

Memorandum of Understanding on the Mode of Application of the Arbitration Process between the competent authorities of Australia and the Swiss Confederation

The competent authorities of the Swiss Confederation and Australia (hereinafter referred to as the “Contracting States”) hereby enter into the following mutual arrangements (hereinafter referred to as the “Memorandum of Understanding”) to establish the mode of application of the arbitration process provided for in paragraph 5 of Article 24 of the *Convention between the Swiss Confederation and Australia for the Avoidance of Double Taxation with Respect to Taxes on Income, with Protocol* signed at Sydney on 30 July 2013 (hereinafter referred to as “the Convention”). This Memorandum of Understanding is entered into pursuant to Article 24 of the Convention. The competent authorities may modify or supplement this Memorandum of Understanding by mutual consent in writing.

Section 1. Request for submission of case to arbitration

1.1 A request that unresolved issues arising from a mutual agreement case be submitted to arbitration pursuant to paragraph 5 of Article 24 of the Convention (hereinafter referred to as the “request for arbitration”) must be made in writing and sent to one or both of the competent authorities. The request must contain sufficient information to identify the case. The request must also be accompanied by a written statement by each of the persons who either made the request or is directly affected by the case that no decision on the same issues has already been rendered by a court or administrative tribunal of the Contracting States. Within 30 days after the receipt of the request, a competent authority who received it without any indication that it was also sent to the other competent authority will send a copy of that request and the accompanying statements to the other competent authority.

Section 2. Time for submission of the case to arbitration

2.1 A request for arbitration may only be made after 3 years from the date on which a case presented to the competent authority of one Contracting State under paragraph 1 of Article 24 of the Convention has also been presented to the competent authority of the other Contracting State. For this purpose, a case shall be considered to have been presented to the competent authorities of both Contracting States (hereinafter referred to as “the arbitration start date”) when the information required in order to address the case has been submitted to both of the Contracting States’ competent authorities. For this purpose, the information required by the competent authorities in order to address the case must include:

- (a) for Australia, the information and documentation which must be provided when making a request for Mutual Agreement Procedure as set out on the Mutual Agreement Procedure page on the Australian Taxation Office website, ato.gov.au, as such guidance may be amended from time to time;
- (b) for Switzerland, the information set out in the Fact sheet on the mutual agreement procedure of the State Secretariat for International Finance, as such guidance may be amended from time to time; and
- (c) any other specific additional information requested by the competent authority of a Contracting State within 3 calendar months after the receipt of the request for a mutual agreement procedure.

2.2 The competent authorities of the Contracting States will notify each other of any significant changes that are made with respect to the information requirements provided in their domestic guidance relevant to a request for a mutual agreement procedure.

2.3 The following rules will apply in order to determine the arbitration start date:

- (a) The competent authority that received the initial request for a mutual agreement procedure under paragraph 1 of Article 24 of the Convention will, within 60 days after receiving the request:
 - (i) send a notification to the person who presented the case that it has received the request; and
 - (ii) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.
- (b) Within 90 days after receiving the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State), each competent authority will either:
 - (i) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
 - (ii) request additional information from that person for that purpose.
- (c) Where, pursuant to subdivision (ii) of subparagraph 2.3(b) above, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent

authority that requested the additional information will , within 90 days after receiving the additional information from that person, notify that person and the other competent authority either:

- (i) that it has received the requested information; or
 - (ii) that some of the requested information is still missing.
- (d) Where neither competent authority has requested additional information pursuant to subdivision (ii) of subparagraph 2.3(b) above, the arbitration start date will be the earlier of:
- (i) the date on which both competent authorities have notified the person who presented the case pursuant to subdivision (i) of subparagraph 2.3(b) above; and
 - (ii) the date that is 90 days after the notification to the competent authority of the other Contracting State pursuant to subdivision (ii) of subparagraph 2.3(a) above.
- (e) Where additional information has been requested pursuant to subdivision (ii) of subparagraph 2.3(b) above, the start date will be the earlier of:
- (i) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subdivision (i) of subparagraph 2.3(c) above; and
 - (ii) the date that is 90 days after both competent authorities have received all information requested by either competent authority from the person who presented the case.
- (f) If, however, one or both of the competent authorities send the notification referred to in subdivision (ii) of subparagraph 2.3(c) above, such notification will be treated as a request for additional information under subdivision (ii) of subparagraph 2.3(b).

2.4 Where a competent authority has suspended the mutual agreement procedures referred to in paragraph 2.1 because the case with respect to one or more of the same issues is pending before a court or administrative tribunal, the period provided for in paragraph 2.1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedures, the period provided in paragraph 2.1 will stop running until the suspension has been lifted.

