

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-INDIA

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

Naskah sintesis ini disusun berdasarkan posisi Konvensi Indonesia yang disampaikan ke Penyimpan pada 28 April 2020 dan posisi Konvensi India yang disampaikan ke Penyimpan pada 25 Juni 2019. Posisi Konvensi dapat berubah sebagaimana yang diatur dalam Konvensi. Perubahan atas posisi Konvensi dapat mempengaruhi dampak Konvensi atas P3B Indonesia-India.

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

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

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

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

Referensi

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

Keberlakuan Efektif Konvensi

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

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 25 Juni 2019 untuk India.

Saat belaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 Oktober 2019 bagi India.

The Government of the Republic of Indonesia and the Government of the Republic of India, **[MODIFIED 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 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 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),

and with a view to promoting economic cooperation between the two countries.

Have agreed as follows:

**CHAPTER I
SCOPE OF THE AGREEMENT**

**Article 1
PERSONS COVERED**

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, Article 19, Article 20, Article 21, Article 23, Article 25, Article 26, and Article 29 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 subdivisions or local authorities. 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 and taxes on the totals 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 Republic of Indonesia:
the income tax;
(hereinafter referred to as "Indonesian tax").
 - (b) in the case of the Republic of India:
the income taxes, including any surcharge thereon;
(hereinafter referred to as "Indian tax").
4. The Agreement shall also apply to any identical or substantially similar taxes that 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 any significant changes that have been made in their respective taxation laws.

**CHAPTER II
DEFINITIONS**

**Article 3
GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "Republic of Indonesia" means the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf, exclusive economic zone and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the United Nations Convention on the Law of the Sea 1982;
 - (b) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the United Nations Convention on the Law of the Sea 1982;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean the Republic of Indonesia or the Republic of India as the context requires;
 - (d) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
 - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term "enterprise" applies to the carrying on of any business;
 - (g) 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;
- (h) 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;
 - (i) the term "national" means:
 - (1) any individual possessing the nationality of a Contracting State; and
 - (2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - (j) the term "competent authority" means:
 - (1) in the case of the Republic of Indonesia, the Minister of Finance or his authorised representative;
 - (2) in the case of the Republic of India, the Finance Minister or his authorised representative;
 - (k) the term tax means Indonesian or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
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 that 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, place of incorporation, or any other criterion of a similar nature, and also includes that state and any political 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 his residential status cannot be determined by reason of subparagraphs (a) to (c) in that sequence, the competent authorities of the Contracting States shall endeavor to 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated can not be determined, then the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.]

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

ARTICLE 4 OF THE MLI - DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Agreement 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 Agreement, 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 Agreement.

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 in relation to a person providing storage facilities for others;
 - (g) premises as sales outlet;
 - (h) farm or other place where agricultural, forestry, plantation or related activities are carried on; and
 - (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
3. The term "permanent establishment" also encompasses:
 - (a) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** [a building site or a construction or assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last for a period of more than 183 days;]

- (b) a drilling rig or working ship used for exploration or exploitation of natural resources, but only if so used for a period more than 183 days;
- (c) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 91 days within any twelve month period.

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 14 OF THE MLI - SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the 183 days referred to in paragraph 3 of Article 5 of the Agreement has been exceeded:

- a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or a construction or assembly or installation project or supervisory activities in connection therewith, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period or periods referred to in paragraph 3 of Article 5 of the Agreement; and
- b) where connected activities are carried on in that other Contracting State at in connection with the same a building site or a construction or assembly or installation project or supervisory activities in connection therewith during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first mentioned enterprise has carried on activities at that a building site ora construction or assembly or installation project or supervisory activities in connection therewith.

4. [MODIFIED by paragraph 2 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 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 of collecting information, for the enterprise;
- (e) the maintenance of 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 2 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (Option A)

Notwithstanding Article 5 of the Agreement, the term "permanent establishment" shall be deemed not to include:

- a) the activities specifically listed in paragraph 4 of Article 5 of the Agreement as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, 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 (as modified by paragraph 2 of Article 13 of the MLI):

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

Article 5 of this Agreement (as modified by paragraph 2 of Article 13 of the MLI) 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 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- (a) **[REPLACED by paragraph 1 of Article 12 of the MLI]** [has, and habitually exercises, in that State an authority to conclude contracts in the name of 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]; or

The following paragraph 1 of Article 12 of the MLI replaces subparagraph (a) of paragraph 5 of Article 5 of this Agreement:

ARTICLE 12 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT
ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND
SIMILAR STRATEGIES

Notwithstanding Article 5 of the Agreement, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or
b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Agreement.

