
◆ **AUSTRALIA**

LN 113/1990 [FRGS No. 43 18th December 1990]

INCOME TAX ACT
(CHAPTER 201)

THE Government of Fiji has made arrangements with the Government of Australia with a view to the prevention of the levying under the laws of Fiji and of Australia of income tax in respect of the same income and rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Fiji and of Australia.

The arrangements so made are embodied in a Convention concluded on 15 October, 1990, a copy of which is set out in the Schedule.

Dated this 10th day December 1990.

JOSEVATA N. KAMIKAMICA
Minister of Finance & Economic Planning

SCHEDULE

AGREEMENT BETWEEN AUSTRALIA AND FIJI FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME

Fiji and Australia

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows:

ARTICLE 1

Personal Scope

This Agreement 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 Agreement shall apply are:
- (a) in Australia:
- the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia; and
- (b) in Fiji:
- the income tax (including basic tax and normal tax, the non-resident dividend withholding tax, the interest withholding tax, the royalty withholding tax and the dividend tax, and the land sales tax.
- (2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Fiji after the date of signature of this Agreement in addition to, or in place of the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the laws of their respective States relating to the taxes to which the Agreement applies, within a reasonable period of time after those changes.

ARTICLE 3

General Definitions

- (1) In this Agreement, 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 exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
- (b) the term “Fiji” means the Islands of Fiji, including the Island of Rotuma and its dependencies, and includes all areas of water which consistently with international law, have been, or may after the date of this Agreement be, designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;
- (c) the terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Fiji, as the context requires;
- (d) the term “person” includes 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 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 Fiji, as the context requires;
- (g) the term “tax” means Australian tax or Fiji tax, as the context requires;
- (h) the term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of **Article 2**;
- (i) the term “Fiji tax” means tax imposed by Fiji, being tax to which this Agreement applies by virtue of **Article 2**; and
- (j) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Fiji, the Commissioner of Inland Revenue or an authorised representative of the Commissioner.

(2) In this Agreement, the terms “Australian tax” and “Fiji tax” do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of **Article 2**.

(3) In the application of the provisions of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies by virtue of **Article 2**.

(4) In determining, for the purposes of **Article 10, 11** or **12**, whether dividends, interest or royalties are beneficially owned by a resident of one of the Contracting States, dividends, interest or royalties derived by a trustee is subject to tax in that State shall be treated as being beneficially owned by that trustee to the extent to which, as at the end of the year of income, residents of that State had any interest, whether vested or contingent, in that income and no person other than residents of that State could, by the exercise of a power conferred on any person, obtain such an interest.

ARTICLE 4

Residence

- (1) For the purposes of this Agreement, a person is a resident of one of the Contracting States:
 - (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 Fiji, if the person is a resident of Fiji for the purposes of Fiji tax.
- (2) A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
- (3) Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:
 - (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
 - (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode, and

(c) if the person has an habitual abode in both Contracting States or does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.

(4) In determining for the purposes of paragraph (3) the Contracting State with which an individual's personal and economic relations are the closer, the matters to which regard may be had shall include the citizenship of the individual.

(5) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then the person's status shall be determined as follows:

- (a) it shall be deemed to be resident of the Contracting State in which it is incorporated or otherwise constituted; and
- (b) if it is not incorporated or otherwise constituted in either of the Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For the purposes of this Agreement, 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,
- (g) an agricultural, pastoral or forestry property, and
- (h) a building site or construction, installation or assembly project which exists for more than six months.

(3) 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 to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise; or
- (d) 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 six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;
- (b) substantial equipment is being used or installed in that State by, for or under contract with the enterprise; or
- (c) it furnishes services, including consultancy services, through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that State for a period or periods aggregating more than six months within any twelve month period.

(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) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) there is maintained in that State a stock of goods or merchandise belonging to the enterprise from which the person habitually fills orders on behalf of the enterprise; or
- (c) in so acting, the person manufactures or processes in that Contracting 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 person who is a broker, general commission agent or any other agent of an independent status and is acting in the ordinary course of the person's 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 the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) 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 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", in relation to one of the Contracting States has the meaning which it has under the laws of that State and also includes:

- (a) a lease of land and any other interest in or over land whether improved or not; and
- (b) a right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of standing timber or any mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

(3) Any interest or right referred to in paragraph (2) shall be regarded as situated where the land, standing timber, 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 paragraphs (1) and (3) shall also apply to 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 Contracting 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 Contracting State, but only so much of them as is attributable to:

- (a) that permanent establishment; or
- (b) sales within that other State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment, if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.

