije.

*12. člen*

## LICENČNINE IN AVTORSKI HONORARJI

1. Licenčnine in avtorski honorarji, ki nastanejo v državi pogodbenici in se plačajo ali pripišejo rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Licenčnine in avtorski honorarji, ki nastanejo v državi pogodbenici, pa se lahko obdavčijo tudi v tej državi v skladu z zakonodajo te države, vendar če je upravičeni lastnik licenčnin in avtorskih honorarjev rezident druge države pogodbenice, tako obračunani davek ne sme presegati 10 odstotkov bruto zneska licenčnin in avtorskih honorarjev.

3. Izraz "licenčnine in avtorski honorarji", kakor je uporabljen v tem členu, pomeni plačila ali pripise, ne glede na to, ali so periodični ali ne in kako so opisani ali izračunani, kolikor so opravljeni kot povračilo za:

(a) uporabo ali pravico do uporabe katere koli avtorske pravice, patenta, modela ali vzorca, načrta, skrivne formule ali postopka, znamke ali drugega podobnega premoženja ali pravice;

(b) zagotavljanje znanstvenega, tehničnega, industrijskega ali komercialnega znanja ali informacij;

(c) zagotavljanje kakršne koli pomoči, ki je dopolnilna in pomožna ter je zagotovljena kot sredstvo za omogočanje uporabe ali uživanja katerega koli takega premoženja ali pravice iz pododstavka (a) ali katerega koli takega znanja ali informacije iz pododstavka (b);

(d) uporabo ali pravico do uporabe:

(i) kinematografskih filmov;

(ii) filmov ali avdio- ali videotrakov ali plošč ali katerih koli drugih sredstev za reprodukcijo ali prenos slike ali zvoka za uporabo v povezavi s televizijskim, radijskim ali drugim oddajanjem;

(e) uporabo ali pravico do uporabe dela radiofrekvenčnega spektra ali celotnega dela radiofrekvenčnega spektra, kot je določeno v dovoljenju za uporabo spektra države pogodbenice, če plačilo ali pripis nastane v tej državi, ali

(f) popolno ali delno opustitev uporabe ali zagotavljanja katerega koli premoženja ali pravice iz tega odstavka.

4. Določbe prvega in drugega odstavka se ne uporabljajo, če upravičeni lastnik licenčnin in avtorskih honorarjev, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici, v kateri licenčnine in avtorski honorarji nastanejo, prek stalne poslovne enote v njej in je pravica ali premoženje, v zvezi s katerim se licenčnine in avtorski honorarji plačajo ali pripišejo, dejansko povezano s tako stalno poslovno enoto. V takem primeru se uporabljajo določbe 7. člena.

5. Šteje se, da licenčnine in avtorski honorarji nastanejo v državi pogodbenici, kadar je plačnik rezident te države za davčne namene. Kadar pa ima oseba, ki plačuje licenčnine in avtorske honorarje, ne glede na to, ali je oseba rezident države pogodbenice, v državi pogodbenici stalno poslovno enoto, v zvezi s katero je nastala obveznost za plačilo licenčnin in avtorskih honorarjev, ter take licenčnine in avtorske honorarje krije taka stalna poslovna enota, se šteje, da so take licenčnine in avtorski honorarji nastali v državi, v kateri je stalna poslovna enota.

6. Kadar zaradi posebnega odnosa med plačnikom in upravičenim lastnikom ali med njima in drugo osebo znesek plačanih ali pripisanih licenčnin in avtorskih honorarjev glede na to, za kaj so plačani ali pripisani, presega znesek, za katerega bi bilo mogoče pričakovati, da bi se o njem sporazumela plačnik in upravičeni lastnik, če takega odnosa ne bi bilo, se določbe tega člena uporabljajo samo za zadnji navedeni znesek. V takem primeru se presežni del plačil ali pripisov še naprej obdavčuje v skladu z zakonodajo vsake države pogodbenice, pri čemer je treba upoštevati druge določbe te konvencije.

*13. člen*

ODTUJITEV PREMOŽENJA

1. Dohodek, dobiček ali dobiček iz premoženja, ki ga rezident države pogodbenice doseže z odtujitvijo nepremičnin, ki so navedene v 6. členu in so v drugi državi pogodbenici, se lahko obdavči v tej drugi državi.

2. Dohodek, dobiček ali dobiček iz premoženja iz odtujitve premičnin, ki so del poslovnega premoženja stalne poslovne enote, ki jo ima podjetje države pogodbenice v drugi državi pogodbenici, vključno z dohodkom, dobičkom ali dobičkom iz premoženja iz odtujitve take stalne poslovne enote (same ali s celotnim podjetjem), se lahko obdavči v tej drugi državi.

3. Dohodek, dobiček ali dobiček iz premoženja, ki ga podjetje države pogodbenice, ki opravlja prevoze z ladjami ali zrakoplovi v mednarodnem prometu, doseže z odtujitvijo teh ladij ali zrakoplovov, ali z odtujitvijo premičnin, povezanih z opravljanjem prevozov s temi ladjami ali zrakoplovi, se obdavči samo v tej državi.

4. Dohodek, dobiček ali dobiček iz premoženja, ki ga rezident države pogodbenice doseže z odtujitvijo delnic ali primerljivih deležev, kot so deleži v partnerstvu ali skrbniškem skladu, se lahko obdavči v drugi državi pogodbenici, če je kadar koli v obdobju 365 dni pred odtujitvijo več kakor 50 odstotkov vrednosti teh delnic ali primerljivih deležev izhajalo neposredno ali posredno iz nepremičnin, opredeljenih v 6. členu, ki so v tej drugi državi.

5. Dobiček kapitalske narave iz odtujitve premoženja, ki ni navedeno v prvem, drugem, tretjem in četrtem odstavku, se obdavči samo v državi pogodbenici, katere rezident je oseba, ki odtuji premoženje.

6. Določbe tega člena ne vplivajo na pravico države pogodbenice, da v skladu s svojo zakonodajo obdavči dohodek, dobiček ali dobiček iz premoženja, ki ga je z odtujitvijo katerega koli premoženja dosegla oseba, ki je prenehala biti rezident te države kadar koli v letu dohodka, v katerem je bilo premoženje odtujeno, ali je bila rezident kadar koli v petih letih neposredno pred tem letom, če je imela ta oseba to premoženje neposredno pred prenehanjem statusa rezidenta te države.

