

## LAMPIRAN

Surat Edaran Direktur Jenderal Pajak

Nomor : [@NomorND]

Tanggal : [@TanggalND]

## NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-ROMANIA

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

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

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

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

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

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

Referensi

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

#### Keberlakuan Efektif Konvensi

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

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 28 Februari 2022 untuk Romania.

Saat berlaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 Juni 2022 bagi Romania.

Berdasarkan Pasal 35 Konvensi, ketentuan-ketentuan dalam Konvensi yang diadopsi oleh Pemerintah Republik Indonesia dan Romania yang dinyatakan dalam kotak-kotak, berlaku efektif untuk P3B Indonesia-Romania:

- a. sehubungan dengan pajak-pajak yang dipotong atau dipungut di negara sumber atas pembayaran kepada atau dikreditkan oleh subjek pajak luar negeri, apabila kejadian yang menimbulkan pajak terjadi pada atau setelah tanggal 1 Januari 2024; dan
- b. sehubungan dengan pajak-pajak lainnya yang dikenakan pada tahun pajak yang dimulai pada atau setelah tanggal 1 Januari 2024.

*The Government of the Republic of Indonesia and the Government of Romania*

**[REPLACED by paragraph 1 of Article 6 of the MLI]** *[DESIRING to promote and strengthen the economic relations between the two countries on the basis of national sovereignty and respect of independence, full equal rights, mutual advantage and non-interference in the domestic affairs, and to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.]*

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

**ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT**

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

*Have agreed as follows:*

**Article 1**

**PERSONAL SCOPE**

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

**Article 2**

**TAXES COVERED**

1. *This Agreement shall apply to taxes on income imposed on by each of the Contracting State, by its administrative-territorial units or by 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 in particular:*
  - (a) *in the case of Indonesia:*  
*the income tax, imposed under the Undang-undang Pajak Penghasilan 1984 (Law No. 7 of 1983).*  
*(hereinafter referred to as "Indonesian tax").*
  - (b) *in the case of Romania:*
    - *the tax on income derived by individuals;*

- *the tax on salaries, wages and other similar remuneration;*
  - *the tax on the profits of bodies and legal persons;*
  - *the tax on income realised from agricultural activities;*
- (hereinafter referred to as "Romanian tax").*
4. *The Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in addition to, or in place of, those 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.*

### **Article 3**

#### **GENERAL DEFINITIONS**

1. *For the purposes of this Agreement, unless the context otherwise requires:*
- (a) *the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Romania or Indonesia;*
  - (b) (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 sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;*
  - (ii) *the term "Romania" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania exercises sovereign rights, in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea-bed and subsoil of these waters;*
  - (c) *the term "person" includes an individual, a company and any other body of persons;*
  - (d) *the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;*
  - (e) *the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, any enterprise carried on by a resident of a Contracting State and any enterprise carried on by a resident of the other Contracting State;*
  - (f) *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;*
  - (g) *the term "competent authority" means:*
    - (i) *in Indonesia:*

*the Minister of Finance or his authorized representative;*

(ii) *in Romania:*

*the Minister of Finance or his authorized representative;*

(h) *the term "national" means:*

(i) *any individual possessing the citizenship of a Contracting State;*

(ii) *any legal person or other entities deriving its 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**

##### **FISCAL DOMICILE**

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.*
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 both Contracting 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 replace 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 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 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 four months within any twelve month period, counted from the first day the services are furnished.*
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, display or occasional delivery of goods or merchandise belonging to the enterprise;*
  - (b) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery;*

- (c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;*
  - (d) *the maintenance of a fixed place of business solely for the purpose of purchase goods or merchandise, or of collecting information, for the enterprise;*
  - (e) *the sale of goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition after the closing of the said fair or exhibition;*
  - (f) *the maintenance of a fixed place of business solely for the purpose of advertising, for supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.*
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 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; or*
  - (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 enterprises.*
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 MOVABLE PROPERTY**

1. *Income derived from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.*
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 provision of general law respecting landed property apply usufruct of immovable property and rights to variable or fixed payments as consideration 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; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment. The provisions of sub-paragraphs (b) and (c) above shall not apply if the enterprise proves that such sales or activities are attributable to some person or entity other than 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. 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. For the purpose 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.*
- 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. 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, and the tax so charged shall not exceed 2 per cent from the gross amount of the freight.*

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.*
4. *Notwithstanding the provisions of paragraphs 1 and 2 of this Article or of Article 7, the profits derived from the operation of ships or aircraft used solely between places in a Contracting State may be taxed in that State.*

### **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 the Agreement and the competent authorities of the Contracting States shall if necessary consult each other.*

**Article 10**  
**DIVIDENDS**

1. *Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:*
  - (a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** *[12.5 per cent of the gross amount of the dividends if the recipient is a company which owns directly at least 25 per cent of the capital of the company paying the dividends;]*

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

**ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS**

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

- (b) *in all other cases, 15 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, "jouissance" shares, or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, as well as income from other corporate rights assimilated to income from shares by the taxation law 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, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment or a fixed base 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 15, 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 dividend paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.*
6. *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 12.5 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.*

#### **Article 11**

#### **INTEREST**

1. *Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.*
3. *Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that State if:*
  - (a) *the payer of the interest is that Contracting State, an administrative-territorial unit or a local authority thereof; or*
  - (b) *the interest is paid to the other Contracting State, an administrative-territorial unit or a local authority thereof or any financial institution wholly owned by that other Contracting State, or administrative-territorial unit or local authority thereof; or*
  - (c) *the interest is paid: in the case of Romania to the National Bank of Romania and to the Romanian Bank for Foreign Trade, and in the case of Indonesia to the Bank Indonesia (the Central Bank of Indonesia); or*
  - (d) *the interest is paid to any other financial institutions wholly owned by the Governments of the Contracting States in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.*
4. *The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by a mortgage, and whether or not carrying a right to participate*

*in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises, including interest on deferred payments sales. Penalty charges for late payments of loans shall not be regarded as interest for the purpose of this Article.*

5. *The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base, or with other business activities connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, 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, an administrative-territorial unit, 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**

### **COMMISSION**

1. *Commission 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 commission may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the*

*commission the tax so charged shall not exceed 10 per cent of the gross amount of the commission.*

3. *The term "commission" as used in this Article means a payment made to a broker, a general commission agent or to any other person assimilated to a broker or agent by the taxation law of the Contracting State in which such payment arises.*
4. *The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the commissions, being a resident of a Contracting State, has in the other Contracting State in which the commission arises, a permanent establishment with which the activity giving rise to the commission is effectively connected. In such case the provisions of Article 7 shall apply.*
5. *Commission shall be deemed to arise in a Contracting State when the payer is that State itself, an administrative-territorial unit, a local authority or a resident of that State. Where, however, the person paying the commission, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the activities for which the payment is made was incurred, and such commission is borne by such permanent establishment, then such commission shall be deemed to arise in the Contracting State in which the permanent establishment is situated.*
6. *Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the commission, having regard to the activities 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 13**

#### **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 recipient is the beneficial owner of the royalties the tax so charged shall not exceed :*
  - (a) *12.5 per cent of the gross amount of the royalties, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use*

- of, or the right to use, industrial, commercial or scientific equipment, cinematograph films or tapes for television or broadcasting;*
- (b) 15 per cent of the gross amount of the royalties, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work.*
- 3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.*
  - 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base, or with other business activities connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, 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, an administrative-territorial unit, 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, owing to 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 that 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 14****CAPITAL GAINS**

1. *Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of any property other than that referred to in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.*
4. *Gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such means of transport shall be taxable only in the Contracting State of which the alienator is a resident.*

**Article 15****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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 120 days in any 12 month period, counted from the first day of arrival in one of the Contracting States. If he has such a fixed base or remains in that other State for the aforesaid period or periods, the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.*
2. *The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.*

**Article 16****DEPENDENT PERSONAL SERVICES**

1. *Subject to the provisions of Articles 17, 19, 20, 21 and 22, 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 that other State for a period or periods not exceeding in the aggregate 183 days in any period of 12 months counted from the first day of arrival in one of the Contracting States; 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise which is a resident of a Contracting State shall be taxable only in that State.*

#### **Article 17**

##### **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 company's organ in accordance with the domestic law of that State, which is a resident of the other Contracting State, may be taxed in that other State.*

#### **Article 18**

##### **ARTISTES AND SPORTSMEN**

1. *Notwithstanding the provisions of Articles 15 and 16, 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, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.*
3. *Income derived from activities performed within the framework of cultural exchanges established under cultural agreements concluded between the two Contracting States, shall be exempt from tax.*

**Article 19****PENSIONS**

1. *Subject to the provisions of paragraph 2 of Article 20, any pensions or other similar remuneration paid to a resident of one of the Contracting States from a source in the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such a resident from such a source may be taxed in that other State.*
2. *The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.*

**Article 20****GOVERNMENT SERVICE**

1. (a) *Remuneration, other than a pension, paid by a Contracting State, an administrative-territorial unit or a local authority thereof to an individual in respect of services rendered to that State, unit 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 other State and the individual is a resident of that State who:*
  - (i) *is a citizen 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, an administrative-territorial unit or a local authority thereof to an individual in respect of services rendered to that State, unit 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 citizen of, that other State.*
3. *The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, an administrative-territorial unit or a local authority thereof.*

**Article 21****TEACHERS AND RESEARCHERS**

*Professors, or other members of a teaching or researching staff, who make a temporary visit to a Contracting State solely for the purpose of teaching or conducting research at a university, college, school or other educational institution recognised by the Government of a Contracting State and who is, or immediately before such visit was, 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.*

#### **Article 22**

##### **STUDENTS**

*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 23**

##### **OTHER INCOME**

*Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable in the State in which it arises.*

#### **Article 24**

##### **ELIMINATION OF DOUBLE TAXATION**

- 1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.*
- 2. In the case of Indonesia, where a resident of Indonesia derives income from Romania and such income may be taxed in accordance with the provisions of this Agreement, the amount of Romania tax payable in respect of the 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.*
- 3. In the case of Romania, taxes paid by Romanian residents in respect of income taxable in Indonesia, in accordance with the provisions of this Agreement, shall be deducted from the Romanian taxes due according to the Romanian fiscal laws. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given which is attributable to the income which may be taxed in that other State.*

#### **Article 25**

##### **NON-DISCRIMINATION**

- 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.*

2. *The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. 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. *A Contracting State shall not adjust any assessment of a resident of the other Contracting State by including items of income already taxed in the other Contracting State after expiry of the time limits provided for in its domestic law, and in any case, after 5 years from the end of the relevant taxable year during which the income was derived.*
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 26**

##### **MUTUAL AGREEMENT PROCEDURE**

1. *Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. **[REPLACED by second sentence of paragraph 1 of Article 16 of the MLI]** [The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.]*

*The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 26 of this Agreement:*

**ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE**

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

2. **[MODIFIED by second sentence of paragraph 2 of Article 16 of the MLI]** *[The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.]*

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

**ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE**

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

3. *The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.*
4. *The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place between the representatives of the competent authorities of the Contracting States.*

**Article 27**

**EXCHANGE OF INFORMATION**

1. *The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, involved in the assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but 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 28**

##### **MISCELLANEOUS RULES**

*The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:*

- (a) *by the laws of a Contracting State in the determination of the tax imposed by that State;*  
or
- (b) *by any other agreement between the Contracting States.*

#### **Article 29**

##### **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 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 30****ENTRY INTO FORCE**

1. *This Agreement shall be ratified in accordance with the constitutional provisions in force in each of the Contracting States and shall enter into force upon the exchange of instruments of ratification.*
2. *The provisions of this Agreement shall have effect:*
  - (a) *in Indonesia:*  
*in respect of income derived on or after 1st of January of the calendar year next following that of the entry into force of the Agreement;*
  - (b) *in Romania:*  
*in respect of income derived on or after 1st of January of the calendar year next following that of the entry into force of the Agreement.*

**Article 31****TERMINATION**

*This Agreement shall remain in force indefinitely. Either Contracting State may denounce the Agreement through diplomatic channels up to the 30th of June of each calendar year, starting from the 5th year following that in which the Agreement entered into force.*

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

- (a) *in Indonesia:*  
*in respect of income derived on or after 1st of January of the calendar year next following that in which the notice of termination is given;*
- (b) *in Romania:*  
*in respect of income derived on or after 1st of January of the calendar year next following that in which the notice of termination is given.*

*In witness whereof the undersigned, being duly authorised by their respective Governments have signed this Agreement.*

*Done at Jakarta on July 3rd 1996 in three original copies, each in the Romanian, Indonesian and English languages, the three texts being equally authentic. In the case there is any divergence of interpretation of the provisions of this Agreement, the English text shall prevail.*

*For the Government of  
the Republic Indonesia*

*For the Government of  
Romania*

*signed*

*signed*

SOEMADI D.M. BRODODININGRAT

DUMITRU TANCU

*Director General for  
Foreign Economic Relations*

*Ambassador*

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Direktur Jenderal Pajak



ditandatangani secara elektronik  
Suryo Utomo

