

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF THE INDEPENDENT STATE
OF PAPUA NEW GUINEA
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 INDEPENDENT STATE OF PAPUA NEW GUINEA

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED AS FOLLOWS:

**CHAPTER I
SCOPE OF THE AGREEMENT**

**Article 1
PERSONS COVERED**

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

**Article 2
TAX COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a 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.
3. The taxes which are the subject of this Agreement are:
 - (a) in the case of Indonesia:

the income tax.

(hereinafter referred to as “Indonesian taxes”)
 - (b) in the case of Papua New Guinea:

the income tax imposed under the law of Papua New Guinea, including:

 - (i) the salary or wages tax;
 - (ii) the additional profits tax upon additional profits from mining operations;
 - (iii) the additional profits tax upon additional profits from petroleum operations;
 - (iv) the additional profits tax upon additional profits from gas operations;
 - (v) the dividend withholding tax upon taxable dividend income;
 - (vi) the foreign contractor withholding tax;
 - (vii) the management fee withholding tax;
 - (viii) the business payments tax; and
 - (ix) the interest withholding tax.

(hereinafter referred to as “Papua New Guinea tax”).
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a)(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 jurisdiction in accordance with International Law;
 - (ii) the term “Papua New Guinea” means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is, consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea bed and sub-soil;
 - (b) the term “a Contracting State” and “the other Contracting State” mean Indonesia or Papua New Guinea as the context requires;
 - (c) the term “person” includes an individual, a company and any other body of persons;

- (d) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (e) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (f) the term “tax” means Indonesian tax or Papua New Guinea tax as the context requires;
 - (g) the term “national” means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, association or any other entity deriving its status as such from the laws in force in a Contracting State;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means:
 - (i) in the case of Indonesia, the Minister of Finance or his authorized representative;
 - (ii) in the case of Papua New Guinea, the Commissioner General of Internal Revenue or an authorised representative of the Commissioner General of Internal Revenue; and
2. In this Agreement the terms “Indonesian tax” and “Papua New Guinea tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies.
3. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, 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 a person, being an individual, is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:
- (a) the person shall be deemed to be a resident of the Contracting State in which the person has a permanent home;
 - (b) if a permanent home is available to the person in both States, or in neither of them, the person shall be deemed to be a resident of the State with which the person’s personal and economic relations are the closer (centre of vital interests);
 - (c) if the Contracting State in which the person’s centre of vital interests cannot be determined, and the person has no permanent home in either State, the person shall be deemed to be a resident of the State in which the person has an habitual abode;

- (d) if the person has an habitual abode in both Contracting States or in neither of them, the person shall be deemed to be a resident of the State of which the person is a national;
 - (e) if the person is a national of both Contracting States or is national of neither Contracting State, 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” shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a warehouse or premises used as a sales outlet;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction or exploration or exploitation of natural resources, drilling rig or working ship used for exploration or exploitation of natural resources;
 - (h) a farm or other place where agricultural, forestry, logging, pastoral or plantation activities are carried on; and
3. The term “permanent establishment” likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 120 days;
 - (b) the furnishing of services, other than technical services as stipulated under Article 13, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 120 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising or for the supply of information, for the enterprise;
 - (f) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity or a preparatory or auxiliary character;

- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such a person:
- (a) has or 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 or 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; or
 - (c) manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

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. For the purpose of this Agreement, the term "immovable property" shall be defined in accordance with the laws 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 or the right to explore for, mineral deposits, oil or gas, deposits, quarries and other places of extraction of natural resources including indigenous and exotic timber or other forest produce, 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. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral deposits, sources and other natural resources, as the case may be, are situated or where the exploration may take place.
5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - (a) That permanent establishment; or
 - (b) Sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold through that permanent establishment; or
 - (c) Other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment;
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 independent 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 purpose 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. 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.
5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be effected by the provisions of this Article.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Nothing in this article shall affect the operation of any law of one of the Contracting States relating to tax imposed on profits derived by non-residents on insurance premiums collected, or from insurance relating to risks arising or to property, in that State, whether or not that law deems the existence of a permanent establishment in relation to the relevant activity.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by 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 provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or international operating agency.
3. The term "operation of ships or aircraft" shall mean the business of transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft and the incidental lease of ships or aircraft.

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

Article 10

DEIVIDENDS

1. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid
3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of 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 15, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 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 15 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 provision contained in any production sharing contract and relating to oil and gas sector or other mining sectors concluded by the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of the other Contracting States.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities thereof, a political subdivision, the Central Bank or any financial institution controlled by that Government, the capital of which is wholly owned by the Government of the other Contracting State, as may be agreed upon from time to time between the competent authorities of the Contracting States, shall be exempt from tax in the first-mentioned State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other 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 15, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether the person 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 that 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
8. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means amounts paid or accrued, whether periodical or not, and in whatever form or name or nomenclature to extent to which they are made as consideration for:
 - (a) the use of, or the right to use, any, copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right; or
 - (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or
 - (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
 - (d) the supply of any assistance that is ancillary and subsidiary to any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c); or
 - (e) the use of, or the right to use;
 - (i) cinematograph or motion picture films; or
 - (ii) films or video tapes in connection with television; or
 - (iii) tapes or compact disks in connection with radio and television broadcasting; or
 - (iv) programs developed in connection with the use of computers; or
 - (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other 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 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether the person 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, then such royalties shall be deemed to arise in the Contracting 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 persons the amount of royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

TECHNICAL FEES

1. Technical fees 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 technical fees 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 technical fees the tax shall not exceed 10 per cent of the gross amount of the technical fees.
3. The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether the person 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 technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such, technical fees shall be deemed to arise in the Contracting 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 technical fees paid exceeds, for whatever reason, 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 14

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 a of movable property pertaining to a fixed base available to a resident of Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such skips or aircraft shall be taxable only in that State.
4. Gains from the alienation of any property other than that referred to in the preceding paragraph shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days within any twelve month period. If he has such a fixed base or remains in that other State for the aforesaid period or periods, the income may be taxed in that other States but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 17, 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 that other State for a period or periods not exceeding in the aggregate 183 days within any twelve month period commencing or ending 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 home by a permanent establishment or a Fixed base which the employer has in the other State;
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

Article 17

DIRECTORS' FEES

1. Director's 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 derived 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 16.

Article 18

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in the other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that capacity accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Notwithstanding the provisions of paragraph 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if

the visit to that State is wholly or substantially supported by funds of one or both of the Contracting States, a local authority or public institution thereof.

Article 19

PENSIONS AND ANNUITIES

1. Subject to the provision of paragraph 2 of Article 20, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The term “annuity” includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

Article 20

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.
(b) However, such salaries, wages and other similar 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 other State who:
 - (i) is a national of that other State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provision of Article 16, 17, and 19 shall apply to salaries, wages and other similar remuneration and to pension in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 21

TEACHERS AND RESEARCHERS

An individual who is immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that Contracting State on his remuneration for such activity, provided that payment of such remuneration is derived by him from outside that Contracting State.

Article 22

STUDENTS AND TRAINEES

1. Payment which a student 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 received for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.
2. In respect of grants, scholarship and remuneration from employment not covered by paragraph 1, a student or business trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemption, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

Article 23

OTHER INCOME

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.
3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

CHAPTER IV

SPECIAL PROVISIONS

Article 24

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

Where a resident of a Contracting State derives income from the other Contracting State, the amount of tax on that income payable in that other Contracting State in accordance with the provisions of this Agreement, may be credited against the tax levied in the first mentioned Contracting State imposed on that resident. The amount of credit, however, shall not exceed the amount of the tax on the first-mentioned Contracting State on that income computed in accordance with its taxation laws and regulations.