7. Šesti odstavek ne velja za dohodek, dobiček ali dobiček iz premoženja, ki ga oseba, ki je prenehala biti ali je bila rezident države pogodbenice, kot določeno v navedenem odstavku, doseže z odtujitvijo:

   (a) nepremičnin, ki so navedene v 6. členu, če je nepremičnina v drugi državi pogodbenici in je odtujitev te nepremičnine obdavčljiva v tej drugi državi, ali

   (b) delnic ali primerljivih deležev, kot so deleži v partnerstvu ali skrbniškem skladu, če je kadar koli v obdobju 365 dni pred odtujitvijo več kakor 50 odstotkov vrednosti teh delnic ali primerljivih deležev izhajalo neposredno ali posredno iz nepremičnin, opredeljenih v

6. členu, in so nepremičnine v drugi državi pogodbenici ter je odtujitev teh delnic ali primerljivih deležev obdavčljiva v tej drugi državi.

*14. člen*

DOHODEK IZ ZAPOSLITVE

1. Ob upoštevanju določb 15., 17., 18. in 19. člena se plače, mezde in drugi podobni prejemki, ki jih dobi rezident države pogodbenice iz zaposlitve, obdavčijo samo v tej državi, razen če se zaposlitev ne izvaja v drugi državi pogodbenici. Če se zaposlitev izvaja tako, se tako dobljeni prejemki lahko obdavčijo v tej drugi državi.

2. Ne glede na določbe prvega odstavka se prejemek, ki ga dobi rezident države pogodbenice iz zaposlitve, ki se izvaja v drugi državi pogodbenici, obdavči samo v prvi navedeni državi, če:

   (a) je prejemnik navzoč v drugi državi v obdobju ali obdobjih, ki skupaj ne presegajo 183 dni v katerem koli dvanajstmesečnem obdobju, ki se začne ali konča v posameznem davčnem letu, in

   (b) prejemek plača delodajalec, ki ni rezident druge države, ali se plača zanj ter

   (c) prejemka ne krije stalna poslovna enota, ki jo ima delodajalec v drugi državi.

3. Ne glede na prejšnje določbe tega člena in določbe 1. člena se prejemek, ki ga posameznik, ne glede na to, ali je rezident države pogodbenice, kot član redne posadke ladje ali zrakoplova dobi iz zaposlitve, ki se izvaja na ladji ali zrakoplovu, s katerim podjetje države pogodbenice opravlja prevoze v mednarodnem prometu, obdavči samo v tej državi pogodbenici. Če tak prejemek dobi rezident druge države pogodbenice, pa se lahko obdavči tudi v tej drugi državi.

4. Boniteta, ki je brez uporabe tega odstavka obdavčljiva v državi pogodbenici na ravni posameznika v zvezi z njegovo zaposlitvijo in tudi v drugi državi pogodbenici na ravni posameznikovega delodajalca, se obdavči samo v državi pogodbenici, ki ima v skladu s konvencijo izključno ali prednostno pravico do obdavčevanja plač, mezd ali drugih podobnih prejemkov iz zaposlitve, na katero se boniteta nanaša. Država pogodbenica ima "prednostno pravico do obdavčevanja", če je pravica do obdavčevanja plače, mezde ali drugih podobnih prejemkov iz zaposlitve tej državi dodeljena v skladu s to konvencijo, druga država pogodbenica pa mora zagotoviti olajšavo za davek, ki ga je v zvezi s takim prejemkom naložila prva navedena država.

*15. člen*

PREJEMKI DIREKTORJEV

Prejemki direktorjev in druga podobna plačila, ki jih dobi rezident države pogodbenice kot član upravnega odbora ali podobnega organa družbe, ki je rezident druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

*16. člen*

NASTOPAJOČI IZVAJALCI IN ŠPORTNIKI

1. Ne glede na določbe 14. člena se dohodek, ki ga rezident države pogodbenice dobi iz osebnih dejavnosti, ki jih opravlja v drugi državi pogodbenici kot nastopajoči izvajalec, kot je gledališki, filmski, radijski ali televizijski umetnik ali glasbenik, ali kot športnik, lahko obdavči v tej drugi državi.

2. Kadar dohodek iz osebnih dejavnosti, ki jih opravlja nastopajoči izvajalec ali športnik kot tak, ne priraste nastopajočemu izvajalcu ali športniku, temveč drugi osebi, se ta dohodek ne glede na določbe 14. člena lahko obdavči v državi pogodbenici, v kateri se opravijo dejavnosti nastopajočega izvajalca ali športnika.

3. Določbe prvega in drugega odstavka se ne uporabljajo za dohodek iz dejavnosti, ki jih nastopajoči izvajalci ali športniki opravljajo v državi pogodbenici, če se gostovanje v tej državi v celoti ali pretežno krije iz javnih sredstev druge države pogodbenice ali njenih političnih enot ali lokalnih oblasti. V takem primeru se dohodek obdavči samo v državi pogodbenici, katere rezident je nastopajoči izvajalec ali športnik.

*17. člen*

POKOJNINE IN PREŽIVNINE

1. Ob upoštevanju določb drugega odstavka 18. člena se pokojnine in drugi podobni prejemki, ki se plačajo rezidentu države pogodbenice, obdavčijo samo v tej državi.

2. Ne glede na določbe prvega odstavka se:

   (a) enkratna izplačila, ki nastanejo v državi pogodbenici in se izplačajo rezidentu druge države pogodbenice iz priznanega pokojninskega sklada v okviru načrta pokojninskih prejemkov

ali zaradi upokojitve, invalidnosti, prizadetosti ali smrti ali kot nadomestilo za poškodbe, lahko obdavčijo v prvi navedeni državi;

(b) pokojnine in drugi podobni prejemki, plačani po zakonodaji države pogodbenice o socialnem varstvu in plačani rezidentu druge države pogodbenice, lahko obdavčijo v prvi navedeni državi, vendar tako obračunani davek ne sme presegati 15 odstotkov bruto zneska plačila.

3. Preživnina ali drugo plačilo za vzdrževanje, ki nastane v državi pogodbenici in se plača rezidentu druge države pogodbenice, se obdavči samo v prvi navedeni državi.

