

DOUBLE TAXATION

Taxes on Income

**Protocol Between the
UNITED STATES OF AMERICA
and AUSTRALIA**

Amending the Convention of August 6, 1982

Signed at Canberra September 27, 2001



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

AUSTRALIA

Double Taxation: Taxes on Income

Protocol amending the convention of August 6, 1982.

Signed at Canberra September 27, 2001;

*Transmitted by the President of the United States of America
to the Senate November 14, 2002 (Treaty Doc. 107-20,
107th Congress, 2d Session);*

*Reported favorably by the Senate Committee on Foreign Relations
March 12, 2003 (Senate Executive Report No. 108-3,
108th Congress, 1st Session);*

*Advice and consent to ratification by the Senate
March 13, 2003;*

Ratified by the President March 28, 2003;

Ratified by Australia August 25, 2002;

Ratifications exchanged at Washington May 12, 2003;

Entered into force May 12, 2003.

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of Australia,

Desiring to amend the Convention between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Sydney on the sixth day of August 1982 (in this Protocol referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Article 1 of the Convention is amended by:

- (a) inserting in the last sentence of paragraph (3) “or long-term resident” after “include a former citizen”; and
- (b) by omitting in the last sentence of paragraph (3) “citizenship” and substituting “such status”.

ARTICLE 2

Article 2 of the Convention is amended by omitting paragraph (1) and substituting:

- “(1) The existing taxes to which this Convention shall apply are:
- (a) in the United States: the Federal income taxes imposed by the Internal Revenue Code; and
 - (b) in Australia:
 - (i) the Australian income tax, including tax on capital gains; and
 - (ii) the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia.”.

ARTICLE 3

Article 4 of the Convention is amended by:

- (a) deleting “or” at the end of sub-paragraph (1)(b)(i) and inserting after that sub-paragraph the following:
 - “(ii) a United States citizen, other than a United States citizen who is a resident of a State other than Australia for the purposes of a double tax agreement between that State and Australia; or”;

- (b) renumbering sub-paragraph (1)(b)(ii) as sub-paragraph (1)(b)(iii).

ARTICLE 4

Article 7 of the Convention is amended by inserting:

“(9) Where:

- (a) a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more interposed fiscally transparent entities, to a share of the business profits of an enterprise carried on in the other Contracting State by the fiscally transparent entity (or, in the case of a trust, by the trustee of the trust estate); and
- (b) in relation to that enterprise, that fiscally transparent entity (or trustee) would, in accordance with the principles of Article 5 (Permanent Establishment), have a permanent establishment in that other State,

that enterprise carried on by that fiscally transparent entity (or trustee) shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.”.

ARTICLE 5

Article 8 of the Convention is amended by:

- (a) omitting sub-paragraph (1)(b) and substituting:

“(b) profits from the lease of ships or aircraft on a bare boat basis, provided that such lease is merely incidental to the operation in international traffic of ships or aircraft by the lessor.”; and

- (b) omitting paragraphs (2) and (3) and substituting:

“(2) Profits of an enterprise of one of the Contracting States from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

(3) The profits to which the provisions of paragraphs (1) and (2) apply include profits from the participation in a pool service or other profit sharing arrangement.

(4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise taken on board in a Contracting State for discharge in that State shall not be treated as profits from the operation in international traffic of ships or aircraft and may be taxed in that State.”.

ARTICLE 6

Article 10 of the Convention is omitted and the following Article is substituted:

“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, those 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:

(a) the tax charged shall not exceed 5 percent of the gross amount of the dividends, if the person beneficially entitled to those dividends is a company which holds directly at least 10 percent of the voting power in the company paying the dividends; and

(b) the tax charged shall not exceed 15 percent of the gross amount of the dividends to the extent to which those dividends are not within sub-paragraph (a),

provided that if the relevant law in either Contracting State is varied after the effective date of this provision otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

(3) Notwithstanding the provisions of paragraph (2), dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the person who is beneficially entitled to the dividends is a company that is a resident of the other Contracting State that has owned shares representing 80 percent or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared and:

(a) is a qualified person by reason of sub-paragraph (c) of paragraph (2) of Article 16 (Limitation on Benefits); or

(b) is entitled to benefits with respect to the dividends under paragraph (5) of that Article.

(4) (a) Sub-paragraph (a) of paragraph (2) and paragraph (3) shall not apply in the case of dividends paid by a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT).

(b) In the case of dividends paid by a RIC, sub-paragraph (b) of paragraph (2) shall apply.

