

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-KANADA

Naskah ini merupakan naskah sintesis untuk penerapan P3B Indonesia-Kanada yang dimodifikasi dengan Konvensi yang ditandatangani Pemerintah Republik Indonesia dan Pemerintah Kanada pada 7 Juni 2017.

Naskah sintesis ini disusun berdasarkan posisi Konvensi Indonesia yang disampaikan ke Penyimpan pada 28 April 2020 dan posisi Konvensi Kanada yang disampaikan ke Penyimpan pada 29 Agustus 2019. Posisi Konvensi dapat berubah sebagaimana yang diatur dalam Konvensi. Perubahan atas posisi Konvensi dapat mempengaruhi dampak Konvensi atas P3B Indonesia-Kanada.

Tujuan naskah sintesis ini hanyalah untuk membantu dalam memahami penerapan Konvensi terhadap P3B Indonesia-Kanada dan tidak dapat dijadikan sebagai sumber hukum. Naskah asli Konvensi dan P3B Indonesia-Kanada tetap menjadi dasar hukum yang berlaku.

Pokok-pokok pengaturan dalam Konvensi yang berlaku untuk P3B Indonesia-Kanada dinyatakan dalam kotak-kotak dalam konteks ketentuan yang relevan dari P3B Indonesia-Kanada. Kotak-kotak tersebut dimasukkan sesuai dengan urutan ketentuan dalam P3B Indonesia-Kanada.

Beberapa terminologi dalam Konvensi telah diubah untuk menyesuaikan dengan terminologi yang digunakan dalam P3B Indonesia-Kanada (seperti "*Covered Tax Agreement*" dan "*Convention*", "*Contracting Jurisdictions*" dan "*Contracting States*"), untuk mempermudah pemahaman atas Konvensi. Perubahan terminologi tersebut dimaksudkan untuk membantu pembaca dan bukan untuk mengubah substansi pengaturan dalam Konvensi. Lebih lanjut, beberapa bagian pengaturan dalam Konvensi juga diubah untuk menjelaskan ketentuan P3B Indonesia-Kanada yang saat ini berlaku: narasi deskriptif diganti dengan rujukan ketentuan P3B Indonesia-Kanada yang saat ini berlaku untuk membantu pembaca.

Seluruh rujukan ke ketentuan P3B Indonesia-Kanada harus dimaknai sebagai rujukan ke ketentuan P3B Indonesia-Kanada yang dimodifikasi Konvensi setelah Konvensi telah berlaku efektif.

Referensi

Posisi Konvensi Indonesia dan Kanada yang disampaikan ke Penyimpan dapat dilihat di [laman Penyimpan Konvensi \(OECD\)](#).

Keberlakuan Efektif Konvensi

Pokok-pokok pengaturan dalam Konvensi yang berlaku untuk P3B Indonesia-Kanada tidak berlaku efektif pada saat yang sama dengan ketentuan P3B Indonesia-Kanada. Masing-masing pengaturan dalam Konvensi dapat berlaku efektif pada tanggal yang berbeda tergantung pada jenis pajaknya (pajak-pajak yang dipotong atau dipungut di negara sumber atau pajak-pajak lainnya) dan pilihan yang dibuat oleh Pemerintah Republik Indonesia and Pemerintah Kanada dalam posisi Konvensinya.

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 29 Agustus 2019 untuk Kanada.

Saat belaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 Desember 2019 bagi Kanada.

The Government of the Republic of Indonesia and the Government of Canada,
[MODIFIED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,]

The following paragraph 1 of Article 6 of the MLI is included in addition to the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

ARTICLE 6 OF THE MLI - PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by the Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

CHAPTER I
SCOPE OF THE CONVENTION

Article 1
Personal Scope

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

Article 2
Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) in the case of Indonesia:
-- the income tax imposed under the Undang-undang Pajak Penghasilan 1984 (Law number 7 of 1983 as amended)
(hereinafter referred to as "Indonesian tax").
 - (b) in the case of Canada:
the income taxes imposed by the Government of Canada,
(hereinafter referred to as "Canadian tax")
4. The Convention shall also apply to any identical or substantially similar taxes on income which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made to their respective taxation laws.