*18. člen*

DRŽAVNA SLUŽBA

1. (a) Plače, mezde in drugi podobni prejemki, ki jih država pogodbenica ali njena politična enota ali lokalna oblast plačuje posamezniku za storitve, ki jih opravi za to državo ali enoto ali oblast, se obdavčijo samo v tej državi.

(b) Take plače, mezde in drugi podobni prejemki pa se obdavčijo samo v drugi državi pogodbenici, če se storitve opravljajo v tej državi in je posameznik rezident te države ter:

(i) je državljan te države ali

(ii) ni postal rezident te države samo zaradi opravljanja storitev.

2. (a) Ne glede na določbe prvega odstavka se pokojnine, ki jih plačuje država pogodbenica ali njena politična enota ali lokalna oblast ali ki se plačujejo iz njihovih skladov posamezniku za storitve, opravljene za to državo ali enoto ali oblast, obdavčijo samo v tej državi.

(b) Take pokojnine se obdavčijo samo v drugi državi pogodbenici, če je posameznik rezident in državljan te države.

3. Za plače, mezde in druge podobne prejemke ter za pokojnine za storitve, opravljene v zvezi s posli države pogodbenice ali njene politične enote ali lokalne oblasti, se uporabljajo določbe 14., 15., 16. in 17. člena.

*19. člen*

PROFESORJI, UČITELJI IN RAZISKOVALCI

1. Profesor, učitelj ali raziskovalec, ki obišče eno od držav pogodbenic za obdobje, ki ni daljše od dveh let, z namenom poučevanja ali raziskovanja na univerzi, visoki šoli, šoli ali drugi priznani izobraževalni ustanovi v tej državi pogodbenici in ki je bil tik pred tem obiskom rezident druge države pogodbenice, je za obdobje, ki ni daljše od dveh let od datuma prvega prihoda v to prvo navedeno državo v ta namen, v tej prvi navedeni državi oproščen davka od prejemkov za tako poučevanje ali raziskovanje, če je ta prejemek obdavčen v drugi državi pogodbenici. Posameznik je upravičen do ugodnosti iz tega člena samo enkrat.

2. Oprostitev po prvem odstavku se ne prizna za prejemke za raziskovanje, če se tako raziskovanje ne izvaja v javno korist, ampak predvsem v zasebno korist določene osebe ali oseb.

*20. člen*

ŠTUDENTI

Plačila, ki jih za svoje vzdrževanje, izobraževanje ali usposabljanje prejme študent ali oseba na praksi, ki je ali je bila tik pred obiskom države pogodbenice rezident druge države pogodbenice in je v prvi navedeni državi začasno navzoča samo zaradi svojega izobraževanja ali usposabljanja, se ne obdavčijo v tej državi, če taka plačila izhajajo iz virov zunaj te države.

*21. člen*

DRUGI DOHODKI

1. Deli dohodka rezidenta države pogodbenice, ki nastanejo kjer koli in niso obravnavani v prejšnjih členih te konvencije, se obdavčijo samo v tej državi.

2. Določbe prvega odstavka se ne uporabljajo za dohodek, ki ni dohodek od nepremičnin, kakor so opredeljene v drugem odstavku 6. člena, ki ga doseže rezident države pogodbenice, ki posluje v drugi državi pogodbenici prek stalne poslovne enote v njej, in je pravica ali premoženje, v zvezi s katerim se plača dohodek, dejansko povezano s tako stalno poslovno enoto. V takem primeru se uporabljajo določbe 7. člena.

3. Ne glede na določbe prvega in drugega odstavka se deli dohodka rezidenta države pogodbenice, ki niso obravnavani v prejšnjih členih te konvencije in nastanejo v drugi državi pogodbenici, lahko obdavčijo tudi v tej drugi državi.

## IV. POGLAVJE

## METODE ZA ODPRAVO DVOJNEGA OBDAVČENJA

*22. člen*

OLAJŠAVA PRI DVOJNEM OBDAVČENJU

Dvojno obdavčenje se zmanjša tako:

1. V Avstraliji:

   Ob upoštevanju določb avstralske zakonodaje, ki dovoljujejo odbitek davka, plačanega v državi zunaj Avstralije, od avstralskega davka (kar ne vpliva na splošno načelo tega člena), se slovenski davek, plačan po slovenski zakonodaji in v skladu s to konvencijo (razen če določbe te konvencije omogočajo, da Slovenija obdavčitev opravi izključno zato, ker je ta dohodek tudi dohodek, ki ga doseže rezident Slovenije) od dohodka, ki ga doseže rezident Avstralije, dovoli kot odbitek od avstralskega davka, ki se plača od tega dohodka.

2. V Sloveniji:

   (a) Kadar rezident Slovenije doseže dohodek, ki se lahko obdavči v Avstraliji v skladu z določbami te konvencije (razen če določbe te konvencije omogočajo, da Avstralija obdavčitev opravi izključno zato, ker je ta dohodek tudi dohodek, ki ga doseže rezident Avstralije), Slovenija dovoli kot odbitek od davka od dohodka tega rezidenta znesek, ki je enak davku od dohodka, plačanemu v Avstraliji. Tak odbitek pa ne sme presegati tistega dela pred odbitkom izračunanega davka od dohodka, ki se nanaša na dohodek, ki se lahko obdavči v Avstraliji.

   (b) Kadar je v skladu s katero koli določbo konvencije dohodek, ki ga doseže rezident Slovenije, oproščen davka v Sloveniji, lahko Slovenija pri izračunu davka od preostalega dohodka tega rezidenta kljub temu upošteva oproščeni dohodek.

## V. POGLAVJE

## POSEBNE DOLOČBE

*23. člen*

ENAKO OBRAVNAVANJE

1. Za državljane države pogodbenice ne sme v drugi državi pogodbenici veljati kakršno koli obdavčevanje ali kakršna koli s tem povezana zahteva, ki sta drugačna ali bolj obremenjujoča, kakor so ali so lahko obdavčevanje in s tem povezane zahteve za državljane te druge države v enakih okoliščinah, še zlasti glede rezidentstva. Ta določba se ne glede na določbe 1. člena uporablja tudi za osebe, ki niso rezidenti ene države pogodbenice ali obeh držav pogodbenic.