(c) In the case of dividends paid by a REIT, sub-paragraph (b) of paragraph (2) shall apply only if:

(i) the person beneficially entitled to the dividends is an individual holding an interest of not more than 10 percent in the REIT;

(ii) the dividends are paid with respect to a class of stock that is publicly traded and the person beneficially entitled to the dividends holds an interest of not more than 5 percent of any class of the REIT's stock; or

(iii) the person beneficially entitled to the dividends holds an interest of not more than 10 percent in the REIT and the gross value of no single interest in real

property held by the REIT exceeds 10 percent of the gross value of the REIT's total interest in real property.

- (d) Notwithstanding sub-paragraph (c), sub-paragraph (b) of paragraph (2) shall apply with respect to dividends paid by a REIT to a listed Australian property trust ("LAPT"). However, if the responsible entity for the LAPT knows or has reason to know that one or more unitholders each owns 5 percent or more of the beneficial interests in the LAPT, each of such 5 percent or more unitholders shall, for purposes of this paragraph, be deemed to hold such proportion of the LAPT's direct interest in the REIT as equals that person's proportionate interest in the LAPT and shall be deemed to be beneficially entitled to the REIT dividends paid with respect thereto, and the provisions of sub-paragraph (c) shall apply to that person. For purposes of this paragraph, dividends paid with respect to REIT shares held by an LAPT shall be deemed to be paid with respect to a class of stock that is publicly traded. For these purposes, a "listed Australian property trust" means an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and regularly traded on one or more recognized stock exchanges (as defined in Article 16 (Limitation on Benefits)).
- (5) The above provisions of this Article 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
- (6) The term "dividends" as used in this Article means income from shares, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law

of the State of which the company making the distribution is a resident for the purposes of its tax.

(7) 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 to which a person who is not a resident of the other Contracting State is beneficially entitled—except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor may it impose tax on a company's undistributed profits, except as provided in paragraph (8), even if the dividends paid consist wholly or partly of profits or income arising in such other State.

(8) A company which is a resident of one of the Contracting States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income or gains that may be taxed in the other State under Article 6 (Income from Real Property) or under paragraph (1) or (3) of Article 13 (Alienation of Property) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income or gains referred to in the preceding sentence that is subject to tax under Article 6 (Income from Real Property) or under paragraph (1) or (3) of Article 13 (Alienation of Property) that, in the case of the United States, represents the dividend equivalent amount of such profits, income or gains and, in the case of Australia, is an amount that is analogous to the dividend equivalent amount. This paragraph shall not apply in the case of a company which:

(a) is a qualified person by reason of sub-paragraph (c) of paragraph (2) of Article 16 (Limitation on Benefits) of this Convention; or

(b) is entitled to benefits with respect to the dividends under paragraph (5) of that Article.

(9) The tax referred to in paragraph (8) may not be imposed at a rate in excess of the rate specified in sub-paragraph (a) of paragraph (2).”

ARTICLE 7

Article 11 of the Convention is omitted and the following Article is substituted:

“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, that 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 percent of the gross amount of the interest.
- (3) Notwithstanding paragraph (2), interest arising in one of the Contracting States to which a resident of the other Contracting State is beneficially entitled may not be taxed in the first-mentioned State if:
 - (a) the interest is derived by one of the Contracting States or by a political or administrative sub-division or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State;
 - (b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term “financial institution” means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.
- (4) (a) Notwithstanding paragraph (3), interest referred to in sub-paragraph (b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 percent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

(b) Nothing in this Article shall be construed as restricting, in any manner, the right of a Contracting State to apply any anti-avoidance provisions of its taxation law.

(5) The term "interest" in this Article means interest from government securities or from bonds or debentures (including premiums attaching to such securities, bonds or debentures), whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness, 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. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

(6) The provisions of paragraphs (1), (2), (3) and (4) 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

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

(8) Where, by reason of a special relationship between the payer and the 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 reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that 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, due regard being had to the other provisions of this Convention.

(9) Notwithstanding the provisions of paragraphs (1), (2), (3) and (4):

(a) interest that is paid by a resident of one of the Contracting States and that is determined with reference to the profits of the issuer or of one of its associated enterprises, as defined in sub-paragraph (a) or (b) of paragraph (1) of Article 9 (Associated Enterprises), being interest to which a resident of the other State is beneficially entitled, also may be taxed in the Contracting State in which it arises, and according to the laws of that State, at a rate not exceeding 15 percent of the gross amount of the interest; and

(b) interest that is paid with respect to the ownership interests in a person used for the securitization of real estate mortgages or other assets, to the extent that the amount of interest paid exceeds the normal rate of return on publicly-traded debt instruments with a similar risk profile, may be taxed by each State in accordance with its domestic law.

