

Overenskomst mellom Norge og Australia til unngåelse av dobbeltbeskatning m.v.

Vedlegg.

**Convention between the Kingdom of Norway and Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.**

The Government of the Kingdom of Norway and the Government of Australia,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

Article 1

*Personal Scope*

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

Article 2

*Taxes Covered*

1. The existing taxes to which this Convention shall apply are —

- a) in Australia:
  - the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;
- b) in Norway:
  - (i) the national tax on income (inntektsskatt til staten);
  - (ii) the county municipal tax on income (inntektsskatt til fylkeskommunen);
  - (iii) the municipal tax on income (inntektsskatt til kommunen);
  - (iv) the national contributions to the Tax Equalisation Fund (fellesskatt til Skattefordelingsfondet);
  - (v) the national tax on capital (formuesskatt til staten);
  - (vi) the municipal tax on capital (formuesskatt til kommunen);
  - (vii) the national tax relating to income and capital from the exploration for and the exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport of petroleum produced; (skatt til staten vedrørende inntekt og formue i forbindelse med undersøkelse etter og utnyttelse av undersjøiske petroleumforekomster og dertil knyttet virksomhet og arbeid, herunder rørledningstransport av utvunnet petroleum);
  - (viii) the national dues on remuneration to non-resident artistes; (avgifter til staten av honorarer som tilfaller kunstnere bosatt i utlandet);
  - (ix) the seamen's tax; (sjømannsskatt).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

Article 3

*General Definitions*

1. In this Convention, unless the context otherwise requires —

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- a) the term «Australia» means the Commonwealth of Australia and, when used in a geographical sense, includes —
- (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 Coral Sea Islands Territory; and
  - (vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;
- b) the term «Norway» means the Kingdom of Norway, including any area outside the territorial waters of the Kingdom of Norway where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the sea-bed and subsoil and their natural resources; the term does not comprise Svalbard, Jan Mayen and the Norwegian dependencies («biland»);
- c) the terms «Contracting State», «one of the Contracting States» and «other Contracting State» mean Australia or Norway, as the context requires;
- d) the term «person» means an individual, a company and any other body of persons;
- e) the term «company» means any body corporate or any entity which is treated as a company or a body corporate for tax purposes;
- f) the terms «enterprise of one of the Contracting States» and «enterprise of the other Contracting State» mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Norway, as the context requires;
- g) the term «tax» means Australian tax or Norwegian tax, as the context requires;
- h) the term «Australian tax» means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2;
- i) the term «Norwegian tax» means tax imposed by Norway or its political subdivisions or local authorities, being tax to which this Convention applies by virtue of Article 2;
- j) the term «competent authority» means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Norway, the Minister of Finance and Customs or his authorized representative.

2. In this Convention, the terms «Australian tax» and «Norwegian tax» do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies by virtue of Article 2.

3. In the application of this Convention by a Contracting State, any term not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which this Convention applies.

#### Article 4

##### *Residence*

1. For the purposes of this Convention, a person is a resident of one of the Contracting States —

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- a) in the case of Australia, subject to the provisions of paragraph 2, if the person is a resident of Australia for the purposes of Australian tax; and
- b) in the case of Norway, if the person is liable to tax therein by reason of his domicile, residence, place of incorporation or any other criterion of a similar nature, but not if he is liable to tax in Norway in respect only of income from sources therein.

2. In relation to income from sources in Norway, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Norway is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Norwegian tax.

3. Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;
- b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

4. For the purposes of the last preceding paragraph, an individual's citizenship or nationality of a Contracting State as well as his habitual abode shall be factors in determining the degree of his personal and economic relations with that Contracting State.

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

## Article 5

### *Permanent Establishment*

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

2. The term «permanent establishment» shall include especially —

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- g) an agricultural, pastoral or forestry property;
- h) a building site or construction, installation or assembly project which exists for more than twelve months.

3. Notwithstanding the preceding provisions of this Article, an enterprise shall not be deemed to have a permanent establishment merely by reason of —

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging

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- to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if —

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

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 6 applies — shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if —

- a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.

7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

8. The principles set forth in paragraph 1 to 7 inclusive shall be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 5 of Article 12 of this Convention whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

## Article 6

### *Income from Real Property*

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

2. In this Article, the term «real property»

- a) in the case of Australia, has the meaning which it has under the laws of Australia, and shall also include —

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- (i) a lease of land and any other interest in or over land, whether improved or not;
  - (ii) a right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
- b) in the case of Norway, means immovable property according to the laws of Norway, and shall also include —
- (i) property accessory to immovable property;
  - (ii) rights to which the provisions of the general law respecting landed property apply;
  - (iii) usufruct of immovable property; and
  - (vi) a right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

Ships, boats and aircraft shall not be regarded as real property.

3. A lease of land, any other interest in or over land and any right referred to in any of the sub-paragraphs of paragraph 2 shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources, as the case may be, are situated.

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

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of professional services.

#### Article 7

##### *Business Profits*

1. The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment

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on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

7. 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.

8. 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.

9. Nothing in this Article shall affect the operation of any law of a Contracting State relating to taxation of profits from insurance with non-residents provided that if the relevant law in force in either State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

#### Article 8

##### *Shipping and Air Transport*

1. Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

5. The provisions of paragraphs 1 and 2 shall apply to profits derived by the joint Norwegian, Danish and Swedish air transport consortium Scandinavian Airlines System (SAS), but only insofar as profits derived by Det Norske Luftfartsselskap A/S (DNL), the Norwegian partner of the Scandinavian Airlines System (SAS), are in proportion to its share in that organization.

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## Article 9

*Associated Enterprises*

## 1. Where —

- a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and taxed accordingly, the competent authority of the first-mentioned State shall, with a view to the provision of such relief to the first-mentioned enterprise as may be appropriate, consult with the competent authority of the other State.

## Article 10

*Dividends*

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term «dividends» in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the

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dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State. However, this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Norway for the purposes of Norwegian tax.

6. Subject to the provisions of this Convention, a Contracting State may impose on the income of a company which is a resident of the other Contracting State, tax in addition to the income tax (in this paragraph called «the general income tax») payable by the company in respect of its taxable income; provided that the additional tax so imposed in respect of a year of income shall not exceed 15 per cent of the amount by which the taxable income of that year of income exceeds the general income tax payable in respect of the taxable income of that year of income.

## Article 11

### *Interest*

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Interest derived by the Government of a Contracting State, or by any other body exercising governmental functions in, or in a part of, a Contracting State, or by a bank performing central bank functions in a Contracting State, shall be exempt from tax in the other Contracting State.

4. The term «interest» in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a perma-



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

7. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Convention.

## Article 12

### *Royalties*

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term «royalties» 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 use of, or the right to use, any industrial, commercial or scientific equipment;
- c) the supply of scientific, technical, industrial or commercial knowledge or information;
- d) 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), any such equipment as is mentioned in subparagraph b) or any such knowledge or information as is mentioned in subparagraph c);
- e) the use of, or the right to use —
  - (i) motion picture films;
  - (ii) films or video tapes for use in connection with television; or
  - (iii) tapes for use in connection with radio broadcasting; or
- f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

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

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5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Convention.

#### Article 13

##### *Alienation of Property*

1. Income or gains from the alienation of real property or of an interest in or over land or of a right to exploit, or to explore for, a natural resource may be taxed in the Contracting State in which the real property, the land or the natural resource is situated.

2. For the purposes of this Article, shares or comparable interests in a company, the assets of which consist wholly or principally of real property or of interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States, shall be deemed to be real property situated in the Contracting State in which the land or the natural resources are situated or in which the exploration may take place.

3. Subject to the provisions of paragraph 1, income from the alienation of capital assets of an enterprise of one of the Contracting States or of capital assets available to a resident of one of the Contracting States for the purpose of performing professional services or other independent activities shall be taxable only in that State, but, where those assets form part of the business property of a permanent establishment or fixed base situated in the other Contracting State, such income may be taxed in that other State.

4. Gains from the alienation of shares in a company the capital of which is wholly or partly divided into shares and which is a resident of Norway for the purposes of Norwegian tax, derived by an individual who is a resident of Australia, may be taxed in Norway.

5. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

##### *Independent Personal Services*

1. Income derived by an individual who is a resident of one

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of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless —

- a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in which case the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base; or
- b) he is present in the other State for a period or periods in any year of income exceeding 183 days or he is present in that State for a period or periods in any two consecutive years of income exceeding in the aggregate 183 days; in which case the income derived by the individual during such a period or periods may be taxed in the other State.

2. However, to the extent that the above-mentioned income is exempt from tax in the first-mentioned State, or upon the application of this Article will be exempt from tax in that State, the income may be taxed in the other State.

3. The term «professional services» includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### Article 15

##### *Dependent Personal Services*

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods in any year of income not exceeding in the aggregate 183 days in the year of income of that other State or he is present in that other State for a period or periods in any two consecutive years of income of that other State not exceeding in the aggregate 183 days; and
- b) the remuneration is paid by, or on behalf of, an employer who is a resident of the State of which the recipient is a resident; and
- c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

However, to the extent that the above-mentioned remuneration is exempt from tax in the first-mentioned State, or upon the application of this Article will be exempt from tax in that State, the remuneration may be taxed in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or

aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State. Where a resident of Norway derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Norway.