2. Obdavčevanje stalne poslovne enote, ki jo ima podjetje države pogodbenice v drugi državi pogodbenici, v tej drugi državi ne sme biti manj ugodno, kakor je obdavčevanje podjetij te druge države, ki opravljajo enake dejavnosti. Ta določba se ne razlaga, kot da zavezuje državo pogodbenico, da prizna rezidentom druge države pogodbenice kakršne koli osebne olajšave, druge olajšave in znižanja za davčne namene zaradi osebnega stanja ali družinskih obveznosti, ki jih priznava svojim rezidentom.

3. Razen kadar se uporabljajo določbe prvega odstavka 9. člena, devetega odstavka 11. člena ali šestega odstavka 12. člena, se obresti, licenčnine in avtorski honorarji ter druga izplačila, ki jih plača podjetje države pogodbenice rezidentu druge države pogodbenice, pri ugotavljanju obdavčljivega dobička takega podjetja odbijejo pod enakimi pogoji, kakor če bi bili plačani rezidentu prve navedene države.

4. Za podjetja države pogodbenice, katerih kapital je v celoti ali delno, neposredno ali posredno v lasti ali pod nadzorom enega rezidenta druge države pogodbenice ali več rezidentov druge države pogodbenice, ne sme v prvi navedeni državi veljati kakršno koli obdavčevanje ali kakršna koli s tem povezana zahteva, ki sta drugačna ali bolj obremenjujoča, kakor so ali so lahko obdavčevanje in s tem povezane zahteve za podobna podjetja prve navedene države.

5. Določbe tega člena se uporabljajo samo za davke iz 2. člena.

*24. člen*

## POSTOPEK SKUPNEGA DOGOVARJANJA

1. Kadar oseba meni, da imajo ali bodo imela dejanja ene države pogodbenice ali obeh držav pogodbenic zanjo za posledico obdavčenje, ki ni v skladu z določbami te konvencije, lahko ne glede na pravna sredstva, ki ji jih omogoča domače pravo teh držav, predloži zadevo pristojnemu organu države pogodbenice, katere rezident je, ali če se njena zadeva nanaša na prvi odstavek 23. člena, tiste države pogodbenice, katere državljan je. Zadeva mora biti predložena v treh letih od prvega uradnega obvestila o dejanju, ki je imelo za posledico obdavčenje, ki ni v skladu z določbami konvencije.

2. Če pristojni organ meni, da je pritožba upravičena, in če sam ne more najti zadovoljive rešitve, si prizadeva rešiti zadevo s skupnim dogovorom s pristojnim organom druge države pogodbenice, da bi se izognili obdavčenju, ki ni v skladu s konvencijo. Vsak dosežen dogovor se izvaja ne glede na roke v domačem pravu držav pogodbenic.

3. Pristojna organa držav pogodbenic si prizadevata s skupnim dogovorom rešiti kakršne koli težave ali odpraviti dvome, ki nastanejo pri razlagi ali uporabi konvencije. Poleg tega se lahko posvetujeta o odpravi dvojnega obdavčevanja v primerih, ki jih konvencija ne predvideva.

4. Da bi pristojna organa držav pogodbenic dosegla dogovor v skladu s prejšnjimi odstavki, se lahko dogovarjata neposredno.

5. Kadar:

   (a) je oseba po prvem odstavku predložila zadevo pristojnemu organu države pogodbenice, ker so imela dejanja ene države pogodbenice ali obeh držav pogodbenic zanjo za posledico obdavčenje, ki ni v skladu z določbami te konvencije, in

   (b) se pristojna organa ne moreta dogovoriti o rešitvi zadeve v skladu z drugim odstavkom v treh letih od dne, ko so bile obema pristojnima organoma zagotovljene vse informacije, ki sta jih zahtevala za obravnavo zadeve,

   se katera koli nerešena vprašanja, ki izhajajo iz zadeve, predložijo v arbitražo, če oseba tako pisno zahteva. Vendar se ta nerešena vprašanja ne predložijo v arbitražo, če je o njih že odločilo sodišče ali upravno sodišče katere koli od obeh držav. Razen če se pristojna organa v treh mesecih po tem, ko sta bila obveščena o odločitvi, ne dogovorita o drugačni rešitvi ali če oseba, na katero se zadeva neposredno nanaša, ne sprejme skupnega dogovora, s katerim se izvede arbitražna odločitev, je ta odločitev zavezujoča za obe državi pogodbenici in se izvede ne glede na roke v domači zakonodaji teh držav. Pristojna organa držav pogodbenic s skupnim dogovorom uredita način uporabe tega odstavka.

6. Za namene tretjega odstavka XXII. člena (Posvetovanja) Splošnega sporazuma o trgovini s storitvami se državi pogodbenici strinjata, da se ne glede na navedeni odstavek vsak spor med njima glede tega, ali ukrep spada na področje uporabe te konvencije, lahko predloži Svetu za trgovino s storitvami, kot določa navedeni odstavek, samo s soglasjem obeh držav pogodbenic.

Vsak dvom glede razlage tega odstavka se rešuje v skladu s tretjim odstavkom tega člena, ali če ni dogovora po tem postopku, po katerem koli drugem postopku, o katerem se dogovorita državi pogodbenici.

*25. člen*

IZMENJAVA INFORMACIJ

1. Pristojna organa držav pogodbenic si izmenjavata informacije, ki so predvidoma pomembne za izvajanje določb te konvencije ali za izvajanje ali uveljavljanje domače zakonodaje glede davkov vseh vrst in opisov, ki se uvedejo v imenu držav pogodbenic ali njunih političnih enot ali lokalnih oblasti, če obdavčevanje na njeni podlagi ni v nasprotju s konvencijo. Izmenjava informacij ni omejena s 1. in 2. členom.

2. Vse informacije, ki jih država pogodbenica prejme na podlagi prvega odstavka, se obravnavajo kot tajnost enako kakor informacije, pridobljene po domači zakonodaji te države, in se razkrijejo samo osebam ali organom (vključno s sodišči in upravnimi organi), udeleženim pri odmeri ali pobiranju davkov iz prvega odstavka, pri njihovi izterjavi ali pri pregonu ali odločanju o pritožbah v zvezi z njimi ali pri nadzoru nad navedenim. Te osebe ali organi uporabljajo informacije samo za te namene. Informacije lahko razkrijejo v javnih sodnih postopkih ali sodnih odločbah. Ne glede na to se informacije, ki jih pridobi država pogodbenica, lahko uporabljajo za druge namene, kadar se za take druge namene lahko uporabljajo po zakonodaji obeh držav in če pristojni organ države, ki informacije da, tako uporabo dovoli.