(10) Where interest expense is deductible in determining the profits, income or gains of a company resident in one of the Contracting States, being profits, income or gains which:

(a) are attributable to a permanent establishment of that company in the other Contracting State; or

(b) may be taxed in the other Contracting State under Article 6 (Income from Real Property) or paragraph (1) or (3) of Article 13 (Alienation of Property),

and that interest expense exceeds the interest paid by that permanent establishment or paid with respect to the debt secured by real property located in the other Contracting State, the amount of that excess shall be deemed to be interest arising in that other Contracting State to which a resident of the first-mentioned Contracting State is beneficially entitled.”

ARTICLE 8

Article 12 of the Convention is amended by:

- (a) omitting "10" and substituting "5" in paragraph (2); and
- (b) omitting sub-paragraph (a) of paragraph (4) and substituting:
 - "(a) payments or credits of any kind to the extent to which they are consideration for the use of or the right to use any:
 - (i) copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
 - (ii) motion picture films; or
 - (iii) 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;"

ARTICLE 9

Article 13 of the Convention is amended by:

- (a) omitting paragraph (3) and substituting:
 - "(3) Income or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the first-mentioned State for the purpose of performing independent personal services, including income or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.
 - (4) Income or gains derived by an enterprise of one of the Contracting States from the alienation of ships, aircraft or containers operated or used in international traffic or

property, other than real property, pertaining to the operation or use of such ships, aircraft, or containers shall be taxable only in that State.

(5) Where an individual who, upon ceasing to be a resident of one of the Contracting States, 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 re-acquired the property for an amount equal to its fair market value at that time.

(6) An individual who elects, under the taxation law of a Contracting State, to defer taxation on income or gains relating to property which would otherwise be taxed in that State upon the individual ceasing to be a resident of that State for the purposes of its tax, shall, if the individual is a resident of the other State, be taxable on income or gains from the subsequent alienation of that property only in that other State.

(7) Except as provided in the preceding paragraphs of this Article, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”; and

(b) renumbering paragraph (4) as paragraph (8).

ARTICLE 10

Article 16 of the Convention is omitted and the following Article is substituted:

“ARTICLE 16

Limitation on Benefits

(1) Except as otherwise provided in this Article, a resident of one of the Contracting States that derives income from the other Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of one of the Contracting States unless such resident is a "qualified person" as defined in paragraph (2).

(2) A resident of one of the Contracting States shall be a qualified person for a taxable year if the resident is:

(a) an individual;

- (b) that State, any political subdivision or local authority thereof or any agency or instrumentality of such State;
- (c) a company, if:
 - (i) the principal class of its shares is listed on a recognized stock exchange specified in sub-paragraph (a) or (b) of paragraph (6) of this Article and is regularly traded on one or more recognized stock exchanges; or
 - (ii) at least 50 percent of the aggregate vote and value of the shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this sub-paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
- (d) a person other than an individual or a company, if:
 - (i) the principal class of units in that person is listed or admitted to dealings on a recognized stock exchange specified in sub-paragraph (a) or (b) of paragraph (6) of this Article and is regularly traded on one or more of the recognized stock exchanges; or
 - (ii) the direct or indirect owners of at least 50 percent of the beneficial interests in that person are qualified persons by reason of clause (i) of sub-paragraph (c) or clause (i) of this sub-paragraph;
- (e) an entity organized under the laws of one of the Contracting States and established and maintained in that State exclusively for a religious, charitable, educational, scientific, or other similar purpose, even if the entity is generally exempt from tax in that State;
- (f) an entity organized under the laws of one of the Contracting States and established and maintained in that State to provide, pursuant to a plan, pensions or other similar benefits to employed and self-employed persons, even if the entity is generally exempt from tax in that State, provided that more than 50 percent of the entity's beneficiaries, members or participants are individuals resident in either Contracting State;

- (g) a person other than an individual, if:
 - (i) on at least half the days of the taxable year persons that are qualified persons by reason of sub-paragraph (a), (b), (c)(i), or (d)(i) of this paragraph own, directly or indirectly, at least 50 percent of the aggregate vote and value of the shares or other beneficial interests in the person; and
 - (ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of one of the Contracting States such payment is attributable to a permanent establishment of that bank located in one of the Contracting States); or
- (h) a recognized headquarters company for a multinational corporate group. For purposes of this paragraph, a person shall be considered a recognized headquarters company if:
 - (i) it provides in its State of residence a substantial portion of the overall supervision and administration of a group of companies (which may be part of a larger group of companies), which may include, but cannot be principally, group financing;
 - (ii) the group of companies consists of corporations resident in, and engaged in an active business in, at least five countries (or groupings of countries), and the business activities carried on in each of the five countries (or groupings of countries) generate at least 10 percent of the gross income of the group;
 - (iii) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;

(iv) no more than 25 percent of its gross income is derived from the other Contracting State;

(v) it has, and exercises, independent discretionary authority to carry out the functions referred to in sub-paragraph (i);

(vi) it is subject to generally applicable rules of taxation in its country of residence; and

(vii) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in sub-paragraph (ii).