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. **[REPLACED by paragraph 2 of Article 12 of the MLI]** An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

The following paragraph 2 of Article 12 of the MLI replaces paragraph 7 of Article 5 of this Agreement:

ARTICLE 12 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT
ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND
SIMILAR STRATEGIES

Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

8. 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.

**CHAPTER III
TAXATION OF INCOME**

**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 Contracting 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 and aircraft shall not be regarded as immovable property.*
3. *The provisions of paragraph 1 shall also 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.*

**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 business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State. 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 banking enterprise, by way of interest on money 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 derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
2. *If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.*
3. *The term "operation of ships or aircraft" means business of transportation by sea or by air of passengers, mail, livestock or goods carried on by the owners, lessees or charterers of ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.*
4. *Notwithstanding the provisions of paragraphs 1 and 2, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first-mentioned State, but the tax imposed in that Contracting State shall be reduced by an amount equal to 50 per cent thereof.*
5. *Profits derived by a transportation enterprise which is a resident of a Contracting State from the use,*

maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

6. *For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.*
7. *The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.*

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. *Where a Contracting State includes 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 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 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.*
3. *The provision of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.*

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 % (ten per cent) of the gross amount of the dividends.*

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 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.*
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. *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% (ten percent) of the gross amount of the interest.*
3. *Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:*
 - (a) *the Government, a political sub-division or a local authority of the other Contracting State; or*
 - (b)
 - (i) *in the case of the Republic of Indonesia:*
 - (1) *Bank Indonesia (the Central Bank of Indonesia);*
 - (2) *Pusat Investasi Pemerintah (the Centre for Government Investment), and*
 - (3) *Lembaga Pembiayaan Ekspor Indonesia (the Indonesia Eximbank);*
 - (ii) *in the case of India:*

- (1) Reserve Bank of India;
 - (2) Export-Import bank of India; and
 - (3) National Housing bank; or
- (c) a statutory body or any institution wholly owned by the Government of the Contracting States, as may be agreed from time to time between the competent authorities of the Contracting States;
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 maybe, 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 home 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 of interest. 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 AND FEES FOR TECHNICAL SERVICES

1. Royalties or fees for technical services 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 or fees for technical services 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 or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10% (ten per cent) of the gross amount of the royalties or fees for technical services.
3. (a) 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, or films or tapes used 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.
(b) The term fees for technical services" as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or technical personnel.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services 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 maybe, shall apply.
5. (a) Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated, (b) Where under sub-paragraph (a) royalties or fees for technical services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for technical services relate to services performed, in one of the Contracting States, the royalties or fees for technical services shall be deemed to arise in that Contracting State.
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 or fees for technical services, 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 of royalties. 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 derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the place of effective management of the enterprise is situated.
4. **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.]

The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 13 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 this Agreement, 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.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

**Article 14
INDEPENDENT PROFESSIONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar 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 State; or
 - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 91 days in any period of twelve months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, surgeons, 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 fiscal 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, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

**Article 16
DIRECTORS' FEES**

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 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 SPORTPERSONS**

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. The provisions of paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States, a local authority or public institution thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18 PENSIONS AND ANNUITY

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment and annuity paid to a resident of a Contracting State shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19 GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State, or a political subdivision, or a local authority 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 subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority 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 other State;
3. The provisions of Article 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 subdivision or a local authority body thereof.

Article 20 PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholars who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school, museum or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the fiscal year of income in which he visits the other Contracting State or in the immediately preceding fiscal year of income.
4. For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

Article 21 STUDENTS AND APPRENTICES

1. Payments which a student or 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.
2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article:
(i) in the case of student: for more than five consecutive years from the date of his first arrival for the purposes of his education in the Contracting State;
(2) in the case of apprentice: for more than two consecutive years from the date of his first arrival for the purposes of his training in the Contracting 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 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.*
3. *Notwithstanding the provisions of paragraphs 1 and 2, Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.*

CHAPTER IV
METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. *Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow as deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Such deduction shall not, however, exceed the part of the income tax as computed before the deduction is given, which is attributable as the case may be, to the income which may be taxed in that other State.*
2. *Where in accordance with any provision of the Agreement, income derived by a resident of a Contracting State is exempt from tax in that State, that State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.*

CHAPTER V
SPECIAL PROVISIONS

Article 24
LIMITATION OF BENEFITS

1. *The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.*
2. **[REPLACED by paragraph 1 of Article 7 of the MLI]** *[A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.]*
3. **[REPLACED by paragraph 1 of Article 7 of the MLI]** *[The case of legal entities not having bonafide business activities shall be covered by the provisions of this Article.1*

The following paragraph 1 of Article 7 of the MLI replaces paragraph 2 and paragraph 3 of Article 24 of this Agreement:

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

Notwithstanding any provisions of a this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital 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 this Agreement.