3. Določbe prvega in drugega odstavka se v nobenem primeru ne razlagajo tako, da nalagajo državi pogodbenici obveznost, da:

   (a) izvaja upravne ukrepe, ki niso v skladu z zakonodajo in upravno prakso te ali druge države pogodbenice;

   (b) predloži informacije, ki jih ni mogoče dobiti na podlagi zakonodaje ali po običajni upravni poti te ali druge države pogodbenice;

   (c) predloži informacije, ki bi razkrile kakršno koli trgovinsko, poslovno, industrijsko, komercialno ali poklicno skrivnost ali trgovinski postopek, ali informacije, katerih razkritje bi bilo v nasprotju z javnim redom.

4. Če država pogodbenica zahteva informacije v skladu s tem členom, druga država pogodbenica sprejme ukrepe za pridobitev zahtevanih informacij, tudi če jih ta druga država morda ne potrebuje za svoje davčne namene. Za obveznost iz prejšnjega stavka veljajo omejitve iz tretjega odstavka, toda v nobenem primeru se take omejitve ne razlagajo tako, da država pogodbenica lahko zavrne predložitev informacij samo zato, ker sama zanje nima interesa.

5. V nobenem primeru se določbe tretjega odstavka ne razlagajo tako, da država pogodbenica lahko zavrne predložitev informacij samo zato, ker jih hrani banka, druga finančna institucija,

pooblaščenec ali oseba, ki deluje kot zastopnik ali fiduciar, ali zato, ker so povezane z lastniškimi deleži v neki osebi.

*26. člen*

POMOČ PRI POBIRANJU DAVKOV

1. Državi pogodbenici si pomagata pri pobiranju davčnih terjatev. Pomoč ni omejena s 1. in 2. členom. Pristojna organa držav pogodbenic lahko s skupnim dogovorom uredita način uporabe tega člena.

2. Izraz "davčna terjatev", kakor je uporabljen v tem členu, pomeni dolgovani znesek v zvezi z davki vseh vrst in opisov, ki se uvedejo v imenu držav pogodbenic in v primeru Slovenije tudi v imenu njenih političnih enot ali lokalnih oblasti, če tako obdavčenje ni v nasprotju s to konvencijo ali katerim koli drugim dokumentom, katerega članici sta državi pogodbenici, vključno z obrestmi, upravnimi kaznimi in stroški pobiranja ali zavarovanja v zvezi s tem zneskom.

3. Kadar je davčno terjatev države pogodbenice mogoče uveljaviti po zakonodaji te države, dolžnik pa takrat po zakonodaji te države njenega pobiranja ne more preprečiti, to davčno terjatev na zaprosilo pristojnega organa te države sprejme za namene pobiranja pristojni organ druge države pogodbenice. To davčno terjatev pobere ta druga država v skladu z določbami svoje zakonodaje, ki se uporablja pri uveljavljanju in pobiranju njenih davkov, kakor da bi šlo za davčno terjatev te druge države.

4. Kadar je davčna terjatev države pogodbenice taka, da ta država po svoji zakonodaji lahko izvede ukrepe za zavarovanje, da zagotovi njeno pobiranje, to davčno terjatev na zaprosilo pristojnega organa te države sprejme pristojni organ druge države pogodbenice zaradi izvedbe ukrepov za zavarovanje. Ta druga država izvede ukrepe za zavarovanje te davčne terjatve v skladu z določbami svoje zakonodaje, kakor če bi bila to njena davčna terjatev, tudi če med izvajanjem teh ukrepov te davčne terjatve ni mogoče uveljaviti v prvi navedeni državi ali če ima dolžnik pravico preprečiti pobiranje.

5. Ne glede na določbe tretjega in četrtega odstavka za davčno terjatev, ki jo država pogodbenica sprejme za namene tretjega ali četrtega odstavka, v tej državi ne veljajo roki ali prednostna obravnava, ki se uporablja za davčno terjatev po zakonodaji te države samo zaradi njene narave. Poleg tega davčna terjatev, ki jo sprejme država pogodbenica za namene tretjega ali četrtega odstavka, v tej državi ni prednostno obravnavana po zakonodaji druge države pogodbenice.

6. Obstoj, veljavnost ali višina davčne terjatve države pogodbenice niso predmet postopkov pred sodišči ali upravnimi organi druge države pogodbenice.

7. Če kadar koli po zaprosilu države pogodbenice v skladu s tretjim in četrtim odstavkom ter preden druga država pogodbenica pobere davčno terjatev ter jo nakaže prvi navedeni državi:

(a) v primeru zaprosila po tretjem odstavku ta davčna terjatev ni več davčna terjatev prve navedene države, ki jo je mogoče uveljaviti po njeni zakonodaji in jo dolguje oseba, ki takrat po zakonodaji te države njenega pobiranja ne more preprečiti, ali

(b) v primeru zaprosila po četrtem odstavku ta davčna terjatev ni več davčna terjatev prve navedene države, za katero ta država po svoji zakonodaji lahko izvede ukrepe za zavarovanje, da zagotovi njeno pobiranje,

pristojni organ prve navedene države o tem takoj uradno obvesti pristojni organ druge države in glede na izbiro druge države prva navedena država zadrži ali umakne svoje zaprosilo.

8. V nobenem primeru se določbe tega člena ne razlagajo tako, da nalagajo državi pogodbenici obveznost, da:

(a) izvaja upravne ukrepe, ki niso v skladu z zakonodajo in upravno prakso te ali druge države pogodbenice;

(b) izvaja ukrepe, ki bi bili v nasprotju z javnim redom;

(c) zagotovi pomoč, če druga država pogodbenica ni izvedla vseh razumnih ukrepov za pobiranje ali zavarovanje, odvisno od primera, ki jih ima na voljo po svoji zakonodaji ali upravni praksi;

(d) zagotovi pomoč v primerih, ko je upravno breme za to državo očitno nesorazmerno s koristjo, ki bi jo imela druga država pogodbenica;

(e) zagotovi pomoč, če ta država meni, da so davki, v zvezi s katerimi se zaprosi za pomoč, uvedeni v nasprotju s splošno sprejetimi načeli obdavčevanja.