2.5 Where both competent authorities jointly determine that a person directly affected by the case has failed to provide in a timely manner any additional material information required by either competent authority after the start date of the 3 year period referred to in paragraph 2.1, the period provided in that paragraph will be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

Section 3. Terms of reference

3.1 Unless the competent authorities otherwise jointly determine,

- (a) Within 60 days after the request for arbitration (or a copy thereof) has been received by both competent authorities, the competent authorities will jointly determine on the questions to be resolved by the arbitration panel and communicate them in writing to the person who made the request for arbitration. This will constitute the “Terms of Reference” for the case. Notwithstanding the following provisions of this Memorandum of Understanding, the competent authorities may also, in the Terms of Reference, provide procedural rules that are additional to, or different from, those included in these provisions and deal with such other matters as are deemed appropriate.
- (b) If the Terms of Reference have not been communicated to the person who made the request for arbitration within the period referred to in subparagraph 3.1(a) above, that person and each competent authority may, within 30 days after the end of that period, communicate in writing to each other a list of issues to be resolved by the arbitration. All the lists so communicated during that period will constitute the tentative Terms of Reference. Within 30 days after all the arbitrators have been appointed as provided in the following provisions of this Memorandum of Understanding, the Chair will communicate to the competent authorities and the person who made the request for arbitration a revised version of the tentative Terms of Reference based on the lists so communicated. Within 30 days after the revised version has been received by both of them, the competent authorities may jointly determine different Terms of Reference and communicate them in writing to the arbitrators and the person who made the request for arbitration. If they do so within that period, these different Terms of Reference will constitute the Terms of Reference for the case. If no different Terms of Reference have been jointly determined by the competent authorities and communicated in writing

within that period, the revised version of the tentative Terms of Reference prepared by the arbitrators will constitute the Terms of Reference for the case.

Section 4. Selection and appointment of arbitrators

- 4.1 The arbitration panel will consist of 3 individual arbitrators with expertise or experience in international tax matters. They need not, however, have experience as either a judge or arbitrator. Each arbitrator appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors and any related persons). In particular, the arbitrators may not be employed by the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors and any related persons) in the period of 12 months preceding an appointment and at the time of accepting an appointment. The arbitrators must maintain their impartiality and independence throughout the proceedings, and avoid any conduct for 12 months after the date the panel delivers its decision under paragraph 5.6 or subparagraph 5.7(f), as the case may be, or any other period jointly determined by the competent authorities, which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings. Each arbitrator appointed to the arbitration panel will execute a written certification to this effect. The arbitrators will undertake to promptly disclose to both competent authorities, in writing, any new facts or circumstances that arise during or following the arbitration proceedings that might give rise to doubts with respect to their impartiality or independence.
- 4.2 Within 90 days after the request for arbitration (or a copy thereof) has been received by both competent authorities, the competent authorities will each appoint one arbitrator. Within 60 days after the latter appointment, the arbitrators so appointed will appoint a third arbitrator who will function as Chair. The arbitrators will choose the Chair from the list that has been jointly determined by the competent authorities pursuant to paragraph 4.7. The Chair must not be a national or resident of either Contracting State.
- 4.3 If any appointment is not made within the required time period, the arbitrator(s) not yet appointed will be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development who is not a national of either Contracting State within 10 days after receiving a request to that effect from the person who made the request for arbitration. In these circumstances, the Chair of the arbitration panel will be appointed from the list that has been jointly determined by the competent authorities pursuant to paragraph 4.7.

- 4.4 The same procedure will apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration process has begun. In such circumstances, the competent authorities will also jointly determine necessary adaptations, as appropriate, to the deadlines provided in Section 5 of this Memorandum of Understanding.
- 4.5 An arbitrator will be considered to have been appointed when a letter confirming that appointment and signed by both the arbitrator and the person or persons who have the power to appoint that arbitrator has been communicated to both competent authorities.
- 4.6 If a competent authority becomes aware of a breach by an arbitrator of the impartiality and independence requirements referred to in paragraph 4.1 they will bring that breach to the attention of the other arbitrators and the competent authority of the other Contracting State immediately. The competent authorities will then, based on the particular facts and circumstances of the case and the breach, jointly determine how to proceed and may, for example –
- (a) remove and replace the relevant arbitrator;
 - (b) terminate the arbitration proceeding and appoint a new arbitration panel; or
 - (c) invalidate the arbitration decision, if the arbitration decision has already been rendered.
- 4.7 The competent authorities will identify and jointly determine a list of at least 5 persons who are qualified and willing to serve as the Chair of an arbitration panel. The competent authorities will review and revise this list as necessary. The persons to be identified for purposes of this list must meet the requirements of paragraph 4.1.

Section 5. Arbitration process

- 5.1 Within 60 days after the appointment of the Chair of the arbitration panel (unless, before the end of that period, the competent authorities jointly determine a different period or jointly determine to use a different type of arbitration process, such as the approach described in paragraph 5.7 or the approach described in paragraph 5.8 with respect to the relevant case), the competent authority of each Contracting State will submit to the Chair of the arbitration panel a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities). The proposed resolution will

be submitted by courier in 4 copies or by appropriate electronic system for secure transfer of documents. The Chair will forward the proposed resolutions to the other members of the arbitration panel and the respective other competent authority only after reception of both proposed resolutions or after the 60 day period has expired, whichever is the earlier. The proposed resolutions will be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax that may be charged pursuant to the provisions of the Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Convention (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions. The proposed resolution will not exceed 5 pages.

- 5.2 The competent authority of each Contracting State may also submit to the Chair of the arbitration panel, within the period of time provided for in paragraph 5.1, a supporting position paper for consideration by the arbitrators. The position paper will be submitted together with the proposed resolution by courier in 4 copies or by appropriate electronic system for secure transfer of documents. The Chair will submit the supporting position papers to the other members of the arbitration panel and the respective other competent authority only after reception of both supporting position papers or after the 60 day period has expired, whichever is the earlier. A supporting position paper will not exceed 30 pages, plus annexes. Any annex to a supporting position paper which does not reflect information widely available to the general public will be a document that was provided by one competent authority to the other, or by the taxpayer to both competent authorities, for use in the negotiation of the mutual agreement procedure case.
- 5.3 In the event that the competent authority of one Contracting State fails to submit a proposed resolution within the period of time provided for in paragraph 5.1, the Chair of the arbitration panel will inform that Contracting State that if a proposed resolution is not submitted within an additional 7 days, the arbitration panel will select as its decision the proposed resolution submitted by the other competent authority.
- 5.4 Each competent authority may also submit to the arbitrators and to the other competent authority, within 150 days after the appointment of the Chair of the arbitration panel, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A reply submission will not exceed 10 pages.

5.5 As far as possible, the arbitrators will use tele- and videoconferencing to communicate between themselves and with both competent authorities. If a face-to-face meeting involving additional costs is necessary, the Chair will contact the competent authorities who will decide when and where the meeting should be held and will communicate that information to the arbitrators.

5.6 The arbitration panel will select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and will not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the arbitrators. Unless the competent authorities otherwise jointly determine, the arbitration decision will be delivered to the competent authorities of the Contracting States in writing within 60 days after the reception by the arbitrators of the last reply submission or, if no reply submission has been submitted, within 180 days after the appointment of the Chair of the arbitration panel. The arbitration decision will have no precedential value.

5.7

(a) If, within 60 days after receiving request for arbitration, the competent authorities mutually arrange to use the approach described in this paragraph with respect to a given case, each competent authority will provide to the arbitration panel and to the other competent authority, within 120 days after that arrangement, any information that it considers necessary for the panel to reach its decision. That information should include a description of the facts and of the unresolved issues to be decided together with the position of the competent authority concerning these issues and the arguments supporting that position. Unless the competent authorities otherwise jointly determine, the arbitration panel may not take into account any information that was not available to both competent authorities before both competent authorities received the request for arbitration (or a copy thereof), unless it reflects information widely available to the general public.

(b) In the event that the competent authority of one Contracting State fails to submit the information described in subparagraph 5.7(a) within the period of time provided for in that subparagraph, the Chair of the arbitration panel will inform the competent authority that if a proposed position is not submitted within an additional 7 days the arbitration panel will select as its decision the position submitted by the other competent authority.

(c) The competent authority who received the written request for arbitration will notify the person who made the request for arbitration of an arrangement to use the approach described in this paragraph within 7 days of such an arrangement (if the written request for arbitration indicates that it was also sent to the other competent authority, such notification

will be provided by the competent authority of the jurisdiction of residence of the person who made the request for arbitration). The person who made the request for arbitration may, either directly or through their representatives, present their position to the arbitrators in writing to the same extent that they can do so during the mutual agreement procedure. Any written materials prepared by the person who made the request for arbitration or their representatives will be submitted to the arbitrators by the competent authorities. Such materials will only be presented to the arbitrators if they are provided to both competent authorities within 120 days after the notification referred to in the first sentence of this subparagraph.