Article 25
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 favorably levied in that other State than the taxation levied on enterprise of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to resident 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. *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 other similar enterprises of the first mentioned State are or may be subjected.*
4. *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 disbursement 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.

5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 26 **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 25, to that of the Contracting State of which he is a national. 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. 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. 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

Article 27 **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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 referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
 - (b) to supply information (including documents or certified copies of the documents) 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).
4. If the information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3, but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28 **ASSISTANCE IN COLLECTION**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as

- if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
 5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
 6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.
 7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the State, the first-mentioned State shall either suspend or withdraw its request.
 8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (order public);
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 29
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

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

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

Notwithstanding any provisions of a 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.

CHAPTER VI
FINAL PROVISIONS

Article 30
ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other Contracting State through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect as follows:
 - (a) In Indonesia:
 - (i) in respect of taxes withheld at source: for amounts paid or credited on or after the first day of January next following the date on which this Agreement enters into force, and
 - (ii) in respect of other taxes: for any tax year commencing on or after the first day of January next following the date on which this Agreement enters into force.
 - (b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.
4. The Agreement between the Government of the Republic of Indonesia and the Government of the Republic of India for the Avoidance of Double Taxation and Prevention of fiscal evasion with respect to taxes on income signed at Jakarta on the 7th August, 1987 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3 of this Article.

Article 31
TERMINATION

This Agreement shall remain in force indefinitely until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) In Indonesia:
 - (i) in respect of taxes withheld at source: for amount paid or credited on or after the first day of January in the calendar year immediately following that in which the notice of such termination is given, and*
 - (ii) in respect of other taxes: for any tax year commencing on or after the first day of January in the calendar year immediately following that in which the notice of such termination is given.**
- (b) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given.*

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

Done at New Delhi on the 27th day of July 2012 in two identical originals each in the Bahasa Indonesia, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

*For the Government of
Republic of Indonesia*

*For the Government of
Republic of India*

PROTOCOL

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

1. With reference to paragraph 1 of Article 7 (Business Profits), it is understood that profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent establishment if it is proved that:
 - (i) this transaction has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated, and
 - (ii) the permanent establishment in any way was involved in this transaction.
2. It is understood that the provisions of paragraphs 1 and 2 of Articles 11 (Interest) and 12 (Royalties and Fees for Technical Services) shall not apply and provisions of Article 7 (Business Profits) shall apply if the income is effectively connected with business activities referred to in paragraph 1 of this Protocol.
3. Notwithstanding anything contained in this Agreement, it is understood that nothing shall prevent a Contracting State from charging the profits of a permanent establishment of an enterprise of the other Contracting State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned State and it shall neither be construed as discriminatory with respect to Article 25 (Non-discrimination) nor as being in conflict with the provisions of paragraph 3 of Article 7 (Business Profits).
4. For purposes of Article 7 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 subjected to an additional tax or branch profits tax in that other State in accordance with its law, but such tax so charged shall not exceed a rate of 15% (fifteen per cent).
5. It is understood that in the event of conflict in application between the provisions of this Agreement and the provisions of production sharing contracts relating to the exploitation and production of oil and natural gas in a Contracting State entered into by the Government or any person authorized by it, the latter shall prevail.
6. In respect of paragraph 2 of Article 27 (Exchange of Information), it is understood that, information received by a Contracting State may be used for other Government enforcement purposes when such information may be used for such other Government enforcement purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

DONE at New Delhi on the 27th day of July 2012 in two identical originals each in the Bahasa Indonesia, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the
Republic of Indonesia

Signed

DR. R.M. MARTYM. NATALEGAWA
Minister for Foreign Affairs

For the Government of the
Republic of India

Signed

S.M. KRISHNA
Minister for External Affairs

DIREKTUR JENDERAL,

ttd.

SURYO UTOMO