*27. člen*

ČLANI DIPLOMATSKIH PREDSTAVNIŠTEV IN KONZULATOV

Nič v tej konvenciji ne vpliva na davčne privilegije članov diplomatskih predstavništev ali konzulatov po splošnih pravilih mednarodnega prava ali določbah posebnih sporazumov.

*28. člen*

OMEJITEV UGODNOSTI

1. Ne glede na druge določbe te konvencije se ugodnost po tej konvenciji v zvezi z delom dohodka, dobička ali dobička iz premoženja ne prizna, če je ob upoštevanju vseh ustreznih dejstev in okoliščin mogoče sklepati, da je bila pridobitev te ugodnosti eden od glavnih namenov katerega

koli dogovora ali transakcije, na podlagi katerega oziroma katere je bila neposredno ali posredno pridobljena ta ugodnost, razen če se ne ugotovi, da bi bilo priznavanje take ugodnosti v teh okoliščinah skladno s cilji in nameni ustreznih določb te konvencije.

2. Če je del dohodka, dobička ali dobička iz premoženja, ki ga doseže posameznik, oproščen davka v državi pogodbenici samo zaradi statusa tega posameznika kot začasnega rezidenta po veljavni zakonodaji te države, v skladu s to konvencijo v drugi državi pogodbenici ni na voljo nobena olajšava ali oprostitev davka v zvezi s tem delom dohodka, dobička ali dobička iz premoženja.

## VI. POGLAVJE

## KONČNE DOLOČBE

*29. člen*

ZAČETEK VELJAVNOSTI

Državi pogodbenici se po diplomatski poti medsebojno pisno obvestita o izpolnitvi svojih notranjih zahtev za začetek veljavnosti te konvencije. Konvencija začne veljati na datum zadnjega uradnega obvestila, nato pa se uporablja:

(a) v primeru Avstralije:

(i) v zvezi z davkom, odtegnjenim pri viru, od dohodka, ki ga doseže nerezident, za dohodek, dosežen 1. januarja po dnevu, ko začne veljati konvencija, ali pozneje;

(ii) v zvezi z davkom na bonitete za bonitete, dane 1. aprila po dnevu, ko začne veljati konvencija, ali pozneje;

(iii) v zvezi z drugimi avstralskimi davki za dohodek, dobiček ali dobiček iz premoženja katerega koli leta dohodka, ki se začne 1. julija po dnevu, ko začne veljati konvencija, ali pozneje;

(b) v primeru Slovenije:

(i) v zvezi z davki, odtegnjenimi pri viru, za dohodek, dosežen 1. januarja v koledarskem letu po letu, v katerem začne veljati konvencija, ali pozneje;

(ii) v zvezi z drugimi davki od dohodka za davke, obračunane za katero koli davčno leto, ki se začne 1. januarja v koledarskem letu po letu, v katerem začne veljati konvencija, ali pozneje.

*30. člen*

PRENEHANJE VELJAVNOSTI

Ta konvencija velja, dokler je država pogodbenica ne odpove. Vsaka država pogodbenica lahko odpove konvencijo po diplomatski poti s pisnim obvestilom o odpovedi najmanj šest mesecev pred koncem katerega koli koledarskega leta, ki se začne po petih letih od dneva začetka veljavnosti konvencije, in v takem primeru se konvencija preneha uporabljati:

(a) v primeru Avstralije:

(i) v zvezi z davkom, odtegnjenim pri viru, od dohodka, ki ga doseže nerezident, za dohodek, dosežen 1. januarja po dnevu, ko je dano obvestilo o odpovedi, ali pozneje;

(ii) v zvezi z davkom na bonitete za bonitete, dane 1. aprila koledarskega leta po letu, v katerem je dano obvestilo o odpovedi, ali pozneje;

(iii) v zvezi z drugimi avstralskimi davki za dohodek, dobiček ali dobiček iz premoženja katerega koli leta dohodka, ki se začne 1. julija koledarskega leta po letu, v katerem je dano obvestilo o odpovedi, ali pozneje;

(b) v primeru Slovenije:

(i) v zvezi z davki, odtegnjenimi pri viru, za dohodek, dosežen 1. januarja v koledarskem letu po letu, v katerem je dano obvestilo o odpovedi, ali pozneje;

(ii) v zvezi z drugimi davki od dohodka za davke, obračunane za katero koli davčno leto, ki se začne 1. januarja v koledarskem letu po letu, v katerem je dano obvestilo o odpovedi, ali pozneje.

V POTRDITEV TEGA sta podpisana, ki sta bila za to ustrezno pooblaščena, podpisala to konvencijo.

Sklenjeno v _____ dne _____ 20__ v dveh izvodih v angleškem in slovenskem jeziku, pri čemer sta besedili enako verodostojni.

**Za Avstralijo:** **Za Republiko Slovenijo:**

# PROTOKOL H KONVENCIJI MED AVSTRALIJO IN REPUBLIKO SLOVENIJO O ODPRAVI DVOJNEGA OBDAVČEVANJA V ZVEZI Z DAVKI OD DOHODKA TER O PREPREČEVANJU DAVČNIH UTAJ IN IZOGIBANJA DAVKOM

Avstralija in Republika Slovenija sta se poleg Konvencije med Avstralijo in Republiko Slovenijo o odpravi dvojnega obdavčevanja v zvezi z davki od dohodka ter o preprečevanju davčnih utaj in izogibanja davkom (v nadaljnjem besedilu: konvencija) sporazumeli o tem protokolu, ki je sestavni del konvencije:

1. Na splošno v zvezi z uporabo konvencije:

(a) nič v tej konvenciji ne preprečuje uporabe katere koli določbe zakonodaje države pogodbenice, ki je namenjena preprečevanju izogibanja davkom ali davčnih utaj, vključno z:

(i) ukrepi za obravnavo tanke kapitalizacije in *dividend stripping*;

(ii) ukrepi za obravnavo transfernih cen;

(iii) pravili glede nadzorovanih tujih družb in skrbniških skladov prenositeljev;