If the income requirements for being considered a recognized headquarters company (sub-paragraphs (ii), (iii), or (iv)) are not fulfilled, they will be deemed to be fulfilled if the required percentages are met when averaging the gross income of the preceding four years.

- (3) (a) A resident of one of the Contracting States will be entitled to the benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or a registered, licensed or authorized securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.
- (b) If the resident or any of its associated enterprises carries on a trade or business activity in the other Contracting State which gives rise to an item of income, sub-paragraph (a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State. Whether a trade or business activity is substantial for purposes of this paragraph will be determined based on all the facts and circumstances.

(c) In determining whether a person is "engaged in the active conduct of a trade or business" in a Contracting State under sub-paragraph (a) of this paragraph, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

(4) Notwithstanding the preceding provisions of this Article, if a company that is a resident of one of the Contracting States, or a company that owns at least 50 percent of the aggregate vote or value of such a company, has outstanding a class of shares:

(a) which is subject to terms or other arrangements which entitle its holders to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms or arrangements ("the disproportionate part of the income"); and

(b) 50 percent or more of the voting power and value of which is owned by persons who are not qualified persons,

the benefits of this Convention shall not apply to the disproportionate part of the income.

(5) A resident of one of the Contracting States that is not a qualified person pursuant to the provisions of paragraph (2) of this Article shall, nevertheless, be granted benefits of the Convention if the competent authority of the other Contracting State determines, in accordance with the law of that other State, that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

- (6) For purposes of this Article the term "recognized stock exchange" means:
- (a) the NASDAQ System owned by the National Association of Securities Dealers, Inc., and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
 - (b) the Australian Stock Exchange and any other Australian stock exchange recognized as such under Australian law; and
 - (c) any other stock exchange agreed upon by the competent authorities.
- (7) Nothing in this Article shall be construed as restricting, in any manner, the right of a Contracting State to apply any anti-avoidance provisions of its taxation law.”.

ARTICLE 11

Article 21 of the Convention is omitted and the following Article is substituted:

“ARTICLE 21

Other Income

- (1) Items of income of a resident of one of the Contracting States, 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 real property as defined in paragraph (2) of Article 6 (Income from Real Property), 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 that case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
- (3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of one of the Contracting States not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.”.

ARTICLE 12

Article 22 of the Convention is amended by omitting in paragraph (1) “sub-paragraph (1)(b)” and substituting “sub-paragraph (1)(b)(i)” in each place it occurs.

ARTICLE 13

- (1) This Protocol shall be subject to ratification in accordance with the applicable procedures of each Contracting State, and instruments of ratification shall be exchanged as soon as possible.
- (2) This Protocol, which shall form an integral part of the Convention, shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - (a) in Australia:
 - (i) in respect of withholding tax on dividends, royalties and interest that is derived by a non-resident, in relation to income derived on or after the later of:
 - (A) the first day of the second month next following the date on which the Protocol enters into force; or
 - (B) 1 July, 2003;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Protocol enters into force; and
 - (b) in the United States:
 - (i) in respect of withholding tax on dividends, royalties and interest that is derived by a non-resident, in relation to income derived on or after the later of:
 - (A) the first day of the second month next following the date on which the Protocol enters into force; or
 - (B) 1 July, 2003;

(ii) in respect of other taxes, for taxable periods beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

(3) Notwithstanding paragraph (2), Article 6 of this Protocol shall not apply to dividends paid by a REIT if the person beneficially entitled to the dividends is an LAPT (as defined in paragraph (4) of Article 10 (Dividends) of the Convention as amended by this Protocol) and the shares in respect of which the dividends are paid were:

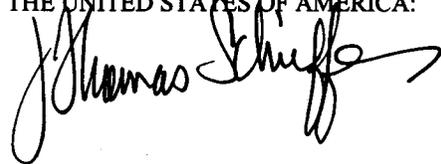
- (a) owned by the LAPT on March 26, 2001;
- (b) acquired by the LAPT pursuant to a binding contract entered into on or before March 26, 2001; or
- (c) acquired by the LAPT pursuant to a reinvestment of dividends (ordinary or capital) with respect to such shares.

In such case, the provisions of Article 10 (Dividends), as it was on March 26, 2001, shall apply.

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

DONE in duplicate at Canberra, this *twenty seventh* day of *September*, 2001.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
AUSTRALIA:

