

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-BELGIA

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

Naskah sintesis ini disusun berdasarkan posisi Konvensi Indonesia yang disampaikan ke Penyimpan pada 28 April 2020 dan posisi Konvensi Belgia yang disampaikan ke Penyimpan pada 26 Juni 2019. Posisi Konvensi dapat berubah sebagaimana yang diatur dalam Konvensi. Perubahan atas posisi Konvensi dapat mempengaruhi dampak Konvensi atas P3B Indonesia-Belgia.

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

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

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

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

Referensi

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

Keberlakuan Efektif Konvensi

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

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 26 Juni 2019 untuk Belgia.

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

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

[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 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),

have agreed as follows:

CHAPTER I. - SCOPE OF THE AGREEMENT

**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 provisions of Article 9 (as modified by paragraph 1 of Article 17 of the MLI), Article 19, Article 20, Article 22, Article 23, Article 24, or 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 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
 - a) in the case of Indonesia:
the income tax imposed under the "Undang-undang Pajak Penghasilan 1984" (Law No. 7 of 1983 as amended);
(hereinafter referred to as "Indonesian tax")
 - b) in the case of Belgium:
 - (i) the individual income tax;
 - (ii) the corporate income tax;
 - (iii) the income tax on legal entities;
 - (iv) the income tax on non-residents;
 - (v) the special levy assimilated to the individual income tax;
 - (vi) the supplementary crisis tax,
including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax;
(hereinafter referred to as "Belgian 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.

CHAPTER II — DEFINITIONS

**Article 3
GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and part of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;
 - b) the term "Belgium" means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Belgium or Indonesia as the context requires;
 - d) the term "tax" means Belgian tax or Indonesian tax, as the context requires;
 - e) the term "person" includes an individual, a company and any other body of persons;
 - f) the term "company" means anybody corporate or any entity which is treated as a body corporate for

- tax purposes in the Contracting State of which it is a resident;
- 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 "competent authority" means:
 - (i) in the case of Indonesia, the Minister of Finance or his duly authorised representative, and
 - (ii) in the case of Belgium, the Minister of Finance or his duly authorised representative;
 - j) the term "nationals" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

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. However this term does not include any person who is liable to tax in a Contracting 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 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 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 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, 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 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 farm or a plantation;
 - g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" likewise encompasses:
 - a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than six months; a building site, a construction, assembly or installation project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than six 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 a connected project) within the country for a period or periods aggregating more than three months within any period of twelve months, 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 a connected project) within the country for a period or periods aggregating more than three months within any period of twelve months.
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 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 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 — ARTIFICIAL 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 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.
6. **[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 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 6 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.

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.

CHAPTER III. – TAXATION OF INCOME

**Article 6
INCOME FROM IMMOVABLE PROPERTY**

1. *Income derived by a resident of a Contracting State from immovable property 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.*

**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:
(a) that permanent establishment, or
(b) the sale of goods or merchandise of the same or similar kind as those sold, or to other business transactions of the same or similar kinds as those effected, through that permanent 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 the determination of 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. 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 or from the use or rental of containers which is incidental to such operation 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.

Article 9
ASSOCIATED ENTERPRISES

[MODIFIED by paragraph 1 of Article 17 of the MLI] [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.]

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions 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 this 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:
 - a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;]

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

ARTICLE 8 OF THE MLI - DIVIDEND TRANSFER TRANSACTIONS

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

- b) 15 per cent of the gross amount of the dividends in all other cases.
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 -- even paid in the form of interest -- which is treated as income from shares by the internal tax legislation of the State of which the paying company 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.
6. Notwithstanding the provisions of paragraph 5, where a company which is a resident of a Contracting State has in the other Contracting State a permanent establishment, that other State may subject the profits of

the permanent establishment, after deduction of the tax which may be levied thereon in accordance with the provisions of Article 7, to an additional tax on deemed distribution of income according to its laws, but the tax so charged shall not exceed 10 per cent of the profits thus reduced.

7. *The provision of paragraph 6 shall not affect the provisions contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to [the] oil and gas sector or other mining sector concluded on or before 31 December, 1983, 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 Belgium.*

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.*
3. *Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is paid to the other Contracting State or a political subdivision or a local authority thereof, or to the central bank of that other 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; however, the term "interest" shall not include for the purpose of this Article penalty charges for late payment nor interest regarded as dividends under paragraph 3 of Article 10.*
5. *The provisions of paragraphs 1, 2 and 3 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 that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and 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 in the Contracting State in which the interest arises according to the laws of that State.*

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.*
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 copyrights 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.*
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 when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such 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 royalties shall remain taxable in the Contracting State in which the royalties arise, according to the laws of that State.*

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 State.
4. 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.

Article 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect 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 91 days within 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, 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 within any period of twelve months, 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 by an enterprise of a Contracting State in international traffic, may be taxed in that 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 a similar organ or as a partner of a company which is a resident of the other Contracting State may be taxed in that other State.
The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision.
2. 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 shall be taxable in accordance with the provisions of Article 15.
3. The provision of paragraph 2 shall also apply to remuneration derived by a resident of a Contracting State in respect of his personal activity as a working partner of a company, other than a company with share capital, which is a resident of the other Contracting State.

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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. *Notwithstanding the provisions of paragraphs 1 and 2 income derived by an entertainer or athlete from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are substantially supported by public funds or sponsored by the other Contracting State, or by a political subdivision, local authority or statutory body thereof.*

Article 18 PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State in consideration of past employment may be taxed in the first-mentioned State.

Article 19 GOVERNMENT SERVICE

1.
 - a) *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 shall be taxable only in that State*
 - b) *However, such 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 State.*
3. *The provisions of Articles 15, 16 and 18 shall apply to remuneration and 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 thereof.*

Article 20 PROFESSORS, RESEARCHERS AND STUDENTS

1. *A professor, teacher or researcher who makes a temporary visit to a Contracting State solely for the purpose of teaching or conducting research at a university, college, school or other recognised educational institution, and who is a resident of the other Contracting State shall be exempt from tax in the first-mentioned State for a period not exceeding two years in respect of remuneration for such teaching or research.*
2. *Payments which a student, apprentice or business trainee 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 first-mentioned State, provided that such payments are made to him from sources outside that State.*

Article 21 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 the Agreement and arising in the other Contracting State may also be taxed in that other State.*

CHAPTER IV. — METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 22

1. *In the case of Indonesia, double taxation shall be avoided as follows:*
 - a) *Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the income which may be taxed in Belgium in accordance with the provisions of the Agreement.*
 - b) *Where a resident of Indonesia derives income from Belgium and such income may be taxed in Belgium in accordance with the provisions of the Agreement, the amount of Belgian tax payable in respect of such income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to such income.*
2. *In the case of Belgium, double taxation shall be avoided as follows:*
 - a) *Where a resident of Belgium derives income which may be taxed in Indonesia in accordance with the provisions of this Agreement, other than those of paragraph 2 of Article 10, paragraphs 2 and 7 of Article 11, and paragraphs 2 and 6 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.*

- b) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempted from Belgian tax according to sub paragraph c) hereinafter, interest taxable in accordance with paragraph 2 or 7 of Article 11, or royalties taxable in accordance with paragraph 2 or 6 of Article 12, the Indonesian tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.
- c) Dividends within the meaning of paragraph 3 of Article 10, derived by a company which is a resident of Belgium from a company which is a resident of Indonesia, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Indonesia, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Indonesia by reason of compensation for the said losses.

CHAPTER V. – SPECIAL PROVISIONS

Article 23 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. This provision shall not 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 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. Nothing contained in this Article shall be construed as preventing Belgium:
 - a) from taxing the profits attributable to a permanent establishment in Belgium of a company which is a resident of Indonesia at the rate of tax provided by the Belgian law;
 - b) from imposing the movable property prepayment on dividends derived from a holding which is effectively connected with a permanent establishment maintained in Belgium by a company which is a resident of Indonesia.
6. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 24 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 23, 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. **[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 24 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. **[MODIFIED by second sentence of paragraph 3 of Article 16 of the MLI]** [The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.]

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

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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

4. The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Agreement and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions in tax provided for in the Agreement.
5. The competent authorities of the Contracting States shall communicate directly with each other for the application of the Agreement.

Article 25 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, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. 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) involved in 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.

Article 26 ASSISTANCE IN COLLECTION

1. Each Contracting State shall endeavour to collect on behalf of the other Contracting State such taxes imposed by that other State as will ensure that any exemption or reduced rate of tax granted under this Agreement by that other State shall not be enjoyed by persons not entitled to such benefits.
2. In no case shall the provisions of this Article be construed so as to impose upon the requested State the obligation to apply any means of enforcement which are not authorised by the legal provisions or regulations of either Contracting State or to take measures which would be contrary to public policy.

Article 27 LIMITATION OF THE EFFECTS OF THE AGREEMENT

1. Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission or consular post under the general rules of international law or under the provisions of special agreements.
2. The Agreement shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

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 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 28 ENTRY INTO FORCE

1. This Agreement shall be approved by Belgium and Indonesia in accordance with their respective legal procedures, and shall enter into force on the fifteenth day after the date of exchange of notes indicating such approval.
2. The Agreement shall have effect:
 - a) with respect to taxes due at source on income credited or payable on or after January 1 in the year next following the year in which the Agreement enters into force;
 - b) with respect to other taxes charged on income of taxable periods ending on or after December 31 of the year in which the Agreement enters into force.
3. The Agreement between the Kingdom of Belgium and the Republic of Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and the Protocol signed at Brussels on November 13th, 1973, shall terminate and cease to be effective in relation to

any tax for any period for which this Agreement has effect in accordance with paragraph 2 of this Article as respects that tax.

Article 29
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State; but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination not later than the 30th June of any calendar year from the fifth year following that in which the Agreement entered into force. In the event of termination before July 1 of such year, the Agreement shall cease to have effect:

- a) with respect to taxes due at source on income credited or payable at latest on December 31 in the year in which the notice of termination is given;*
- b) with respect to other taxes charged on income of taxable periods ending before December 31 of the same year.*

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement and have affixed thereto their seals.

DONE in duplicate at Jakarta, this September 16, 1997, in the English language.

***FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA:***

sgd.

***FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM:***

sgd.

PROTOCOL

At the moment of signing the Agreement between the Kingdom of Belgium and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the said agreement:

Ad Article 7, paragraph 1

It is understood that profits derived by an enterprise of a Contracting State within the other Contracting State from [the] sale of goods or merchandise of the same or similar kind as those sold, or from other business transactions of the same or similar kind as those effected, through the permanent establishment situated therein, may be taxed in such other Contracting State, if the permanent establishment had contributed in any manner in the making of such sales or transactions.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol and have affixed thereto their seals.

DONE in duplicate at Jakarta, this September 16, 1997, in the English language.

***FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA:***

sgd.

***FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM:***

sgd.

DIREKTUR JENDERAL,

ttd.

SURYO UTOMO