(iv) ukrepi za zagotavljanje učinkovitega pobiranja in izterjave davkov, vključno z ukrepi za zavarovanje;

(v) v primeru Avstralije: z delom IVA Zakona o odmeri davka od dohodka iz leta 1936 *(Income Tax Assessment Act 1936)* in oddelkom 67 Zakona o odmeri davka na bonitete iz leta 1986 (*Fringe Benefits Tax Assessment Act 1986)* ter

(vi) v primeru Slovenije: s tovrstnimi določbami zakonov, ki urejajo davek od dohodka ali davčni postopek;

(b) v skladu s splošnim načelom – po katerem konvencije v zvezi z davki od dohodka ne omejujejo pravice držav pogodbenic, da obdavčijo svoje rezidente, razen kadar je to namen – ta konvencija ne vpliva na to, kako država pogodbenica obdavči svoje rezidente, razen v zvezi z ugodnostmi, ki se priznajo v skladu z drugim odstavkom 9. člena ter 17., 18., 19., 20., 22., 23., 24. in 27. členom.

2. V zvezi s pododstavkom (k) prvega odstavka 3. člena konvencije:

Razume se, da v primeru Slovenije izraz "oseba" vključuje tudi vzajemni pokojninski sklad in krovni pokojninski sklad.

3. V zvezi s pododstavkom (m) prvega odstavka 3. člena konvencije:

Razume se, da izraz "slovenski pokojninski sklad v skladu s pravom Slovenije" vključuje vse pokojninske sklade, ki jih urejajo:

(a) *Zakon o pokojninskem in invalidskem zavarovanju z dne 4. decembra 2012*, z vsemi spremembami;

(b) *Zakon o prvem pokojninskem skladu Republike Slovenije in preoblikovanju pooblaščenih investicijskih družb z dne 10. junija 1999*, z vsemi spremembami, in

(c) *Zakon o kolektivnem dodatnem pokojninskem zavarovanju za javne uslužbence z dne 28. novembra 2003*, z vsemi spremembami,

ter morebitne prihodnje spremembe teh zakonov, vključno z vzajemnim pokojninskim skladom, krovnim pokojninskim skladom in kritnim skladom.

4. V zvezi s petim odstavkom 5. člena konvencije:

Razume se, da se zloraba izjem iz tretjega in četrtega odstavka 5. člena, ki se obravnava po petem odstavku 5. člena, lahko obravnava tudi po prvem odstavku 28. člena.

5. V zvezi z drugim odstavkom 6. člena konvencije:

Za katero koli upravičenje ali pravico se šteje, da je tam, kjer so zemljišča, nahajališča rudnin, nafte ali plina, kamnolomi ali naravni viri, odvisno od primera, ali kjer se lahko izvaja raziskovanje. To velja tudi za dohodek iz nepremičnin podjetja.

6. V zvezi z 9. členom konvencije:

Razume se, da je treba sklicevanje na pogoje, ki "se vzpostavijo ali določijo" med podjetjema, razlagati široko in da vključuje katere koli pogoje, ki veljajo med tema podjetjema.

7. V zvezi s pododstavkom (a) tretjega odstavka 10. člena in točko (i) pododstavka (c) četrtega odstavka 11. člena konvencije:

Razume se, da izraz "pokojninske dejavnosti, skladne z zahtevami" pomeni:

(a) tiste dejavnosti, ki jih izvaja subjekt, za katerega velja ugodnejša davčna obravnava, ker spoštuje vse veljavne določbe iz Zakona o dejavnostih dodatnega pokojninskega zavarovanja (nadzor) iz leta 1993 (*Superannuation Industry (Supervision) Act 1993*) ali Zakona o pokojninskih varčevalnih računih iz leta 1997 (*Retirement Savings Accounts 1997*), vključno s subjektom, ki je:
(i) pokojninski subjekt, skladen z zahtevami;
(ii) ponudnik RSA (ponudnik pokojninskega varčevalnega računa), ali

(b) tiste dejavnosti, s katerimi se ustvarja dohodek iz ločenih izvzetih sredstev ali obdavčljivi dohodek življenjske zavarovalnice iz razreda pokojninskega zavarovanja, skladen z zahtevami, za katerega velja ugodnejša davčna obravnava.

8. V zvezi s pododstavkom (b) tretjega odstavka 10. člena in točko (ii) pododstavka (c) četrtega odstavka 11. člena konvencije:

Razume se, da priznani pokojninski sklad Slovenije, katerega dohodek je oproščen slovenskega davka, vključuje priznani pokojninski sklad Slovenije, ki v Sloveniji ni zavezan plačevati davka od dohodkov pravnih oseb.

9. V zvezi s pododstavkom (f) tretjega odstavka 12. člena konvencije:

Razume se, da se izraz "opustitev uporabe ali zagotavljanja katerega koli premoženja ali pravice" nanaša na primere, ko se imetniku katerega koli premoženja ali pravice plača ali pripiše nadomestilo za to, da tega premoženja ali pravice ne da na razpolago drugi osebi.

10. V zvezi z drugim in tretjim odstavkom 13. člena konvencije:

Razume se, da izraz "premičnina" pomeni premoženje, ki ni nepremičnina.

11. V zvezi s pododstavkom (a) drugega odstavka 17. člena konvencije:

(a) razume se, da "načrt pokojninskih prejemkov" pomeni dogovor, v katerem posameznik sodeluje zaradi zagotovitve pokojninskih prejemkov;

(b) razume se tudi, da pri enkratnih izplačilih, ki nastanejo v Avstraliji:

(i) načrt pokojninskih prejemkov vključuje:

(A) "pokojninski varčevalni račun", kot je opredeljen v *Zakonu o pokojninskih varčevalnih računih iz leta 1997 (Retirement Savings Accounts Act 1997)*;

(B) "polico pokojninskega življenjskega zavarovanja, skladno z zahtevami", kot je opredeljena v *Zakonu o odmeri davka od dohodka iz leta 1997 (Income Tax Assessment Act 1997)*, in

(C) "oproščeno polico življenjskega zavarovanja", kot je opredeljena v *Zakonu o odmeri davka od dohodka iz leta 1997 (Income Tax Assessment Act 1997)*, razen police iz pododstavkov e(i) ali (iii) pododdelka 320-246(1) navedenega zakona, in

(ii) se plačilo davčnega komisarja v skladu s Pokojninskim zakonom *(nezahtevani denar in izgubljeni člani)* iz leta 1999 *(Superannuation (Unclaimed Money and Lost Members) Act 1999)* obravnava kot enkratno izplačilo, plačano v okviru načrta pokojninskih prejemkov.