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

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

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) 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 Contracting 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.

(6) Where profits include items of income which are dealt with separately in other Articles of this Agreement then the provisions of those Articles shall not be affected by the provisions of this Article.

(7) 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 Contracting State at the date of signature of this Agreement 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.

(8) Where:

- (a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee would, in accordance with the principles of **Article 5**, have a permanent establishment in Australia,

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

ARTICLE 8

Shipping and Air Transport

(1) Profits 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 organisation 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.

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) Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that State as if this Article had not come into effect but, so far as it is practicable to do so, in accordance with the principles of this Article.

(4) 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), (2) or (3), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(5) The provisions of paragraph (4) relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of assessment of year of tax in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

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) Such dividends may 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 20 per cent of the gross amount of the dividends.

(3) The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, 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 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 of fixed base situated in that other State. Provided that 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 Fiji for the purposes of Fiji tax.

(6) Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing, on the income of a company which is a resident of the other Contracting State, tax in addition to the taxes referred to in **Article 2** in relation to the firstmentioned State, provided that any such additional tax shall not exceed 20 per cent of the amount by which the taxable income of the firstmentioned company of a year of income exceeds the tax payable on that taxable income to the firstmentioned State. Any tax payable to one of the Contracting State on the undistributed profits of a company which is a resident of the other Contracting State shall be calculated as if that company were not liable to the additional tax referred to in this paragraph and had paid dividends of such amount that tax equal to the amount of the additional tax would have been payable on the dividends in accordance with paragraph (2).

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) Such interest may 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) The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

(4) 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 contracting 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.

(5) 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 the person is a resident of one of the Contracting States or not has in one of the Contracting States or outside both Contracting States a permanent establishment of fixed base, in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such armament 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.

(6) 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 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 lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

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) Such royalties may 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 15 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 (including agricultural), commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial (including agricultural) 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 of the kinds 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;
- (f) the supply by a resident of one of the Contracting States of management services in the other Contracting State; or
- (g) 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.

(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 the person is a resident of one of the Contracting States or not, has in one of the Contracting States 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 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 lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 13

Alienation of Property

(1) Income, profits or gains derived by a resident of one of the Contracting States from the alienation of real property as defined in **Article 6** and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

(2) Income, profits or gains from the alienation of property, other than real property as defined in **Article 6**, 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, including income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property other than real property as defined in **Article 6** pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

(4) Income, profits or gains derived by a resident of one of the Contracting States from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property as defined in **Article 6** in the other Contracting State, may be taxed in that other State.

(5) Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of profits or gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3) and (4) apply.

ARTICLE 14

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However if such an individual:

- (a) has a fixed base regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities;
- (b) in a year of income, stays in that other Contracting State for a period or periods aggregating 183 days or more for the purpose of performing the individual's activities; or
- (c) in a year of income, derives gross remuneration (including expenses reimbursed to or borne on behalf of the individual or the value of any benefit provided in connection with those services or activities) in respect of the individual's activities in that other State, that is paid by a resident of that other State or is deductible in determining taxable profits of a permanent establishment or a fixed base situated in that other State and that exceeds eight thousand Australian dollars or its equivalent in Fijian dollar,

so much of the income derived by the individual as is attributable to activities so performed by be taxed in that other State.

(2) The Treasurer of Australia and the Minister of Finance of Fiji may agree in letters exchanged for the purpose to variations in the amount specified in subparagraph (1)(c) and any variations so agreed shall have effect according to the tenor of the letters.

(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 independent activities, as well as in the exercise of independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of **Articles 16, 18, 19 and 20**, 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 firstmentioned State if:

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 90 days in the year of income of that other State; and
- (b) the remuneration is, or upon the application of this Article will be, subject to tax in the firstmentioned 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 State.

ARTICLE 16

Director's Fees

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

ARTICLE 17

Entertainers

(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 those 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) The provisions of paragraphs (1) and (2) shall not apply to income derived from activities exercised in one of the Contracting States by entertainers if the visit to that State is wholly or substantially supported by public funds of the other Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 18

Pensions and Annuities

(1) Pensions (other than pensions to which **Article 19** applies) 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 be taxable only in the firstmentioned State.

ARTICLE 19

Government Service

(1) Remuneration (including a pension or annuity) paid by one of the Contracting States or a political subdivision or local authority 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, not being a pension or annuity, 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 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, including a pension or annuity, 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, 16 or 18**, as the case may be, shall apply.

ARTICLE 20

Professors and Teachers

(1) Remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting States for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the firstmentioned State.

