

CONVENTION

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF UKRAINE

FOR

THE ELIMINATION OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME

AND

THE PREVENTION OF TAX EVASION AND AVOIDANCE

The Government of Australia and the Government of Ukraine,

Desiring to further develop their economic relationship and to enhance their co-operation 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 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.
3. 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, paragraph 6 of Article 13 and Articles 17, 18, 19, 21, 22 and 25.

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 Ukraine, 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 the case of Ukraine:
 - (i) the individual income tax; and
 - (ii) the tax on profits of enterprises
(hereinafter referred to as "Ukrainian 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 Ukraine 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, 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 "Ukraine" when used in geographical sense, means the territory of Ukraine, its Continental Shelf and its exclusive economic zone, including any area

outside the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated, as an area within which the rights of Ukraine with respect to the sea bed and sub-soil and their natural resources may be exercised;

- (c) the terms “a Contracting State” and “the other Contracting State” mean Ukraine or Australia 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 Ukraine, the Ministry of Finance of Ukraine or its authorized 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 such transport is 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) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, 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 "recognised pension fund" of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State or, in the case of Australia, an Australian superannuation fund for the purposes of Australian tax, 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 subparagraph (i) or, in the case of Australia, to invest such funds, or the complying superannuation assets or segregated exempt assets of a life

insurance company that is a resident of Australia, or any combination thereof;

- (m) the term "tax" means Australian tax or Ukrainian 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.

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 considered

to be a resident of either Contracting State for the purposes of enjoying benefits under 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 or installation project constitutes a permanent establishment only if it lasts more than six 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 183 days in any 12 month period in connection with a building site or construction or installation project which is being undertaken in that other State;
 - (b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for 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; 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;
 - (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 paragraph 6.

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.

12. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an

enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

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

- (a) a lease of land and any other interest in or over land, whether improved or not;
- (b) property accessory to immovable property;
- (c) livestock and equipment used in agriculture and forestry;
- (d) rights to which the provisions of general law respecting landed property apply;
- (e) usufruct of immovable property;
- (f) a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
- (g) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore 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. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

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

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

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. Where profits include items of income 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.

6. 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.

7. 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.

8. A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after the expiration of ten years from the end of the taxable year in which the profits might have been expected to have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of ten years, an audit into the profits of the enterprise has been initiated by either State.

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:

- (a) profits from leasing on a bareboat basis of ships or aircraft; and
- (b) 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 leasing or such use, maintenance or rental, as the case may be, 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. 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.

3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that might have been expected to have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after the expiration of ten years from the end of the taxable year in which the profits might have been expected to have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of ten years, an audit into the profits of an enterprise has been initiated by that State.

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 holds directly at least 10 per cent of the voting power in the company paying the dividends throughout a 365 day period that includes the day of the 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) 15 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 holds directly less than 10 per cent of the voting

power in the company 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) a Contracting State, or political subdivision or a local authority thereof (including a government investment fund);
- (b) the Reserve Bank of Australia or the National Bank of Ukraine;
- (c) 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
- (d) in the case of Ukraine, a recognised pension fund of Ukraine whose income is exempt from Ukrainian 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 State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1, 2 and 3 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 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 first-mentioned State, paragraph 2 of this Article shall apply as if the company paying the dividends were a resident only of the other State.

Article 11

INTEREST

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

2. However, 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 an authorised deposit-taking institution which is subject to capital adequacy requirements and regulation for credit risk consistent with international standards for capital requirements of a regulated banking business, as set out in the Basel Accords.

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 is derived by:

- (a) a Contracting State or a political subdivision or a local authority thereof (including a government investment fund);
- (b) the Reserve Bank of Australia or the National Bank of Ukraine;
- (c) 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; or
- (d) in the case of Ukraine, a recognised pension fund of Ukraine whose income is exempt from Ukrainian tax.

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.

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 or outside both Contracting States 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;
- (f) the use of, or the right to use, industrial, commercial or scientific equipment; or
- (g) 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 or outside both Contracting States 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 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 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 from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Income 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 from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income 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. Where an individual who upon ceasing to be a resident of a Contracting State, is treated under the taxation law of that State as having alienated any property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired the property for an amount equal to its market value at that time.

7. The provisions of this Article shall not affect the right of a Contracting State to tax, in accordance with its laws, income from the alienation of any property derived by a person who is a resident of that Contracting State at any time during the year of income in which the property is alienated, or has been so resident at any time preceding that year.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, 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, remuneration derived by a resident of a Contracting State 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, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned 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 will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary, 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 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. Notwithstanding the provisions of paragraphs 1 and 2, income referred to in this Article shall be exempt from tax in the Contracting State in which the activities of the entertainer or sportsperson are exercised, if such activities are wholly or mainly supported by the public funds of the other Contracting State or political subdivision or local authority thereof.

Article 17

PENSIONS

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, 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.

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.