12. V zvezi s 23. členom konvencije:

Razume se, da se 23. člen ne uporablja za avstralski zakon, ki se nanaša na stopnjo obdavčitve posameznika, ki je po avstralskem pravu posameznik na delovnih počitnicah.

13. V zvezi s petim odstavkom 24. člena konvencije:

(a) Državi pogodbenici lahko arbitražnemu senatu, ustanovljenemu v skladu z določbami petega odstavka 24. člena, sporočita informacije, potrebne za izvedbo arbitražnega postopka. Za člane arbitražnega senata veljajo omejitve v zvezi z razkritjem, opisane v drugem odstavku 25. člena konvencije glede tako sporočenih informacij. Pred začetkom arbitražnega postopka pristojna organa držav pogodbenic zagotovita, da se vsaka oseba, ki je predložila zadevo, in njeni svetovalci pisno zavežejo, da informacij, ki jih prejmejo med arbitražnim postopkom od pristojnega organa ali arbitražnega senata, ne bodo razkrili nobeni drugi osebi. Postopek skupnega dogovarjanja in arbitražni postopek se v zvezi z zadevo končata, če kadar koli po vložitvi zahteve za arbitražo in preden arbitražni senat sporoči svojo odločitev pristojnima organoma držav pogodbenic, oseba, ki je predložila zadevo, ali eden od njenih svetovalcev bistveno krši to zavezo.

(b) Kadar pristojni organ prekine postopek skupnega dogovarjanja iz prvega odstavka 24. člena, ker zadevo v zvezi z enim vprašanjem ali več enakimi vprašanji obravnava sodišče ali upravno sodišče, rok, ki je določen v pododstavku (b) petega odstavka 24. člena, preneha teči in ne teče, dokler sodišče ali upravno sodišče ne sprejme končne odločitve oziroma ali se zadeva ne prekine ali umakne. Poleg tega, kadar se oseba, ki je predložila zadevo, in pristojni organ dogovorita o prekinitvi postopka skupnega dogovarjanja, v času trajanja take prekinitve rok iz pododstavka (b) petega odstavka 24. člena ne teče.

(c) Kadar zadeva, v zvezi s katero je bila predložena zahteva za arbitražo, še ni rešena v sodnem ali pritožbenem postopku, se šteje, da oseba, na katero se zadeva neposredno nanaša, ni sprejela skupnega dogovora, s katerim se izvede arbitražna odločitev o zadevi, če katera koli oseba, na katero se zadeva neposredno nanaša, v 60 dneh po dnevu, ko ji je bilo poslano obvestilo o skupnem dogovoru, iz obravnave pred zadevnim sodiščem ali upravnim sodiščem ne umakne vseh vprašanj, razrešenih v skupnem dogovoru, s katerim se izvede arbitražna odločitev, ali kako drugače ne konča katerega koli postopka pred sodiščem ali upravnim sodiščem v zvezi s temi vprašanji na način, ki je v skladu s tem skupnim dogovorom. V takem primeru ni upravičeno, da bi pristojna organa držav pogodbenic zadevo še naprej kakor koli obravnavala.

(d) Razume se tudi, da arbitražna odločitev ni zavezujoča za nobeno od obeh držav pogodbenic, če oseba, na katero se zadeva neposredno nanaša, pred katerim koli sodiščem ali upravnim sodiščem nadaljuje postopek glede vprašanj, rešenih v skupnem dogovoru, s katerim se izvede arbitražna odločitev.

(e) Če kadar koli po predložitvi zahteve za arbitražo in preden arbitražni senat sporoči svojo odločitev o zadevi pristojnima organoma držav pogodbenic:

(i) pristojna organa držav pogodbenic dosežeta skupni dogovor o rešitvi zadeve v skladu z drugim odstavkom 24. člena ali

(ii) oseba, ki je predložila zadevo, umakne zahtevo za arbitražo ali postopek skupnega dogovarjanja,

se postopek skupnega dogovarjanja in arbitražni postopek v zvezi z zadevo končata.

(f) Če kadar koli po predložitvi zahteve za arbitražo in preden arbitražni senat sporoči svojo odločitev o zadevi pristojnima organoma držav pogodbenic, sodišče ali upravno sodišče ene od držav pogodbenic odloči o vprašanju, se arbitražni postopek konča.

(g) Peti odstavek 24. člena se ne uporablja za nerešena vprašanja v zadevah:
(i) v zvezi z deli dohodka, dobička ali dobička iz premoženja, ki niso obdavčeni v državi pogodbenici, ker niso vključeni v davčno osnovo v tej državi pogodbenici ali ker zanje velja oprostitev ali ničelna davčna stopnja, ki velja samo po domačem davčnem pravu te države pogodbenice in je značilna za tak del dohodka, dobička ali dobička iz premoženja;
(ii) ki vključujejo dejanja, zaradi katerih je bil davčni zavezanec, oseba, ki deluje zanj, ali povezana oseba:
(A) na sodišču spoznana za krivo kaznivega dejanja v zvezi z davki ali
(B) ji je bila naložena *večja* kazen zaradi davčne goljufije, utaje ali izogibanja davkom ali spodbujanja in izvajanja shem;

(iii) ki vključujejo uporabo katere koli določbe zakonodaje države pogodbenice, ki je namenjena preprečevanju davčnih utaj ali izogibanja davkom. Razume se, da izraz "katera koli določba zakonodaje države pogodbenice, ki je namenjena preprečevanju davčnih utaj ali izogibanja davkom" vključuje točke (i) do (vi) pododstavka (a) prvega odstavka protokola.

V POTRDITEV TEGA sta podpisana, ki sta bila za to ustrezno pooblaščena, podpisala ta protokol.

Sklenjeno v _____ dne _____ 20__ v dveh izvodih v angleškem in slovenskem jeziku, pri čemer sta besedili enako verodostojni.

**Za Avstralijo:** **Za Republiko Slovenijo:**