CHAPTER II
DEFINITIONS

Article 3
General Definitions

1. In this Convention, unless the context otherwise requires:
 - (a) (i) the term "Canada", used in a geographical sense, means the territory of Canada, including:
 - (A) any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
 - (B) the seas and airspace above any area referred to in subparagraph (A) in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;
 - (ii) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with international law;
 - (b) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Indonesia;
 - (c) the term "person" includes an individual, a company, a partnership, an estate, a trust or any other body of persons;
 - (d) the term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes; in French, the term "societe" also means a "corporation" within the meaning of Canadian law;
 - (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (f) the term "competent authority" means:
 - (i) in the case of Canada, the Minister of National Revenue or his duly authorized representative;
 - (ii) in the case of Indonesia, the Minister of Finance or his duly authorized representative;
 - (g) the term "tax" means Canadian or Indonesian tax, as the context requires;
 - (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State.

- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the operation of the ship or aircraft is solely between places in the other Contracting State.
2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4
Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
 - (a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; and
 - (b) the Government of that Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.

However, the term does not include a permanent establishment within the meaning of subparagraph c. of paragraph (3) of Article 2 of the Indonesian Law Number 7 of 1983 concerning income tax as amended.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, his status shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his "centre of vital interests");
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.]

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI - DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Convention a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

Article 5
Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent Establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil well, a quarry or any other place of extraction of natural resources;
 - (g) a farm or a plantation;
 - (h) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than 120 days;
 - (i) the furnishing of services, including consultancy services, by an enterprise through an employee or other person (other than an agent of an independent status within the meaning of paragraph 6) where the activities continue within a Contracting State for more than 120 days within any twelve month period.
3. The term "permanent establishment" shall not be deemed to include :
 - (a) the use of facilities solely for the purpose of storage or display 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 or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary

- character, for the enterprise.
4. A person -- other than an agent of independent status to whom paragraph 6 applies - acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
 - (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
 5. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated there through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.
 6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State through a broker, general commission agent or any other agent of an independent status, or merely because it maintains in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent, where such broker or agent is acting in the ordinary course of his business. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
 7. The fact that a company which is a resident of a Contracting State 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 constitute either company a permanent establishment of the other.

CHAPTER III TAXATION OF INCOME

ARTICLE 6 Income from Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.
2. For the purposes of this Convention, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment or are derived within such other State from sales of goods or merchandise of the same kind as those sold or from other business transactions of the same kind as those effected, through the permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall 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.
3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then, the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Shipping and Air Transport

1. Profits derived by an enterprise from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.
2. Notwithstanding the provisions of paragraph 1 and of Article 1, profits derived from the operation of ships or aircraft used principally to transport passengers or goods between places in a Contracting State may be taxed in that State.
3. The provisions of paragraph 1 shall also apply to profits derived by an enterprise from its participation in a pool, a joint business or in an international operating agency but only to so much of the profits so derived as is allocable to the participant in an international joint venture in proportion to its share in the joint operation.

Article 9
Associated Enterprises

1. Where:
 - (a) an enterprise of a Contracting State 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 a Contracting State and an enterprise of the other Contracting State,
 and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued 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. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in case of fraud, wilful default or neglect.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed:
 - (a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;]

The following paragraph 1 of Article 8 of the MLI applies to subparagraph (a) of paragraph 2 of Article 10 of this Agreement:

ARTICLE 8 OF THE MLI-DIVIDEND TRANSFER TRANSACTIONS

Subparagraph a paragraph 2 of Article 10 of the Agreement shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

- (b) 15 per cent of the gross amount of the dividends in all other cases.
The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares or treated in the same way as dividends by the taxation law of the State of which the company making the distribution is a resident.
4. The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue 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. Where a company is a resident of only one Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State, or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits attributable to the permanent establishment may be subject to an additional tax in that other State in accordance with its law but the additional tax so charged shall not exceed 15 percent of the amount of such profits after deducting therefrom the company tax and other taxes on income imposed thereon in that other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in

that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.
4. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim 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, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.
7. Notwithstanding the provisions of paragraph 2, interest arising in Canada shall be taxable only in Indonesia if it is paid to :
 - (a) the government of Indonesia or a political subdivision thereof;
 - (b) a statutory body of the government of Canada performing functions of a governmental nature;
 - (c) such financial public institution of Indonesia as is specified and agreed in letters exchanged between the competent authorities of the two Contracting States;
 - (d) an enterprise of Indonesia on loans or credits granted with the participation of a financing public institution of Indonesia with the approval of the competent authority of Canada.
8. Notwithstanding the provisions of paragraph 2, interest arising in Indonesia shall be taxable only in Canada if it is paid to :
 - (a) the government of Canada or a political subdivision thereof;
 - (b) a statutory body of the government of Canada performing functions of a governmental nature;
 - (c) the Export Development Corporation; or
 - (d) an enterprise of Canada on loans or credit granted with the participation of the Export Development Corporation with the consent of the Minister in charge of financial affairs or of planning in Indonesia, in connection with the sale of any industrial or scientific equipment or with the survey, the installation or the supply of industrial or scientific premises or of public works.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. However, the term does not include payments for the furnishing of technical services (such as studies or surveys of a scientific, geological or technical nature, engineering contracts including blueprints related thereto, and consultancy and supervisory services).
4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties 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. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13
Gains from the Alienation of Property

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base may be taxed in that other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
3. **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains derived by a resident of a Contracting State from the alienation of:
 - (a) shares of a company which is a resident of the other State the value of which shares is derived principally from immovable property situated in that other State; or
 - (b) an interest in a partnership, trust or estate, established under the law in the other State, the value of which is derived principally from immovable property situated in that other State, may be taxed in that other State.For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in subparagraph (a) or an interest in a partnership, trust or estate referred to in subparagraph (b).]

The following paragraph 4 of Article 9 of the MLI replaces paragraph 3 of Article 13 of this Convention:

ARTICLE 9 OF THE MLI - CAPITAL GAINS FROM ALIENATION OF SHARES OR
INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM
IMMOVABLE PROPERTY

For purposes of this Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other Contracting State.

4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

Article 14
Professional Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 120 days in any twelve month period. If he has or had such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State 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 therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 120 days within any twelve month period, and either:
 - (a) the remuneration earned in the other Contracting State within the twelve month period does not exceed five thousand Canadian dollars (\$5,000) or its equivalent in rupiah, or such other amount as is specified and agreed in letters exchanged between the competent authorities of the Contracting States; or
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State unless the remuneration is derived by a resident of the other Contracting State.

Article 16
Directors' Fees

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

Article 17
Artistes and Athletes

1. *Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such maybe taxed in the Contracting State in which these activities are exercised.*
2. *Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself 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 or athlete are exercised.*
3. *The provisions of paragraphs 1 and 2 shall apply:*
 - (a) *to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof;*
 - (b) *to income derived in a Contracting State by a non-profit organization of the other Contracting State which is substantially supported by public funds of that other State, including any political subdivision, local authority or statutory body thereof.*

Article 18
Pensions and Annuities

1. *Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that State.*
2. *Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, other than payments under the social security legislation in a Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.*
3. *Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 15 percent of the gross amount of the payment. However, this limitation does not apply to lumpsum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.*
4. *Notwithstanding anything in this Convention:*
 - (a) *pensions and allowances received from Canada under the Pension Act, the Civilian War Pensions and Allowances Act or the War Veterans Allowances Act and compensation received under section 7 of the Aeronautics Act shall not be taxable in Indonesia so long as they are not subject to Canadian tax;*
 - (b) *pensions and allowances paid by, or out of funds created by Indonesia or a political subdivision or a local authority thereof, shall be taxable only in Indonesia;*
 - (c) *alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.*

Article 19
Government Service

1. *Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the recipient did not become a resident of that other State solely for the purpose of performing the services therein.*
2. *The provisions of paragraph 1 shall not apply to the remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.*

