

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-TIONGKOK

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

Naskah sintesis ini disusun berdasarkan posisi Konvensi Indonesia yang disampaikan ke Penyimpan pada 28 April 2020 dan posisi Konvensi Tiongkok yang disampaikan ke Penyimpan pada 25 Mei 2022. Posisi Konvensi dapat berubah sebagaimana yang diatur dalam Konvensi. Perubahan atas posisi Konvensi dapat mempengaruhi dampak Konvensi atas P3B Indonesia-Tiongkok.

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

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

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

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

Referensi

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

Keberlakuan Efektif Konvensi

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

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 25 Mei 2022 untuk Tiongkok.

Saat berlaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 September 2022 bagi Tiongkok.

The Government of the Republic of Indonesia and the Government of the People's Republic of China,
[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:

**Article 1
PERSONAL SCOPE**

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

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

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

The Agreement shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under paragraph 2 of Article 9 (as replaced by paragraph 1 of Article 17 of the MLI), paragraph 2 of Article 18, Article 19, Article 20, Article 21, Article 23, Article 24, Article 25, and Article 27 of the Agreement

**Article 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf, of a Contracting State or of its 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.
3. The existing taxes to which the Agreement shall apply are:
 - a) in Indonesia :
the income tax imposed under the income tax law of 1984 (Undang-undang Pajak Penghasilan 1984, Law Number 7 of 1983 as amended);
(hereinafter referred to as "Indonesian tax");
 - b) in the People's Republic of China:
 - (i) the individual income tax;
 - (ii) the income tax for enterprises with foreign investment and foreign enterprises;
 - (iii) the local income tax;(hereinafter referred to as "Chinese tax").
4. This Agreement shall also apply 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 referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

**Article 3
GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) (i) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;
 - (ii) the term "China" comprises the territory of the People's Republic of China as defined in its laws and the adjacent areas over which the People's Republic of China has sovereignty, sovereign rights or jurisdiction in accordance with international law;
 - b) the terms "a Contracting State" and "the other Contracting State" mean Indonesia or China as the context requires;
 - c) the term "tax" means Indonesian tax or Chinese tax, as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate for the tax purposes;
 - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- h) the term "nationals" means:
 - (i) any individuals possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
 - i) the term "competent authority" means:
 - (i) in Indonesia:
the Minister of Finance or his authorized representatives;
 - (ii) in China:
the State Administration of Taxation or its authorized representatives.
2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this 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 Contracting State, is liable to tax therein by reason of his domicile, residence, place of management, place of head office or any other criterion of a similar nature.
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. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the States shall 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 used as sales outlet;
 - h) a farm or plantation;
 - i) 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, but only where such site, project or activities continue in a Contracting State 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 six months within any twelve-month period;
 - c) drilling rig or working ship used for exploration or exploitation of natural resources which exists or continues for more than six months.

4. *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 advertising, or for the supply of information;*
 - f) *the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of preparatory or auxiliary character;*
 - g) *the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs 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.*
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) *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;*
 - 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. *An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 7.*
7. *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.*
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.*

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. *Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.*
2. *The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ship 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 Contracting 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 Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment. The provisions of this paragraph shall, however, not apply if the enterprise proves that the above activities are not undertaken by the permanent establishment or have no relation with the permanent establishment.*
2. *Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall 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.*
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 maybe 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 paragraphs 1 to 5, 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 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 shall be reduced by an amount equal to 50 per cent thereof.*
2. *Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise operating the aircraft is a resident.*
3. *The provisions of paragraphs 1 and 2 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. **[REPLACED by paragraph 1 of Article 17 of the MLI]** *[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 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.]*

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

ARTICLE 17 OF THE MLI - CORRESPONDING ADJUSTMENTS

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

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 2 after the expiry of the time limits provided in its tax laws.

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. The provisions of 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. Notwithstanding any other provisions of this Agreement where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 10 per cent of the amount of such profits after deducting therefrom income tax imposed thereon in that other State.
6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting 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 Contracting 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 Contracting 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 Contracting State.
2. The rate of tax imposed by one of Contracting States on interest derived from sources within that Contracting State and beneficially owned by resident of the other Contracting State shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the other Contracting State, a political subdivision or a local authority thereof, the Central Bank or any financial institution controlled by that Government, the capital of which is wholly owned by the Government of the other Contracting State, as may be agreed upon from time to time between the competent authorities of the Contracting States, shall be exempt from tax in the first-mentioned State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent under the taxation law of the States in which the income arises, including interest on deferred payment sales. 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 Contracting 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 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.*

Article 12 ROYALTIES

1. *Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.*
2. *The rate of tax imposed by one of Contracting States on royalties derived from sources within that Contracting State and beneficially owned by resident of the other Contracting State shall not exceed 10 per cent of the gross amount of the royalties.*
3. *The term "royalties" as used in this Article means payments, whether periodical or not, and in whatever form or name or nomenclature to the extent to which they are made as consideration for:*
 - a) *the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or*
 - b) *the use of, or the right to use, any industrial, commercial or scientific equipment; or*
 - c) *the supply of scientific, technical, industrial or commercial knowledge or information; or*
 - d) *the supply of any assistance that is ancillary and subsidiary or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or*
 - e) *the use of, or the right to use:*
 - (i) *motion picture films; or*
 - (ii) *films or video for use in connection with television; or*
 - (iii) *tapes for use in connection with radio broadcasting; or*
 - f) *total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.*
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 Contracting 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 local authority thereof 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 payment 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 a fixed base, may be taxed in that other State.*
3. *Gains derived by a resident 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. **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]** *[Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.]*

The following subparagraph b) of paragraph 1 of Article 9 of the MLI applies and supersedes the provisions of this Agreement:

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

Provisions of this Agreement providing that gains derived by a resident of a Contracting State from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting State provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting State (or provided that more than a certain part of the property of the entity consists of such immovable property (real property)) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

**Article 14
INDEPENDENT PERSONAL SERVICE**

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 Contracting State except in one of 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 he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period; in that case, only so much of the income as is derived from his activities performed in that other Contracting State during the aforesaid period or periods may be taxed in that other Contracting State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, engineers, lawyers, dentists, architects and accountants.

**Article 15
DEPENDENT PERSONAL SERVICE**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 Contracting 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 Contracting 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 that other Contracting State for a period or periods not exceeding in the aggregate 183 days within any twelve month period; and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

**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 any other similar organ of a company which is a resident of the other Contracting State may be taxed in that 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 Contracting 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 entertainers or athletes who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of

cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

Article 18 PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxed only in that State.
2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 19, pensions paid and other similar payments made under a public welfare scheme of the social security system or a special fund of a Contracting State, or of the Government or a local authority thereof in accordance with the law of that State shall be taxable only in that State.

Article 19 GOVERNMENT SERVICES

1. a) Remuneration, other than pension, paid by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to that Government or that 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 other Contracting State and the individual is a resident of that other State who:
(i) is a national of that other State; or
(ii) did not become a resident of that other State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government or that 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 Contracting State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a local authority thereof.

Article 20 TEACHERS AND RESEARCHERS

An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official program of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity.

Article 21 STUDENTS AND TRAINEES

1. 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.
2. In respect of grants, scholarships and remuneration not covered by paragraph 1, a student or trainee described in paragraph 1 shall, in addition, be entitled during his or her education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he or she is visiting.

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 Contracting State. However, items of income arising in the other Contracting State may also be taxed in that other Contracting 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 Contracting State independent personal service from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23 METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In Indonesia, double taxation shall be eliminated as follows:
Where a resident of Indonesia derives income from China, the amount of tax on that income payable in China in accordance with the provisions of this Agreement, may be credited against the tax levied in Indonesia imposed on that resident. The amount of credit, however, shall not exceed the amount of the tax in Indonesia on that income computed in accordance with its taxation laws and regulations.

2. *In China, double taxation shall be eliminated as follows:*

- a) *Where a resident of China derives income from Indonesia the amount of tax on that income payable in Indonesia in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.*
- b) *Where the income derived from Indonesia is a dividend paid by a company which is a resident of Indonesia to a company which is a resident of China and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Indonesia by the company paying the dividend in respect of its income.*

Article 24
NON-DISCRIMINATION

1. *Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provision of this paragraph 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. *In this Article the term "taxation" means taxes which are the subject of this Agreement.*

Article 25
MUTUAL AGREEMENT PROCEDURE

1. *Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. 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 endeavor, 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 this Agreement.]*

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

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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

3. *The competent authorities of the Contracting States shall endeavor 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 this 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 paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.*

Article 26
EXCHANGE OF INFORMATION

1. *The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of 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 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 (ordre public).*

Article 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the 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 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 the Agreement.

Article 28

ENTRY INTO FORCE

1. *This Agreement shall enter into force on the later of the date on which the respective Governments may notify each other in writing that the formalities constitutionally required in their respective States have been complied with.*
2. *This Agreement shall have effect:*
 - (i) *in respect of tax withheld at source to income derived on or after 1st of January in the year next following that in which the Agreement enters into force; and*
 - (ii) *in respect of other taxes on income, for taxable years beginning on or after 1st of January in the year next following that in which the Agreement enters into force.*

Article 29

TERMINATION

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channels. In such event this Agreement shall cease to have effect as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

In such case, the Agreement shall cease to have effect:

- (a) *in respect of income tax withheld at source to income derived on or after 1st of January in the year next following that in which the notice of termination is given;*
- (b) *in respect of other taxes on income, for taxable years beginning on or after 1st of January in the year next following that in which the notice of termination is given.*

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Jakarta on the 7th day of November, 2001 in duplicate in the Indonesian, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA

PROTOCOL

The Government of the Republic of Indonesia and the Government of the People's Republic of China,

Having regard to the Agreement between the Government of the Republic of Indonesia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Jakarta on the 7th day of November, 2001 (hereinafter referred to as "the Agreement"),

Have agreed that the following provisions shall form an integral part of the Agreement:

Article 1

With respect to Article 8 (Shipping and Air Transport), notwithstanding the provision of paragraph 2 of Article 8, a resident of a Contracting State engaged in the operation of aircraft in international traffic at the other Contracting State shall be exempted from Value Added Tax (VAT) or similar taxes in the other Contracting State.

Article 2

Both Contracting States shall notify each other through diplomatic channels that they have completed the internal legal procedures necessary for the entry into force of this Protocol. This Protocol shall enter into force on the thirtieth day upon the receipt of the latter notification. This Protocol shall have effect as respects income derived during the taxable years beginning on or after the first day of January next following that in which this Protocol enters into force.

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

Done at Beijing on the 26th day of March, 2015 in duplicate in the Indonesian, Chinese and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

*FOR THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA*

*FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA*

**MEMORANDUM OF UNDERSTANDING
ON THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF INDONESIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME**

The competent authorities of the Government of the Republic of Indonesia and the Government of the People's Republic of China held negotiations with respect to paragraph 3 of Article 11 and agreed upon the following with a view to appropriately implementing the Agreement between the Government of the Republic of Indonesia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"):

1. *For the purpose of paragraph 3 of Article 11, it is understood that "any financial institution" refers to the following:*
 - a) *in the case of Indonesia:*
 - (i) *the Indonesia Investment Agency;*
 - (ii) *the Indonesia Eximbank;*
 - (iii) *the Indonesia Social Security Agency for Health;*
 - (iv) *the Indonesia Social Security Agency for Man Power.*
 - b) *in the case of China:*
 - (i) *the China Development Bank Corporation;*
 - (ii) *the Agricultural Development Bank of China;*
 - (iii) *the Export-Import Bank of China;*
 - (iv) *the National Council for Social Security Fund;*
 - (v) *the China Investment Corporation.*
2. *As an interpretation of the Agreement, the above understanding shall be applicable from the date of entry into force of the Agreement. However, any case that has been settled prior to the date of the signature of this understanding shall remain unaffected. It is understood that a settled case refers to a case where tax has been paid.*

DONE in duplicate at Beijing this 26th day of March, 2015 in the Indonesian, Chinese and English languages, each text being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE COMPETENT AUTHORITY
OF
THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA

ttd.

SOEGENG RAHARDJO

AMBASSADOR EXTRAORDINARY
AND PLENIPOTENTIARY OF THE
REPUBLIC OF INDONESIA TO THE
PEOPLE'S REPUBLIC OF CHINA

FOR THE COMPETENT AUTHORITY
OF
THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA

ttd.

WANG JUN

COMMISSIONER OF THE STATE
ADMINISTRATION OF TAXATION

Direktur Jenderal Pajak,



Ditandatangani secara elektronik
Suryo Utomo