- (d) The arbitrators will decide the issues submitted to arbitration in accordance with the applicable provisions of the Convention, and, subject to these provisions, of those of the domestic laws of the Contracting States. The arbitrators will also consider any other sources which the competent authorities of the Contracting States may by mutual arrangement expressly identify.
- (e) Subject to the provisions of the Convention, and of this Memorandum of Understanding, the arbitrators may adopt those procedural and evidentiary rules that they deem necessary to provide a decision concerning the unresolved issues submitted to arbitration.
- (f) Unless the competent authorities jointly determine otherwise, the arbitration decision will be delivered to the competent authorities of the Contracting States in writing within 365 days after the date of the appointment of the Chair and will indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision will be adopted by a simple majority of the arbitrators. The arbitration decision will have no precedential value.

5.8 If, within 90 days after the request for arbitration (or a copy thereof) has been received by both competent authorities, the competent authorities mutually arrange to use the approach described in this paragraph with respect to a given case, the two competent authorities will, by joint determination, appoint one arbitrator, within 90 days of the date of the request for arbitration under paragraph 1.1. Paragraphs 5.1 to 5.6 and 5.9 will be applicable to this streamlined arbitration process, with the exception of a time-limit of 100 days after the appointment of the Chair of the arbitration panel for the submission of a reply pursuant to paragraph 5.4, and a time limit of 130 days after the appointment of the Chair of the arbitration panel for the arbitration panel to render a decision pursuant to paragraph 5.6. The arbitration decision will have no precedential value.

5.9 The arbitrators will decide the issues submitted to arbitration in accordance with the applicable provisions of the Convention, of its related competent authority agreements and, subject to these provisions, of those of the domestic laws of the Contracting States. Issues of treaty interpretation will be decided by the arbitrators in the light of the principles of interpretation incorporated in Articles 31 to 33 of the Vienna Convention on the Law of Treaties, having regard to the Commentaries of the OECD Model Tax Convention. Issues related to the application of the arm's length principle should similarly be decided having regard to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Section 6. Communication of information and confidentiality

- 6.1 For the sole purposes of the application of the provisions of Articles 24 and 25 of the Convention and of the domestic laws of the Contracting States, concerning the communication and the confidentiality of the information related to the case that results in the arbitration process, each arbitrator and a maximum of three staff per arbitrator (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) will be designated as authorised representatives of the competent authority that has appointed that arbitrator or, if that arbitrator has not been appointed by a competent authority, of both competent authorities.
- 6.2 Prior to the beginning of the arbitration proceedings, each arbitrator must agree in writing, to abide by and be subject to the confidentiality and non-disclosure provisions of Article 25 of the Convention and of the applicable domestic laws of the Contracting States. If an arbitrator will use staff in connection with the performance of their duties, each staff member must execute a similar written agreement.
- 6.3 Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States will request that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel.
- 6.4 If a competent authority becomes aware of a breach by an arbitrator and/or their staff of the confidentiality and non-disclosure requirements referred to in paragraph 6.1 they will bring that breach, to the attention of the other arbitrators and the competent authority of the other Contracting State immediately. The competent authorities will then, based on the particular facts and circumstances of the case and the breach, jointly determine how to proceed and may, for example –

- (a) remove and replace the relevant arbitrator;
- (b) terminate the arbitration proceeding and appoint a new arbitration panel; or
- (c) invalidate the arbitration decision, if the arbitration decision has already been rendered.

6.5 Before the Chair is appointed, the competent authorities will send any correspondence concurrently to both arbitrators.

6.6 After the Chair is appointed, unless jointly determined otherwise by the competent authorities and the Chair, the competent authorities will send any correspondence to the Chair (with a copy sent to the other competent authority). The Chair will send any correspondence from the arbitrators to the competent authorities concurrently to both competent authorities.

6.7 Except with regard to administrative or logistical matters, no arbitrator will have any *ex parte* communications with one competent authority with respect to the mutual agreement case that resulted in the arbitration proceeding.

6.8 All communication, except with regard to administrative or logistical matters, between the arbitrators and the competent authorities will be in writing. Unless the competent authorities otherwise jointly determine, written communication by facsimile or email is allowed to the extent that appropriate measures are taken to preserve the confidentiality of any information that may identify the taxpayer. Express or priority mail or a courier service will be used for all correspondence other than that sent via facsimile or email.

6.9 No substantive discussions may take place without all arbitrators present.

6.10 Except as permitted pursuant to subparagraph 5.7(c), no arbitrator will have communications regarding the issues or matters before the arbitration panel with -

- (a) the person who presented the case;
- (b) any other person whose tax liability to either Contracting State may be directly affected by a mutual agreement reached as a result of the case; or
- (c) their representatives or agents

during or subsequent to the arbitration proceedings.