(2) This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

Australian Government’s Bilateral Aid to Fiji

Notwithstanding anything elsewhere in this Agreement, income derived by any person from the participation in any capacity whatsoever of that person in the Australian Government’s bilateral Aid Program to Fiji shall be exempt from Fiji tax if:

- (a) that person is not a resident of Fiji for the purposes of Fiji tax, or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of such participation, and
- (b) that income is derived from the aid fund and is, or upon the application of this Article will be, subject to tax in Australia.

ARTICLE 22

Students and Trainees

Where a student or trainee, 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 or her education or training, receives payments from sources outside that other State for the purpose of the students or trainee's maintenance, education or training, those payments shall be exempt from tax in that other State.

ARTICLE 23

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 Agreement shall be taxable only in that State.

(2) However, any such income derived by a resident of one of the Contracting State may also be taxed in that other State.

(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 **14**, as the case may be, shall apply.

ARTICLE 24

Source of Income

(1) Profits, income or gains derived by a resident of one of the Contracting States which, under any one or more of **Articles 6 to 8** and **10 to 19** and **Article 23** may be taxed in the other Contracting State, shall for the purposes of the law, relating to tax, of that other Contracting State be deemed to be income from sources in that other State.

(2) Profits, income or gains derived by a resident of one of the Contracting States which, under any one or more of **Articles 6 to 8**, **10 to 19** and **Article 23** may be taxed in the other Contracting State, shall for the purposes of **Article 25** and of the law, relating to tax, of the firstmentioned State be deemed to be income from sources in the other State.

ARTICLE 25

Elimination of Double Taxation

(1) Subject to any provisions of the law of Fiji which may from time to time be in force and which relate to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not affect the general principle hereof), Australian tax paid under the law of Australia and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of Fiji from sources in Australia shall be allowed as a credit against Fiji tax payable in respect of that income.

(2)(a) 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), Fiji tax paid under the law of Fiji and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Fiji shall be allowed as a credit against Australian tax payable in respect of that income.

(b) Where a company which is a resident of Fiji and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in paragraph (1) shall include the tax paid by the firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

(3) For the purposes of paragraph (2), Fiji tax paid shall include an amount equivalent to the amount of any tax forgone which, under the law of Fiji and in accordance with this Agreement, would have been payable as tax on income but for an exemption from, or a reduction of, tax on that income resulting from the operation of.

- (a) (i) subsection 8(1) of the Hotels Aid Act 1964 (Cap. 215); or
(ii) paragraph 8(6)(c), paragraph 9(3)(h), subsection 10A(6), paragraph (a), (b), (d) or (f) of subsection 16(2) or subsection 16(4) or (5) of the Income Tax Act 1974,

insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character, or

(b) any other provision which may subsequently be made granting an exemption from or reduction of tax which the authorised representatives of the Governments of Australia and Fiji agree in writing to be of a substantially similar character, provided that such provisions are not modified thereafter or are modified only in minor respects so as not to affect their general character.

(4) The provisions of paragraph (3) shall apply only in relation to income derived in any of the first **five** years of income in relation to which this Agreement has effect by virtue of subparagraph (a)(ii) of **Article 29** and in any later year of income that may be agreed in an exchange of letters for this purpose by the authorised representatives of the Governments of Australia and Fiji.

ARTICLE 26

Mutual Agreement Procedure

(1) Where a person who is a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person 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 Agreement.

(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 the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

(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 Agreement.

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 Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. 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 Agreement 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 particulars which are 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 Agreement shall affect the Fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements.

ARTICLE 29

Entry into Force

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Fiji, as the case may be, and thereupon this Agreement shall have effect:

- (a) in Australia:
 - (i) in relation to withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force,
 - (ii) in relation to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year immediately following that in which the Agreement enters into force,
- (b) in Fiji:
 - in relation to Fiji tax in respect of income, profits or gains derived during any income year beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 30

Termination

This Agreement shall continue in effect indefinitely, but either of the Contracting States may on or before 30 June in any calendar year beginning after the expiration of five years from the date of its

entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Australia:

(i) in relation to withholding tax on income that is derived by a non-resident in respect of

income derived on or after 1 January in the calendar year immediately following that in which the notice of termination is given,

(ii) in relation to other Australian tax, in respect of income, profits or gains 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 Fiji:

in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

IN Witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Canberra this fifteenth day of October one thousand nine hundred and ninety in the English language.

For Fiji:

Hon. J. N. KAMIKAMICA
Minister of Finance and Economic
Planning for the Government of the
Republic of Fiji

For Australia:

Hon. P. J. KEATING
Minister of State
for the Treasury
of Australia

