

NASKAH SINTESIS KONVENSI DAN P3B INDONESIA-KERAJAAN THAILAND

Naskah ini merupakan naskah sintesis untuk penerapan P3B Indonesia-Thailand yang dimodifikasi dengan Konvensi yang ditandatangani Pemerintah Republik Indonesia pada 7 Juni 2017 dan Pemerintah Kerajaan Thailand pada 9 Februari 2022.

Naskah sintesis ini disusun berdasarkan posisi Konvensi Indonesia yang disampaikan ke Penyimpan pada 28 April 2020 dan posisi Konvensi Kerajaan Thailand yang disampaikan ke Penyimpan pada 31 Maret 2022. Posisi Konvensi dapat berubah sebagaimana yang diatur dalam Konvensi. Perubahan atas posisi Konvensi dapat mempengaruhi dampak Konvensi atas P3B Indonesia-Thailand.

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

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

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

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

Referensi

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

Keberlakuan Efektif Konvensi

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

Tanggal penyampaian instrumen pengesahan: 28 April 2020 untuk Indonesia dan 31 Maret 2022 untuk Thailand.

Saat berlaku Konvensi: 1 Agustus 2020 bagi Indonesia dan 1 Juli 2022 bagi Thailand.

The Government of the Republic of Indonesia and the Government of the Kingdom of Thailand;
[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.

**Article 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of one of the Contracting States, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
 - a) in Thailand:
 - (i) the Income Tax;
 - (ii) the Petroleum income Tax.
 - b) In Indonesia:
the income tax imposed under the Undang-undang Pajak Penghasilan 1984 (Law Number 7 of 1953 as amended).
(hereinafter referred to as "Indonesian 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 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;
 - b) the term "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which, under Thai legislation, and international law, falls under the jurisdiction of the Kingdom of Thailand;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Indonesia or Thailand, as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons as well as any entity treated as a taxable unit under the taxation laws in force in either Contracting State;
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate under the taxation laws in force in either Contracting State;
 - f) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
 - g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - h) the term "tax" means Indonesian tax or Thai tax as the context requires;
 - i) 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;
 - j) the term "competent authority" means:
 - (i) in the case of Indonesia, the Minister of Finance or his duly authorized representative;
 - (ii) in the case of Thailand, the Minister of Finance or his duly authorized representative.

2. As regards the application of the provisions 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 State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the States shall settle the question by mutual 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) premises used as sales outlet;
 - g) a warehouse, in relation to a person providing storage facilities for others;
 - h) a farm or plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
 - i) a mine, an oil or gas well, a quarry or any other place of extraction or exploration of natural resources, drilling rig or ship used for exploration or exploitation of natural resources.
3. The term "permanent establishment" likewise encompasses:
 - a) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** [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 one of the Contracting States for a period of more than six months];

The following paragraph 1 of Article 14 of the MLI applies and supersedes subparagraph a) paragraph 3 of Article 5 of this Agreement:

ARTICLE 14 OF THE MLI - SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the six-month period referred to in subparagraph a) of paragraph 3 of Article 5 of the Agreement has been exceeded:

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

- b) the furnishing of services, including consultancy services, by an enterprise through an employee 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.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of the 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 supply of information;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraph (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

The following paragraph 2 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement:

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

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

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

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement (as modified by paragraph 2 of Article 13 of the MLI):

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

Article 5 of this Agreement (as modified by paragraph 2 of Article 13 of the MLI) shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

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

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

5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 7 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:
- a) **[REPLACED by paragraph 1 of Article 12 of the MLI]** [he has and habitually exercises in the first-mentioned State an authority to negotiate and conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise]; or

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

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

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

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

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

- b) he habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or

- c) *he habitually secures orders in the first-mentioned State wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.*
6. *Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of 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. **[REPLACED by paragraph 2 of Article 12 of the MLI]** *[An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise or on behalf of that enterprise and other enterprise, which are controlled by it or have a controlling interest in it, he will not be considered an agent of an independent status within the meaning of this paragraph.]*

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

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

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

8. *The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.*

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

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

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

**Article 6
INCOME FROM IMMOVABLE PROPERTY**

1. *Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.*
2. *The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.*
3. *The provisions of paragraph 1 shall 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 income or 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 income or 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 the permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through 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 income or 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 determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged, (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of a certain percentage of the gross receipts of the enterprise or of the permanent establishment or 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 a method as may be customary; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the income or 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 income or 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. Income or profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.
2. Income or profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to 50 percent thereof.
3. The provisions of paragraphs 1 and 2 shall also apply to income or profits from the participation in a pool, a joint business or an international operating agency.

Article 9 ASSOCIATED ENTERPRISES

[MODIFIED by paragraph 1 of Article 17 of the MLI] [Where:

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or 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 provision of this Agreement:

ARTICLE 17 OF THE MLI - CORRESPONDING ADJUSTMENTS

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

- (i) 15 percent of the gross amount of the dividends if the company paying the dividends engages in an industrial undertaking;
- (ii) 20 percent of the gross amount of the dividends in other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- 3. *The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights (not being debt-claims), participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.*
- 4. *The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.*
- 5. *Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.*
- 6. *Notwithstanding the provisions of paragraph 5, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits of this permanent establishment may, after having borne the corporation tax, be liable to a tax according to the laws of that 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 State.*
- 2. *However,*
 - a) *In the case of Indonesia, such interest arising in Indonesia may be taxed in Indonesia according to the laws of Indonesia, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 percent of the gross amount of the interest;*
 - b) *In the case of Thailand, such interest arising in Thailand may be taxed in Thailand according to the laws of Thailand, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed:*
 - (i) *10 percent of the gross amount of the interest if it is received by any financial institution (including an insurance company);*
 - (ii) *in all other cases, 25 percent of the gross amount of the interest.*
- 3. *Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.*
 - a) *in the case of Indonesia, means the Government of Indonesia and shall include:*
 - (i) *the Bank Indonesia;*
 - (ii) *the local authorities; and*
 - (iii) *such institution, the capital of which is wholly owned by the Government of Indonesia or the local authorities, as may be agreed from time to time between the Governments of the two Contracting States;*
 - b) *in the case of Thailand, means the Government of Thailand and shall include:*
 - (i) *the Bank of Thailand;*
 - (ii) *the local authorities; and*
 - (iii) *such institutions, the capital of which is wholly owned by the Government of Thailand or the local authorities, as may be agreed from time to time between the Governments of the two Contracting States*
- 4. *For the purposes of paragraph 3, the term "Government",*
- 5. *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 payment sales.*
- 6. *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 out 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.*
- 7. *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.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or the right to receive payment as consideration for or in respect of the exploitation of or the right to explore for or exploit mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources, or the supply of any assistance that is ancillary and subsidiary, or enjoyment of, any such property or the right as is mentioned aforesaid, or 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 paragraph 2 shall likewise apply to the gains from the alienation of any right or property giving rise to such royalties if such right or property is alienated by a resident of a Contracting State for exclusive use in the other Contracting State and the payment of such right or property is borne by an enterprise of that other State or a permanent establishment or fixed base situated therein.
5. 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Royalties 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 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.
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 royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains from the alienation of any property or assets, other than that referred to in the paragraphs 1, 2 and 3 of this Article and paragraph 4 Article 12, shall be taxable only in the Contracting State of which the alienator is resident. Nothing in this paragraph shall prevent either Contracting State from taxing the gains or income from the sale or transfer of shares or other securities.

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 State unless such activities were performed in the other Contracting State. Income in respect of professional services or other independent activities performed within that other State may be taxed in that State.*
2. *Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character performed in the other Contracting State shall be taxable only in the first-mentioned State if:*
 - a) *his stay in the other Contracting State does not exceed in the aggregate 183 days in the fiscal year concerned, and*
 - b) *he does not maintain a fixed base in the other State for a period or periods exceeding in the aggregate 183 days in such fiscal year, and*
 - c) *the income is not borne by an enterprise or by a permanent establishment or fixed base situated in that other State.*
3. *The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.*

Article 15
DEPENDENT PERSONAL SERVICE

1. *Subject to the provisions of Articles 16, 17, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.*
2. *Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:*
 - a) *the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and*
 - b) *the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and*
 - c) *the remuneration is not borne by or paid on behalf of a permanent establishment or a fixed base which the employer has in the other State.*
3. *Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.*

Article 16
DIRECTORS' FEES

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

Article 17
ARTISTES AND ATHLETES

1. *Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as 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 referred to in paragraph 1 accrues not to the entertainer or an 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. *The provisions of paragraphs 1 and 2 shall not apply:*
 - a) *to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, or by those of any political subdivision, local authority or statutory body thereof;*
 - b) *to income derived in a Contracting State by a non-profit organization of the other Contracting State in respect of such activities, provided that such organization is substantially supported by public funds of that other State, or by those of any political subdivision, local authority or statutory body thereof.*

Article 18
PENSIONS AND ANNUITIES

1. *Subject to the provisions of paragraph 2 of Article 19, any pension 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 19 GOVERNMENT SERVICES

1.
 - a) *Remuneration, other than a pension, paid by a Contracting State, or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable 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 national of that State; or*
 - (ii) *did not become a resident of that State solely for the purpose of rendering the services*
2.
 - a) *Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State*
 - b) *However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.*
3. *The provisions of Article 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.*

Article 20 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 21 PROFESSOR, TEACHERS, AND RESEARCHERS

1. *An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution which is recognized by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.*
2. *This Article shall only apply to income from research if such research is undertaken by the individual for the public interest and not primarily for the benefit of some other private person or persons.*

Article 22 INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in the State where the income arises.

Article 23 METHOD FOR ELIMINATION OF DOUBLE TAXATION

1. *Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow as deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in that other State.*
2. *For the purposes of paragraph 1 of this Article, the term "tax paid in that other State" shall be deemed to include the amount of tax which would have been paid in that other State if it had not been exempted or reduced in accordance with the special incentive laws designed to promote economic development in that other State, effective on the date of signature of this Agreement or which may be introduced hereafter in modification of, or in addition to, the existing laws.*

Article 24 NON-DISCRIMINATION

1. *Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.*
2. *The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.*

3. *Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.*
4. *The provisions of this Article 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.*
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 laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. **[REPLACED by second sentence of paragraph 1 of Article 16 of the MLI]** *[The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.]**

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

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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

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

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 and of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, including judicial determination, or collection of the taxes which are the subject of this Agreement.*
2. *In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:*
 - a) *to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;*
 - b) *to supply particulars which are not obtainable under the laws or in the normal course of the administration of that State 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.*
3. *The exchange of information may be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.*

Article 27
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 special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.*

Article 28
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 29
ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating that the formalities constitutionally required in their respective States have been complied with.
2. This Agreement shall have effect:
 - a) In Indonesia:
 - (i) in respect of tax withheld at the source, on or after 1 January in the year next following that in which the Agreement enters into force; and
 - (ii) in respect of other Indonesian tax, for taxable years beginning on or after 1 January in the year next following that in which the Agreement enters into force;
 - b) In Thailand:
 - (i) in respect of taxes withheld at the source, on amounts paid or remitted on or after the first day of January next following that in which the Agreement enters into force;
 - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the Agreement enters into force.
3. The Agreement between the Republic of Indonesia and the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Bangkok on March 25, 1981, shall terminate and cease to have effect in respect of income to which this Agreement applies under the provisions of paragraph 2.

Article 30
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June of any calendar year following after the period of 5 (five) years from the year in which the Agreement enters into force.

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

- a) in Indonesia:
 - (i) in respect of tax withheld at source on or after 1 January in the year next following that in which the notice of termination is given.
 - (ii) in respect of other Indonesian tax, for taxable years beginning on or after 1 January in the year next following that in which the notice of termination is given;
- b) in Thailand:
 - (i) in respect of taxes withheld at the source, on amounts paid or remitted on or after the first day of January next following that in which the Agreement enters into force;
 - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the Agreement enters into force.

In witness whereof the undersigned, duly authorized thereto, have signed this Agreement.

Done in duplicate at Bangkok, this 15th day of June 2001 in the English language, both texts being equally authentic.

For the Government of the
Republic of Indonesia

(Dr. Alwi Shihab)
Minister of Foreign Affairs

For the Government of the
Kingdom of Thailand

(Dr. Surakiart Sathirathai)
Minister of Foreign Affairs

Direktur Jenderal Pajak,



Ditandatangani secara elektronik
Suryo Utomo