#### Article 16

##### *Directors' Fees*

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors or of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

#### Article 17

##### *Entertainers*

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

3. Notwithstanding the provisions of paragraph 1 and Articles 14 and 15, income derived from activities performed in a Contracting State by entertainers shall be exempt from tax in that Contracting State if the visit to that State is substantially supported or sponsored by the other Contracting State and the entertainer is certified as qualifying under this provision by the competent authority of that other State.

#### Article 18

##### *Pensions and Annuities*

1. Pensions (including government pensions and payments under a Social Security system) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

2. The term «annuity» means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State, shall, if it is not an allowable deduction for the payer, be taxable only in the first-mentioned State.

#### Article 19

##### *Government Service*

1. Remuneration (other than a pension or annuity) paid by one of the Contracting States or a political subdivision or local autho-

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riety of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- a) is a citizen or national of that State; or
- b) did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of Article 15 or Article 16, as the case may be, shall apply.

#### Article 20

##### *Students*

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of his education, receives payments from sources outside that other State for the purpose of his maintenance or education, those payments shall be exempt from tax in that other State.

#### Article 21

##### *Income Not Expressly Mentioned*

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.

3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

#### Article 22

##### *Offshore Activities*

1. The provisions of this Article have effect notwithstanding any other provision of this Convention.

2. A person who is a resident of one of the Contracting States and carries on activities offshore in the other Contracting State in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources situated in that other State shall, subject to paragraph 3 of this Article, be deemed in relation to those activities to be carrying on business in that other State through a permanent establishment or fixed base situated therein.

3. The provisions of paragraph 2 shall not apply where the activities are carried on for a period not exceeding 30 days in the aggregate in any 12 months period. However, for the purposes of this paragraph:

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- a) activities carried on by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise;
  - b) two enterprises shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third person or persons.
- 4.

- a) Subject to sub-paragraph b) of this paragraph, salaries, wages and similar remuneration derived by a resident of one of the Contracting States in respect of an employment connected with the exploration or exploitation of the sea-bed and subsoil and their natural resources situated in the other Contracting State shall, to the extent that the duties are performed offshore in that other State, be taxable only in that other State, provided that the employment offshore is carried on for a period exceeding 30 days in the aggregate in any 12 months period.
- b) Salaries, wages and similar remuneration derived by a resident of one of the Contracting States in respect of an employment, shall be taxable only in that Contracting State if the duties are performed, on behalf of an employer who is a resident of that State, in connection with the utilisation of petroleum reservoirs which extend across the trans-median line between a Contracting State and any other State, provided that there is an agreement between those two States for the joint exploitation of the reservoir, and the exploitation is performed simultaneously on both sides of the trans-median line.

#### Article 23

##### *Source of Income*

1. Income derived by a resident of Norway which, under any one or more of Articles 6 to 8, Articles 10 to 18 and Article 21 may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.
2. Income derived by a resident of Australia which, under any one or more of Articles 6 to 8, Articles 10 to 18 and Article 21 may be taxed in Norway, shall for the purposes of paragraph 1 of Article 25 and of the income tax law of Australia be deemed to be income from sources in Norway.

#### Article 24

##### *Capital*

1. Capital represented by real property as defined in Article 6, owned by a resident of Australia and situated in Norway, may be taxed in Norway.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of Australia has in Norway or by movable property pertaining to a fixed base available to a resident of Australia in Norway for the purpose of performing independent personal services, may be taxed in Norway.
3. Capital represented by ships and aircraft operated in international traffic by a resident of Australia and by movable property pertaining to the operation of such ships and aircraft, shall be exempt from tax in Norway.

4. All other elements of capital of a resident of Australia shall be exempt from tax in Norway.

5. In the event that Australia should introduce a tax on capital, Australia shall advise Norway of the introduction of the tax and enter into negotiations with Norway with a view to agreeing to such amendments to this Article as may be appropriate.

