

AGREEMENT
BETWEEN THE REPUBLIC OF INDONESIA
AND
THE REPUBLIC OF KOREA

FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Indonesia

And

The Government of the Republic of Korea

[REPLACED by paragraph 1 of Article 6 of the MLI] [desiring to [promote and strengthen the economic relation by] concluding 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 behalf of each Contracting State, irrespective of the manner in which they are levied.
- 2 There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
- 3 The taxes which are the subject of this Agreement are:
 - (a) in Indonesia :
the income tax (Pajak Penghasilan), and to the extent provided in such income tax, the company tax (Pajak Perseroan), and
the tax on interest, dividends, and royalties (Pajak atas Bunga, Dividen dan Royalty);
(hereinafter referred to as "Indonesian Tax");
 - (b) in Korea:
 - (i) the income tax;
 - (ii) the cooperation tax;
 - (iii) the inhabitant tax where charged by reference to the income tax or the corporation tax;
(hereinafter referred to as "Korean Tax").
- 4 This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of this 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 In this Agreement, unless the context otherwise requires:
 - (a) (i) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law;
 - (ii) the term "Korea" comprises the territory of the Republic of Korea as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Korea has sovereignty, sovereign rights or other rights in accordance with international law;
- (b) the terms "a Contracting State" and "the other Contracting State" mean Indonesia or Korea as the context requires;

- (c) the term "tax" means Indonesian tax or Korean tax, as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
 - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term "competent authority" means :
 - (i) in Indonesia: the Minister of Finance or his authorized representative;
 - (ii) in Korea: the Minister of Finance or his authorized representative;
 - (i) the term "nationals" means :
 - (a) all individuals possessing the nationality of a Contracting State;
 - (b) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.
- 2 As regards the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4

RESIDENT

- 1 For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is treated as a resident for tax purposes in that Contracting State. 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 two Contracting States shall settle the question by mutual agreement.
- 3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PEKMANENT 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; and
 - f) (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 or construction project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than six months;
 - (b) An assembly or installation project which exists for more than six months;
 - (c) The furnishing of services, including consultancy services, by an enterprise through employees or other persons engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than three months within any period of twelve months.
- 4 Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - (a) The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- 5 Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
 - (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; 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 enterprise.
- 6 An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other Contracting 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 Contracting State

through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

- 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

- 1 Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
- 2 The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; 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 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 are attributable to that permanent establishment, or to the sale of goods or merchandise of the same kind as those sold, or to other business transactions of the same 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 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 incurred 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 toward 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 Where profits include items of income which are dealt with separately in other Articles, then the provisions of those Articles shall not be affected by the provisions of this Article.
- 6 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.

Article 8

SHIPPING AND AIR TRANSPORT

- 1 Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
- 2 The provision of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operation agency.
- 3 In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Indonesia, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea which may hereafter be imposed in Indonesia.

Article 9

ASSOCIATED ENTERPRISES

1 Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10

DIVIDENDS

1 Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2 However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

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

3 The term "dividends" as used in this Article means income from shares 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 taxation laws of the Contracting 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 Contracting 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 Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting 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 10 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.
- 7 The provisions of paragraph 6 of this Article shall not affect the provisions contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to the oil and gas sector or other mining sector concluded on or before 31 December 1983, by the Government of Indonesia, its instrumentality, its relevant State oil and gas company or any other entity thereof with a person who is resident of Korea.

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 10 per cent of the gross amount of the interest.
- 3 Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.
- 4 For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by the Government" mean:
 - (a) in the case of Korea:
 - (i) the Bank of Korea;

(ii) the Korea Export-Import Bank;

(iii) the Korea Exchange Bank;

(iv) such other financial institution the capital of which is wholly owned by the Government of the Republic of Korea as may be agreed upon from time to time between the Governments of the two Contracting States;

(b) in the case of Indonesia:

(i) the Bank of Indonesia; and

(ii) such other financial institution the capital of which is wholly owned by the Government of the Republic of Indonesia as may be agreed upon from time to time between the Government of the two Contracting States.

- 5 The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the State in which the income arises.
- 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 on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 7 Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof, or a resident of that Contracting 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 Contracting 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 per cent of the gross amount of the royalties.
- 3 The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph film, 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. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 5 Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- 6 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the 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 Capital gains from the alienation of immovable property as defined in paragraph 2 of Article 6 may be taxed in the 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 ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

- 4 Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

- 1 Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State 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 Contracting State for a period or periods exceeding in the aggregate 90 days in the calendar year concerned. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting 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 15

DEPENDENT PERSONAL SERVICES

- 1 Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 a permanent establishment or a fixed base which the employer has in the other State.
- 3 Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17

ARTISTES AND ATHLETES

- 1 Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such, may be taxed in the other Contracting State in which these activities of the entertainer or athlete are exercised.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual, being a resident of that Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

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

Such income shall, however, be exempt from tax in that Contracting State if such income is derived from the activities exercised by an individual, being a resident of the other Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Government of the two Contracting States and accrues to another person who is a resident of that other Contracting State.

