



Treaty Series No. 82 (1981)

Protocol

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Commonwealth
of Australia

amending the Agreement for the
Avoidance of Double Taxation and
the Prevention of Fiscal Evasion with
respect to Taxes on Income and
Capital Gains,
signed at Canberra on 7 December 1967

Canberra, 29 January 1980

[The Protocol entered into force on 21 May 1980]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
December 1981*

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PROTOCOL
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA
AMENDING THE AGREEMENT FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND
CAPITAL GAINS, SIGNED AT CANBERRA ON
7 DECEMBER 1967

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed at Canberra on 7 December 1967⁽¹⁾ (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE I

The following paragraph shall be added after paragraph (3) of Article 2 of the Agreement.

"(3) (A) Where under the law in force in one of the territories an individual's remuneration from an employment is reduced in charging it to tax in consequence of a period or periods of absence by the individual from that territory, or of the place where the employment is exercised, or of the domicile of the individual, by deducting either the whole or a fixed proportion of the amount arising, then

- (a) where under this Agreement that remuneration would otherwise be relieved from tax in the other territory, the relief shall not extend to the amount so deducted; and
- (b) the amount so deducted shall be regarded as income in respect of which the individual is exempt from and not subject to tax in the first-mentioned territory."

ARTICLE II

Article 8 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 8

(1) (a) Dividends derived from a company which is resident in the United Kingdom by an Australian resident may be taxed in Australia.

⁽¹⁾ Treaty Series No. 66 (1968), Cmnd. 3730.

(b) Where an Australian resident is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid dividends derived from a company which is resident in the United Kingdom and which are beneficially owned by an Australian resident shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) An Australian resident individual who receives dividends from a company which is resident in the United Kingdom shall, provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax. Any such credit shall be treated for the purposes of Australian tax as assessable income from sources in the United Kingdom.

(3) Dividends derived from a company which is a resident of Australia and which are beneficially owned by a United Kingdom resident may be taxed in the United Kingdom. Such dividends may also be taxed in Australia but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(4) The term "dividends" as used in this Article includes any item (other than interest or royalties relieved from tax under Article 9 or Article 10 of this Agreement) which—

- (a) in the case of the United Kingdom is, under the law of the United Kingdom, a distribution of a company;
- (b) in the case of Australia is, or is deemed to be, under the laws in force in Australia relating to Australian tax, a dividend.

(5) If the beneficial owner of dividends being an Australian resident owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraphs (1) and (2) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending 12 months or more before the relevant date. For the purpose of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for bona fide commercial reasons.

(6) The provisions of paragraphs (1) and (2) or, as the case may be, paragraph (3) of this Article shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the trade or business carried on through such permanent establishment.

(7) Dividends paid by a company which is a resident of one of the territories and which are beneficially owned by a person who is not a resident of the other territory shall be exempt from tax in that other territory except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other territory. Provided that this paragraph shall not apply in relation to any United Kingdom company which is also a resident of Australia or any Australian company which is also resident in the United Kingdom.

(8) The Government of one of the territories shall not impose on a company which is a resident of the other territory any tax in the nature of an undistributed profits tax on undistributed profits of the company on a basis that is less favourable than that applicable in the case of a company which is a resident of the first-mentioned territory."

ARTICLE III

This Protocol, which shall form an integral part of the Agreement, shall enter into force⁽²⁾ on the date when the last of all such things shall have been done in the United Kingdom and Australia as are necessary to give the Protocol the force of law in the United Kingdom and Australia respectively, and shall thereupon have effect:

(a) in the United Kingdom:

(i) as regards Article I, for any year of assessment beginning on or after 6 April 1980;

(ii) in relation to any dividend paid on or after 6 April 1977;

(b) in Australia:

(i) as regards Article I, for any year of income beginning on or after 1 July 1980;

(ii) in relation to any dividend paid on or after 6 April 1977.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Canberra this twenty ninth day of January, One thousand nine hundred and eighty.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the Common-
wealth of Australia:

DONALD TEBBIT

JOHN HOWARD

⁽²⁾ The Protocol entered into force on 21 May 1980.