4. Notwithstanding paragraphs 1 and 2 of this Article and subparagraph (b) of paragraph 2 of Article 18, any pension or other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in the other Contracting State to the extent the pension or other similar remuneration would be exempt from tax in the first-mentioned State if the recipient were a resident of that 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

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 20

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 the other State.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 21

ELIMINATION OF DOUBLE TAXATION

1. In Australia, double taxation shall be eliminated as follows:

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), Ukrainian tax paid under the laws of Ukraine and in accordance with this Convention (except to the extent that the provisions of this Convention allow taxation by Ukraine solely because the income is also income derived by a resident of Ukraine), 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 Ukraine, double taxation shall be eliminated as follows:

- (a) Where a resident of Ukraine derives income which, in accordance with the provisions of this Convention, may be taxed in Australia, Ukraine shall allow as a deduction from the Ukrainian tax on the income of that resident, an amount equal to the income tax paid in Australia. Such deduction in either case 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 Ukraine is exempt from tax in Ukraine, Ukraine 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 22

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 either Contracting State. 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. 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 23

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 24

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 Ukraine 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 the 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 25

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 26

ENTITLEMENT TO 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 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 a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.
3. Where an item of income 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.
4. Nothing in this Convention shall prevent the application of any provision of the laws of a Contracting State which is designed to prevent the evasion or avoidance of taxes.

CHAPTER VI

FINAL PROVISIONS

Article 27

ENTRY INTO FORCE

1. 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.

2. 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 this Convention enters into force;
- (iii) in respect of other Australian tax, in relation to income 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 Ukraine:

- (i) in respect of taxes withheld at source on or after the first day of January in the year following that in which the Convention enters into force; and
- (ii) in respect of other taxes for the taxable year beginning on or after the first day of January in the year following that in which the Convention enters into force.

Article 28

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving 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 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 notice of termination is given;

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

(b) in the case of Ukraine:

- (i) in respect of taxes withheld at source on or after the first day of January in the year following that in which the notice is given; and
- (ii) in respect of other taxes for the taxable year beginning on or after the first day of January in the year following that 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 Ukrainian languages, both texts being equally authentic. In case of any divergence of the provisions of this Convention, or their interpretation or application, the English text shall prevail.

For the Government of Australia:

For the Government of Ukraine:

**PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF UKRAINE FOR THE ELIMINATION
OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE
PREVENTION OF TAX EVASION AND AVOIDANCE**

The Government of Australia and the Government of Ukraine have in addition to the Convention between the Government of Australia and the Government of Ukraine for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance agreed on the following provisions, which shall form an integral part of the Convention:

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

In the case of Australia, nothing in this Convention shall prevent the application of Part IVA of the *Income Tax Assessment Act 1936* or section 67 of the *Fringe Benefits Tax Assessment Act 1986*.

2. With reference generally to the Convention:

The term "income" has a wide meaning and includes profits and gains.

3. With reference to subparagraphs (b) and (c) of paragraph 4 of Article 5:

- (a) It is understood that the factors of size, quantity or value of equipment or the role of equipment in income producing activities are relevant in determining whether the equipment is substantial on the basis of the facts and circumstances of each particular case.
- (b) It is understood that the term "substantial equipment" may include:
 - (i) industrial earthmoving equipment or construction equipment used in road building, dam building or powerhouse construction;
 - (ii) manufacturing or processing equipment used in a factory; and
 - (iii) oil or drilling rigs, platforms and other structures used in the petroleum or mining industry.

4. With reference to Article 9:

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.

5. With reference to subparagraph (a) of paragraph 3 of Article 10 and subparagraph (a) of paragraph 3 of Article 11:

It is understood that the term "government investment fund" means an entity that satisfies all of the following conditions:

- (a) the entity is:
 - (i) wholly owned by a Contracting State, or political subdivision or a local authority thereof; and
 - (ii) funded solely by public monies; and
- (b) all returns on the entity's investments are public monies; and
- (c) the entity is not:
 - (i) a partnership; or
 - (ii) an entity with a principal activity that consists of either or both of the following:
 - (A) producing or trading non-financial goods;
 - (B) providing services that are not financial services; or
 - (iii) an entity that:
 - (A) trades in financial assets and liabilities; or
 - (B) operates commercially in the financial markets; or
 - (C) has principal activities which include providing financial intermediary services, financial auxiliary services, or capital financial institution services.

6. With reference to subparagraph (f) of paragraph 3 of Article 12:

The term "royalties" as used in Article 12 shall not include payments or credits made as consideration for the use of any equipment used in the transport of goods or merchandise if such use is directly connected or ancillary to the operation of ships or aircraft in international traffic. In such cases, the provisions of Article 8 shall apply.

7. With reference to subparagraph (g) of paragraph 3 of Article 12:

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 using or not making available to another person such property or right.

8. With reference to paragraphs 2 and 3 of Article 13:

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

9. With reference to paragraph 2 of Article 17:

It is understood that "a retirement benefit scheme" means an arrangement in which the individual participates in order to secure retirement benefits. It is also understood that in the case of lump sums arising in Australia:

- (a) a retirement benefit scheme includes:
 - (i) a "retirement savings account" as defined in the *Retirement Savings Accounts Act 1997*;
 - (ii) a "complying superannuation life insurance policy" as defined in the *Income Tax Assessment Act 1997*; and
 - (iii) 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 320-246(1) of that Act; and
- (b) 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.

10. With reference to paragraph 4 of Article 26:

It is understood that the reference to "any provision of the laws of a Contracting State which is designed to prevent the evasion or avoidance of taxes" includes:

- (a) in the case of Australia, Part IVA of the *Income Tax Assessment Act 1936* or section 67 of the *Fringe Benefits Tax Assessment Act 1986*;
- (b) measures designed to address thin capitalisation and dividend stripping;
- (c) measures designed to address transfer pricing;
- (d) controlled foreign company and transferor trust rules; and
- (e) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

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

Done at this day of 20..., in duplicate in the English and Ukrainian languages, both texts being equally authentic. In case of any divergence of the provisions of this Protocol, or their interpretation or application, the English text shall prevail.

For the Government of Australia:

For the Government of Ukraine: