

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA - PORTUGAL

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

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

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

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

Beberapa terminologi dalam Konvensi telah diubah untuk menyesuaikan dengan terminologi yang digunakan dalam P3B Indonesia-Portugal (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-Portugal yang saat ini berlaku: narasi deskriptif diganti dengan rujukan ketentuan P3B Indonesia-Portugal yang saat ini berlaku untuk membantu pembaca.

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

Referensi

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

Keberlakuan Efektif Konvensi

Pokok-pokok pengaturan dalam Konvensi yang berlaku untuk P3B Indonesia-Portugal tidak berlaku efektif pada saat yang sama dengan ketentuan P3B Indonesia-Portugal. 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 Republik Portugal dalam posisi Konvensinya.

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 28 Februari untuk Portugal.

Saat belaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 Juni 2020 bagi Portugal.

The Republic of Indonesia and the Portuguese Republic, **[REPLACED by paragraph 1 of Article 6 of the MLI]** [desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,]

The following paragraph 1 of Article 6 of the MLI replaces 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 this Agreement 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 Agreement for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

**Article 1
PERSONAL SCOPE**

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

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:

**ARTICLE 11 OF THE MLI - APPLICATION OF TAX AGREEMENTS TO
RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS**

The Agreement shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under paragraph 2 of Article 9 (having been modified by paragraph 1 of Article 17 of the MLI), Article 19, Article 20, Article 21, Article 23, Article 24, Article 25, and Article 27 of the Agreement.

**Article 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
 - a. In the case of the Portuguese Republic:
 - i. Personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
 - ii. Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC);
 - iii. Local surtax on corporate income tax (Derrama);(hereinafter referred to as "Portuguese tax");
 - b. In the case of the Republic of Indonesia: the income tax; (hereinafter referred to as "Indonesian tax").
4. The Agreement shall apply also to any Identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

**Article 3
GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a. the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the archipelagos of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;
 - b. the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;
 - c. the terms "a Contracting State" and "the other Contracting State" mean Portugal or Indonesia as the context requires;
 - d. the term "person" includes an individual, a company and any other body of persons;
 - e. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - f. 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;
 - g. the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - h. the term "competent authority" means:
 - i. in Portugal: the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorised representative;
 - ii. in Indonesia: the Minister of Finance or his authorised representative;
 - i. the term "national" means:

- i. any individual possessing the nationality of a Contracting State;
 - i. any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

**Article 4
RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means 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 also includes that State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a. he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - b. if the 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 State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - d. if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

**Article 5
PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
- a. a place of management;
 - b. a branch;
 - c. an office;
 - d. a factory;
 - e. a workshop;
 - f. a warehouse or premises used as sales outlet;
 - g. a farm or plantation;
 - h. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - i. a drilling rig or working ship used for exploration or exploitation of natural resources.
3. The term "permanent establishment" likewise encompasses:
- a. building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;
 - b. the furnishing of services, including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 183 days within any twelve-month period.
4. **[MODIFIED by paragraph 4 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c. the maintenance of a 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 of collecting information, for the enterprise;
 - e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f. the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI - ARTIFIAL AVOIDANCE OF PERMANENT
ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

Article 5 of the Agreement shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Agreement; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
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.

The following paragraph 1 of Article 15 of the MLI applies to provisions of this Agreement:

**ARTICLE 15 OF THE MLI - DEFINITION OF A PERSON CLOSELY
RELATED TO AN ENTERPRISE**

For the purposes of Article 5 of the Agreement, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

**Article 6
INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under 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.
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 independent personal services.
5. The foregoing provisions shall also apply to income from movable property, or income derived from services connected with the use or the right to use the immovable property, either of which, under the taxation law of the Contracting State in which the property is situated, is assimilated to income from immovable property.

**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 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.
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 in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated

or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head-office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged, (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head-office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head-office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State 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 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 contained 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium, the provisions of paragraph 1 shall apply to such part of the profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

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. **[REPLACED by paragraph 1 of Article 17 of the MLI]** [Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and where the competent authorities of the Contracting State agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.]

The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Agreement:

ARTICLE 17 OF THE MLI - CORRESPONDING ADJUSTMENTS

Where a Contracting State includes in the profits of an enterprise of that Contracting State and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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 Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation. This paragraph shall not affect the taxation of the company in respect of 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes profits attributed under an arrangement for participation in profits.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner 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, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Notwithstanding any other provisions of this Agreement where a company which is a resident of a Contracting State has a permanent established in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 10 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.
6. The provision of paragraph 5 of this Article shall not affect the provision contained in any production sharing contract and relating to oil and gas sector concluded by the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of the other Contracting State.
7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, 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.

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 Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities thereof, a political or administrative subdivision and government institutions, the Central Bank or any financial institution controlled by that Government, the capital of which is wholly owned by the Government of the other Contracting State, as may be agreed upon from time to time between the competent authorities of the Contracting States, shall be exempt from tax in the first-mentioned State.
4. 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is 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 such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this

limitation.

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, and films or tapes for radio or television broadcasting, any patent, trade mark, 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.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such 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 where the payer is 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 such royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
4. **[MODIFIED by paragraph 4 of Article 9 of the MLI]** [Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.]

The following paragraph 4 of Article 9 of the MLI applies and supersedes the provisions of this Agreement:

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 a Covered Tax Agreement, gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting Jurisdiction 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 Jurisdiction.

Article 14 INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:
 - a. if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - b. if his stay in the other Contracting State is for a period or periods amounting to or exceeding In the aggregate 183 days within any twelve-month period; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.
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, 19 and 20, 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:*
 - a. *the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the calendar year concerned, and*
 - b. *the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and*
 - c. *the 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 may be taxed in that Contracting State.*

Article 16
DIRECTORS' FEES

1. *Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.*
2. *The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15.*

Article 17
ARTISTES AND ATHLETES

1. *Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.*
2. *Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.*
3. *Notwithstanding the provisions of paragraphs 1 and 2, income derived in respect of the activities referred to in paragraph 1 within the framework of any cultural or sports exchange programme agreed to by both Contracting States shall be exempt from tax in the Contracting State in which these activities are exercised.*

Article 18
PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19
GOVERNMENT SERVICE

1.
 - a. *Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.*
 - b. *However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:*
 - i. *is a national of that State; or*
 - ii. *did not become a resident of that State solely for the purpose of rendering the services.*
2.
 - a. *Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.*
 - b. *However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.*
3. *The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision, or a local authority or a statutory body thereof.*

Article 20
PROFESSORS AND RESEARCHES

1. *An individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State, solely for the purposes of teaching or scientific research at an university, college, school, or other similar educational or scientific research institution which is recognized as non-profitable by the Government of that other State, or under an official programme of cultural exchange, for a period not exceeding two years from the date of his first arrival in that other State, shall be exempt from tax in that other State on his remuneration for such teaching or research.*
2. *The preceding provision of this Article shall also apply to an individual who carries out research within the scope of a scholarship granted by a Government, religious, charitable, scientific, literary or educational organisation, if such scholarship is exempt from tax.*

Article 21
STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned 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 State, provided that such payments arise from sources outside that State.

Article 22
OTHER INCOME

1. *Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement other than income in the form of lotteries and prizes shall be taxable only in that State.*
2. *The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.*

Article 23
METHOD FOR ELIMINATION OF DOUBLE TAXATION

1. *In the case of Portugal double taxation shall be eliminated as follows:*
 - a. *Where a resident of Portugal derives income which, in accordance with the provisions of this Agreement, may be taxed in Indonesia, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Indonesia. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Indonesia.*
 - b. *Where in accordance with any provisions of this Agreement income derived by a resident of Portugal is exempt from tax in Portugal, Portugal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.*
2. *In the case of Indonesia, where a resident of Indonesia derives income from Portugal, the amount of tax on that income payable in Portugal in accordance with the provisions of this Agreement may be credited against the tax levied in Indonesia imposed on that resident. The amount of credit, however, shall not exceed the amount of the tax in Indonesia on that income computed in accordance with its taxation laws and regulations.*

Article 24
NON-DISCRIMINATION

1. *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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.*
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. Nothing in this provision 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.*
3. *Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.*
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 in 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 other similar enterprises of the first-mentioned State are or may be subjected.*
5. *In this Article, the term "taxation" means taxes which are the subject of this Agreement.*

Article 25
MUTUAL AGREEMENT PROCEDURE

1. *Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. **[REPLACED by second sentence of paragraph 1 of Article 16 of the MLI]** [The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.]*

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 25 of this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. **MODIFIED by second sentence of paragraph 2 of Article 16 of the MLI** [The competent authority shall endeavour, If the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory 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 which is not in accordance with the Agreement.]

The following second sentence of paragraph 2 of Article 16 of the MLI applies to paragraph 2 of Article 25 of this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**Article 26
EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b. to supply information which is 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 27
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provision of this Agreement:

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

Notwithstanding any provisions of the Agreement, a benefit under the Agreement 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 Agreement.

**Article 28
ENTRY INTO FORCE**

1. This Agreement shall enter into force on the later of the dates on which the respective Governments notify each other in writing that the formalities constitutionally required in their respective States have been complied with.
2. This Agreement shall apply:
 - a. in Portugal:
 - i. in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the year in which this Agreement enters into force;

- ii. in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the year next following the year in which this Agreement enters into force;
- b. in Indonesia:
 - i. in respect of tax withheld at the source, to income derived on or after 1 January in the year next following that in which the Agreement enters into force; and
 - ii. in respect of other taxes on income, for taxable years beginning on or after 1 January in the year next following that in which the Agreement enters into force.

Article 29
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June of any calendar year following after the period of five years from the year in which the Agreement enters into force. In such case, the Agreement shall cease to have effect:

- a. in Portugal:
 - i. in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January in the year next following that in which the notice of termination is given;
 - ii. in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January in the year next following that in which the notice of termination is given;
- b. in Indonesia:
 - i. in respect of tax withheld at source, to income derived on or after 1 January in the year next following that in which the notice of termination is given;
 - ii. in respect of other taxes on income, for taxable years beginning on or after 1 January in the year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

Done in duplicate at Lisbon, this 9th day of July, 2003, in the Indonesian, Portuguese, and English languages, all texts being equally authentic. In case of any divergence of interpretation or application of this Agreement the English text shall prevail.

FOR THE REPUBLIC OF INDONESIA

sgd.

N. HASSAN WIRAJUDA
Minister for Foreign Affairs

FOR THE PORTUGUESE REPUBLIC

sgd.

ANTONIO MARTINS DA CRUZ
Minister for Foreign Affairs

PROTOCOL

At the moment of signing the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income, this day concluded between the Portuguese Republic and the Republic of Indonesia, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

Ad Article 5. paragraph 2 (i)

For the purposes of paragraph 2(i) Article 5, the activities referred to must be carried on in the other State for a period or periods exceeding in the aggregate 30 days in any period of 12 months, and shall be deemed not to include:

- a. one or any combination of the activities mentioned in paragraph 4 of Article 5;
- b. towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c. the transport of supplies or personnel by ships or aircraft in international traffic.

Ad Article 5. paragraph 4

It is understood that the provisions of Article 5, paragraph 4, sub-paragraphs (a) and (b) do not refer to delivery accompanied with the respective sales.

Ad Article 22

The term "prizes" means any remuneration of any kind received in respect of competition other than referred to under Article 17.

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

DONE in duplicate at Lisbon, this 9th day of July, 2003, in the Portuguese, Indonesian and English languages, all texts being equally authentic. In case of any divergence of interpretation or application of this Protocol, the English text shall prevail.

FOR THE REPUBLIC OF INDONESIA

sgd.

N. HASSAN WIRAJUDA
Minister for Foreign Affairs

FOR THE PORTUGUESE REPUBLIC

sgd.

ANTONIO MARTINS DA CRUZ
Minister for Foreign Affairs

DIREKTUR JENDERAL,

ttd.

SURYO UTOMO