Article 18

PENSIONS

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

However, such pensions may also be taxed in the other Contracting State if the payment is made by a resident of that State or a permanent establishment situated therein.

Article 19

GOVERNMENTAL FUNCTIONS

- 1 (a) Remuneration, other than a pension, paid by a Contracting State, or a political subdivision, or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or political subdivision or local authority thereof, shall be taxable only in that Contracting State.

- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:
 - (i) is a national of that other Contracting State; or
 - (ii) did not become a resident of that other Contracting State solely for the purpose of performing the services.
- 2 (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority thereof shall be taxable only in that Contracting State.
 - (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
- 3 The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.
- 4 The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea, the Korea Exchange Bank, the Korea Trade Promotion Corporation and other government owned institutions performing functions of a governmental nature as may be agreed upon from time to time by the Governments of the two Contracting States and, in the case of Indonesia, by the Bank of Indonesia, the Development Bank of Indonesia (Bank Pembangunan Indonesia), the National Savings Bank (Bank Tabungan Negara) and other government owned institutions performing functions of a governmental nature as may be agreed upon from time to time by the Governments of the two Contracting States.

Article 20

TEACHERS

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years solely for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

Article 21

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 Contracting 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 22

INCOME NOT EXPRESSLY MENTIONED

- 1 Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
- 2 The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

RELIEF FROM DOUBLE

TAXATION

- 1 In the case of a resident of Korea, double taxation shall be avoided as follows: Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Indonesian tax payable (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Indonesia and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Indonesia shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Indonesia bears to the entire income subject to Korean tax.
- 2 For the purpose of paragraph 1, the term "Indonesian tax payable" shall be deemed to include the amount of Indonesian tax which would have been payable in accordance with Indonesian tax laws but for the exemption or reduction on dividends of Indonesian tax in accordance with Indonesian laws relating to incentives for the promotion of economic development in Indonesia which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Indonesia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character, provided that the amount of the tax referred to in this paragraph shall, however, be an amount of 10 per cent of the gross amount of such dividends.
- 3 In the case of Indonesia, double taxation shall be avoided as follows:
 - (a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in Korea in accordance with the provisions of this Agreement;
 - (b) Where a resident of Indonesia derives income from Korea and that income may be taxed in Korea in accordance with the provisions of this Agreement, the amount of Korean 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 the income.

- 4 For the purpose of paragraph 3, the term "Korean tax payable" shall be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws but for the exemption or reduction on dividends of Korean tax in accordance with the Korean laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character, provided that the amount of the tax referred to in this paragraph shall, however, be an amount of 10 per cent of the gross amount of such dividends.

Article 24

NON-DISCRIMINATION

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

Article 25

MUTUAL AGREEMENT PROCEDURE

- 1 Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement
- 2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

- 3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
- 4 The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
- 5 The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Agreement and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, tax reliefs or exemptions on income referred to in Articles 10, 11 and 12, received from that other Contracting State.

Article 26

EXCHANGE OF INFORMATION

- 1 The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or fiscal evasion or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court, concerned with the assessment and collection, the enforcement or prosecution in respect of those taxes or the determination of appeals in relation thereto and the persons with respect to whom the information relates.
- 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; or
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 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 one of the Contracting States in the determination of the tax imposed by that Contracting State; or
- (b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the two 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 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 be ratified and the instruments of ratification shall be exchanged at Seoul as soon as possible. The Agreement shall enter into force upon the exchange of instruments of ratification.
- 2 This Agreement shall have effect:
 - (i) in respect of tax withheld at the source on amounts paid or credited on or after the first day of January of the calendar year next following that of the entry into force of the Agreement; and
 - (ii) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that of the entry into force of the Agreement..

Article 30

TERMINATION

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

- (a) in respect of tax withheld at the source on amounts paid or credited on or after the first day of January in the calendar year next following that in which the notice is given; and

(b) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Jakarta, this tenth day of November of the year one thousand nine hundred and eighty eight in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA

sgd

ALI ALATAS

Minister for Foreign Affairs

Republic of Indonesia

FOR THE GOVERNMENT OF THE
REPUBLIC OF KOREA

sgd

Mr. Kwang Soo Choi

Minister for Foreign Affairs

Republic of Korea

PROTOCOL

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

1. In respect of subparagraph (b) of paragraph 3 of Article 2 of the Agreement, it is understood that the Agreement shall apply to the Korean defense tax where charged by reference to the income tax or the corporation tax.
2. In respect of paragraph 5 of Article 11, it is understood that interest on deferred payment sales is included in the term interest if it is in accordance with the provisions in the domestic laws of a Contracting State.
3. In witness whereof, the undersigned have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Agreement.

Done in duplicate at Jakarta, this tenth day of November of the year one thousand nine hundred and eighty eight in the English language.

FOR THE GOVERNMENT OF THE

REPUBLIC OF INDONESIA

sgd

ALI ALATAS

Minister for Foreign Affairs

Republic of Indonesia

FOR THE GOVERNMENT OF THE

REPUBLIC OF KOREA

sgd

Mr. Kwang Soo Choi

Minister for Foreign Affairs

Republic of Korea