#### Article 25

##### *Methods of Elimination of Double Taxation*

1. Subject to the provisions of the law of Australia from time to time in force 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 hereof), Norwegian tax paid under the law of Norway and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Norway (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividends is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

2. In the case of Norway:

- a) where a resident of Norway derives income which, in accordance with the provisions of this Convention, may be taxed in Australia, Norway shall, subject to the provisions of paragraphs b) and c), exempt such income from tax;
- b) where a resident of Norway derives items of income which, in accordance with the provisions of Articles 8, 10, 11 and 12, paragraph 2 of Article 21 and Article 22 may be taxed in Australia, Norway shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Australia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Australia.
- c) where in accordance with any provisions of this Convention income derived by a resident of Norway is exempt from tax in Norway, Norway may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

#### Article 26

##### *Mutual Agreement Procedure*

1. Where a resident of one of the Contracting States considers that the actions of the taxation authorities of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Convention.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve by mutual agreement the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention. The solution so reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

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3. The competent authorities of the Contracting States shall jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

#### Article 27

##### *Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by the competent authority of 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, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies and shall be used only for such purposes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation —

- a) to carry out administrative measures at variance with the laws or the 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 to supply information the disclosure of which would be contrary to public policy.

#### Article 28

##### *Diplomatic and Consular Officials*

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

#### Article 29

##### *Entry into Force*

This Convention shall enter into force on the date on which the Government of Australia and the Government of the Kingdom of Norway exchange notes through the diplomatic channel notifying each other that the last of such constitutional processes as are necessary to bring this Convention into force in Australia and in Norway, as the case may be has been completed, and thereupon this Convention shall have effect —



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- a) in 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 July 1982;
  - (ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July 1982;
- b) in Norway —
  - in respect of taxes on income or on capital relating to the 1982 and subsequent calendar years (including accounting periods ending in those years).

#### Article 30

##### *Termination*

This Convention shall remain in force indefinitely, but the Government of Australia or the Government of the Kingdom of Norway may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Convention shall cease to be effective —

- a) In 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 July in the calendar year immediately following that in which the notice of termination is given;
  - (ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given;
- b) in Norway —
  - in respect of taxes on income or on capital relating to the calendar year immediately following that in which the notice is given, and subsequent calendar years (including accounting periods ending in those years).

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

DONE in duplicate at Canberra this sixth day of May One thousand nine hundred and eighty-two in the English language.

*Torleiv Andå*

*John Howard*

For the Government  
of the Kingdom of Norway

For the Government  
of Australia

#### PROTOCOL

The Government of the Kingdom of Norway and the Government of Australia

Have agreed at the signing today of the Convention between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Convention:

1. With reference to Articles 10, 11 and 12, if after 26 September 1980, in a Convention for the avoidance of double taxation that is made between Australia and a third State being a State that is a member of the Organization for Economic Co-operation and Development, Australia shall agree to limit the rate of its taxation —

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- a) on dividends paid by a company which is a resident of Australia for the purposes of Australian tax to which a company that is a resident of the third State is entitled, to a rate less than that provided in paragraph 2 of Article 10; or
- b) on interest arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph 2 of Article 11; or
- c) on royalties arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph 2 of Article 12,

the Government of Australia shall immediately inform the Government of the Kingdom of Norway in writing through the diplomatic channel and shall enter into negotiations with the Government of the Kingdom of Norway to review the provisions specified in a), b) and c) above in order to provide the same treatment for Norway as that provided for the third State.

2. With reference to Article 25,

- a) if, after 26 September 1980, in a Convention for the avoidance of double taxation that is made between Norway and a third State being a State that is a member of the Organization for Economic Co-operation and Development, Norway shall agree to give special relief (holding privilege) from its tax in respect of dividends paid by a company which is a resident of that third State to a company resident in Norway (not being relief that represents a continuation of relief provided for in any such Convention with that State that was in force at that date) the Government of the Kingdom of Norway shall immediately inform the Government of Australia in writing through the diplomatic channel and shall enter into negotiations with the Government of Australia to review the provisions of Article 25 in order to provide the same relief in respect of dividends paid by a company which is a resident of Australia;
- b) if Norway should by note forwarded through the diplomatic channel so request, paragraph 2 of Article 25 shall be replaced by the following text, which shall enter into force on the 30th day after receipt of the note is confirmed through the diplomatic channel, and shall apply in respect of taxes on income relating to the calendar year (including accounting periods ending in such year) immediately following that in which the exchange of notes is made:

«2. In the case of Norway:

Where a resident of Norway derives income which in accordance with the provisions of this Convention may be taxed in Australia, Norway shall allow as a deduction from the income tax of that person an amount equal to the tax paid in Australia. Such deduction shall not, however, exceed that part of the Norwegian tax, as computed before the deduction is given, which is appropriate to the income derived from Australia.»

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

DONE in duplicate at Canberra this sixth day of May One thousand nine hundred and eighty-two in the English language.

*Torleiv Anda*  
For the Government  
of the Kingdom of Norway

*John Howard*  
For the Government  
of Australia