Article 20
Students

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training, shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

Article 21
Income Not Expressly Mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

CHAPTER IV
METHODS FOR PREVENTION OF DOUBLE TAXATION

Article 22
Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows :
 - (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions -- which shall not affect the general principle hereof --, and unless a greater deduction or relief is provided under the laws of Canada, tax payable under the law of Indonesia and in accordance with this Convention on profits, income or gains arising in Indonesia shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
 - (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Indonesia.
 - (c) Where in accordance with any provision of this Convention income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.
2. In the case of Indonesia, double taxation shall be avoided as follows :
 - (a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such taxes are imposed the items of income which according to the provisions of this Convention may be taxed in Canada.
 - (b) Subject to the provisions of subparagraph (c), Indonesia shall allow as a deduction from the tax computed in conformity with subparagraph (a) an amount equal to such proportion of that tax that the income which is included in the basis of that tax and may be taxed in Canada according to the provisions of this Convention bears to the total income which forms the basis for Indonesian tax.
 - (c) Where a resident of Indonesia derives income which, in accordance with paragraph 2 of Article 10, paragraph 2 of Article 11, and paragraph 2 of Article 12 may be taxed in Canada, Indonesia shall allow as a deduction from the Indonesian tax on the income of that person an amount equal to the tax paid in Canada on that income. Such deduction shall not, however, exceed that part of the Indonesian tax computed in conformity with subparagraph (a) which is appropriate to the income derived from Canada.
3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

CHAPTER V
SPECIAL PROVISIONS

Article 23
Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected under the law of the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which, in substantially similar circumstances, enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
5. Nothing in this Article shall be construed so as to prevent Indonesia from limiting to its nationals the enjoyment of tax incentives granted under the Law of 1968 regarding Domestic Capital Investment, so far as it was in force on, and has not been modified since, the date of signature of this Convention, or has been modified only in minor respects so as not to affect its general character.
6. In this Article, the term "taxation" means taxes which are the subject of this Convention.

Article 24
Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. **[REPLACED by paragraph 1 of Article 16 of the MLI]** [To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 24 of this Convention:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting States.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.
3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in case of fraud, wilful default or neglect.
4. **[MODIFIED by second sentence of paragraph 3 of Article 16 of the MLI]** [The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:
 - (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
 - (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.]

The following second sentence of paragraph 3 of Article 16 of the MLI applies to paragraph 4 of Article 24 of this Convention:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States, and for the prevention of fiscal evasion, concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.
2. The exchange of information may be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.
3. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States 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 information, the disclosure of which would be contrary to public policy (ordre public).

Article 26

Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding Article 4, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.
3. This Convention shall not apply to International Organizations, to officials or organs thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

Article 27

Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
 - (a) by the laws of one of the Contracting States in the determination of the tax imposed by that

Contracting State, or
(b) by any other agreement entered into by one of the Contracting States.

2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.
3. The provisions of paragraph 6 of Article 10 shall not affect the provisions contained in any Contracts of Work and Production Sharing Contracts relating to the oil and gas sector or other mining sector negotiated by the Government of Indonesia, its instrumentality, its relevant state oil company or any other entity thereof with a person who is a resident of Canada.
4. Nothing in the Convention shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that Contracting State with respect to a partnership, trust or controlled foreign affiliate in which the resident has an interest.
5. The Convention shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI - PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.

CHAPTER VI
FINAL PROVISIONS

Article 28
Entry into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.
2. The Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect:
 - (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and
 - (b) in respect of other taxes for taxable periods beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

Article 29
Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year 1980, give notice of termination to the other Contracting State and in such event the Convention shall cease to have effect:

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) in respect of other taxes for taxable periods beginning on or after the first day of January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in duplicate at Jakarta, this sixteenth day of January, 1979, in the English, French and Indonesian languages, each version being equally authentic.

FOR THE GOVERNMENT OF
REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF
CANADA

DIREKTUR JENDERAL

ttd.

SURYO UTOMO