6.11 At the termination of the arbitration proceedings each arbitrator will immediately destroy all documents or other information received in connection with the proceedings.

Section 7. Operating procedures

7.1 To the extent needed, the arbitration panel may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 24 of the Convention.

7.2 If the arbitration panel adopts any additional procedures, the Chair will provide a written copy of them to the competent authorities. These procedures will have effect only if both competent authorities mutually consent.

Section 8. Costs

8.1 Unless the competent authorities otherwise jointly determine:

- (a) each competent authority, the person who requested the arbitration and other persons affected by the case will bear the costs related to his own participation in the arbitration proceedings (including travel costs and costs related to the preparation and presentation of its views);
- (b) all other costs related to the arbitration proceedings will be borne in equal shares by the two competent authorities.

Section 9. Failure to communicate the decision within the required period

9.1 In the event that the decision has not been communicated to the competent authorities within the period provided for in paragraph 5.6, subparagraph 5.7(f) or paragraph 5.8, as the case may be, or within any other period jointly determined by the competent authorities, the competent authorities may jointly decide to appoint new arbitrators in accordance with Section 4. The date of such agreement will, for the purposes of the subsequent application of Section 4, be deemed to be the date when the request for arbitration has been received by both competent authorities.

9.2 The fees of each of the original arbitrators will be limited to an amount jointly determined by the competent authorities at the time.

Section 10. Where no arbitration decision will be provided

10.1 Where, at any time after a request for arbitration has been made and before the arbitrators have delivered a decision to the competent authorities, the competent authorities notify in writing the arbitrators

- (a) that they have solved all the unresolved issues that were subject to arbitration, or
- (b) that the person who presented the case has withdrawn the request for arbitration or the request for a mutual agreement procedure

no arbitration decision will be provided and the mutual agreement procedure will be considered to be complete.

Section 11. Final decision

11.1 The competent authorities will implement the arbitration decision within 180 days after the communication of the decision to them by reaching a mutual agreement on the case that led to the arbitration. The arbitration decision will be final.

11.2 The arbitration decision will be binding on both Contracting States except in the following cases pursuant to paragraph 5 of Article 24 of the Convention:

- (a) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case will not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case will be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or

otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement;

- (b) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal; or
- (c) if the competent authorities and the persons directly affected by the case agree on a different solution within six months after the decision has been communicated to them.

11.3 If a final decision by a court of one of the Contracting States holds that the arbitration decision is invalid, the arbitration decision will not be binding on the Contracting States. In such a case, the request for arbitration under paragraph 5 of Article 24 of the Convention will be considered not to have been made, and the arbitration process will be considered not to have taken place (except for the purposes of Sections 6 “Communication of information and confidentiality” and 9 “Costs” of this Memorandum of Understanding). In such a case the person who made the request for arbitration may make a new request for arbitration, which will be accepted.

11.4 It is understood that paragraph 11.3 is intended to apply where, under the domestic laws of a Contracting State, a court has invalidated the arbitration decision based on a procedural or other failure or other conduct that has materially affected the outcome of the arbitration proceeding, which may include:

- (a) a violation of the impartiality or independence requirements applicable to arbitrators pursuant to Section 4 of this Memorandum of Understanding;
- (b) a breach of the confidentiality requirements applicable to arbitrators pursuant to Section 6 of this Memorandum of Understanding;
- (c) any other failure to adhere to the procedural requirements provided in this Memorandum of Understanding; or
- (d) collusion between the person who presented the mutual agreement procedure request and one of the Contracting States.

11.5 It is understood that Section 11 of this Memorandum of Understanding does not provide independent grounds for the invalidation of an arbitration decision where such grounds do not exist under the domestic laws of the Contracting States.

Section 12. Entry into effect and termination

- 12.1 This Memorandum of Understanding takes effect on 15th of September 2020 and remains in effect until terminated by either competent authority giving at least 6 months written notice to the other.
- 12.2 This Memorandum of Understanding applies to any request for arbitration made pursuant to paragraph 5 of Article 24 of the Convention after that provision has become effective.
- 12.3 Arbitrations that have commenced prior to the termination date will be concluded in accordance with this Memorandum of Understanding.

Signed in duplicate at Sydney / Bern on this 15th day of September 2020

For the competent authority of Australia

For the competent authority of the Swiss
Confederation

Signature of representative

Signature of representative

Simon Hellmers

Pascal Duss

Printed name of representative

Printed name of representative

**Assistant Commissioner –
Public Groups and International**

**Head of section – Bilateral tax issues and
double taxation treaties**

Official title of representative

Official title of representative