Article 25

NON DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purpose on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprise 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 States, 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 may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of article 12 apply, interest, royalty and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they has been paid to a resident of the first-mentioned State.
5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 26

MUTUAL AGREEMENT PROCEDUR

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 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting States, 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in 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 preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities use the information only for such purposes but may disclose the information in public court proceedings, or in judicial decisions.
2. In no case shall the provisions of paragraphs 1 be construed so as to impose on a Contracting State the obligations:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

CHAPTER V

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

This Agreement shall enter into force on the later of the dates on which the respective Governments may notify each other in writing through diplomatic channels, that the formalities constitutionally required in their respective Contracting States for the entry into force of this Agreement have been complied with. This Agreement shall have effect:

- (a) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the later of these notifications is given,
 - (ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the later of these notifications is given.
- (b) in Indonesia:
- (i) in respect of tax withheld at the source to income derived on or after 1 January in the year next following that in which the Agreement enters into force; and
 - (ii) in respect of other taxes on income, for taxable years beginning on or after 1 January in the year next following that in which the Agreement enters into force.

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 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 to income derived on or after 1 January in the year next following that in which the notice of termination is given.
 - (ii) in respect of other taxes on income, 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 Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which notification is given;
 - (ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following in which the notification is given.

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

DONE in duplicate at Port Moresby this 12th day of March 2010 in the English language. Both text being equally authentic.

For The Government Of The
Republic Of Indonesia

ttd

DR. R.M. MARTY M.
NATALEGAWA
MINISTER OF FOREIGN
AFFAIRS

For The Government Of The
Independent State Of Papua New
Guinea

ttd

HON SAMUEL T. ABAL, MP
MINISTER FOR FOREIGN AFFAIRS,
TRADE AND IMMIGRATION

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income including taxes on gains from the alienation of movable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are :
 - (a) in Pakistan :
 - (i) the income tax;
 - (ii) the super tax; and
 - (iii) the surcharge,(hereinafter referred to as "Pakistan tax")
 - (b) in Indonesia :

the income tax (pajak-penghasilan),

(hereinafter referred to as "Indonesian tax").
4. This Agreement shall also apply to any identical or substantially similar taxes (including surcharge in Indonesia) which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires :
 - (a) the term "Pakistan" used in a geographical sense means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction with respect to the natural resources of the sea-bed and sub-soil and superjacent waters;
 - (b) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations convention on the law of the Sea, 1982;

- (c) the terms "a Contracting State" and "the other Contracting State" mean Pakistan or Indonesia, as the context requires;
 - (d) the term "tax" means Pakistani tax or Indonesian tax, as the context requires;
 - (e) the term "person" includes an individual, a company and any other body of persons;
 - (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (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 "national" means all individuals having the nationality of a Contracting State and all legal persons, partnerships and other bodies of persons deriving their status as such from the law in force in a Contracting State;
 - (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, in the case of Pakistan, the Central Board of Revenue or its authorised representative in the case of Indonesia, the Minister of Finance or his authorised representative.
2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4

RESIDENT

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of effective 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting 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 Contracting 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 Contracting States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- 3. [REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI] [Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which the place of effective management of its business is situated. However, where the place of effective management of the business of such person cannot be determined, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the said person shall be deemed to be a resident for the purposes of this Agreement.]

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Agreement:

ARTICLE 4 OF THE MLI — DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Agreement a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Agreement.

Article 5

PERMANENT ESTABLISHMENT

- 1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- 2. The term "permanent establishment" means especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;

- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (g) a warehouse;
 - (h) a permanent sales exhibition; and
 - (i) premises for receiving and soliciting orders.
3. (MODIFIED by paragraph 1 of article 14 of the MLI) [The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than three months.]

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 14 OF THE MLI — SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the three months referred to in 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 a construction or assembly or installation project or supervisory activities in connection therewith, 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 paragraph 3 of Article 5 of the Agreement; and*
- b) *where connected activities are carried on in that other Contracting State at in connection with the same a building site or a construction or assembly or installation project or supervisory activities in connection therewith 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 a building site or a construction or assembly or installation project or supervisory activities in connection therewith.*

4. (MODIFIED by paragraph 2 of Article 13 of the MLI) [Notwithstanding the provisions of paragraphs 1 to 3, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities, solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for similar activities which have a preparatory or auxiliary character, for the enterprise and which are performed free of charge and not for the purpose of profits.]

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 the Agreement, the term "permanent establishment" shall be deemed not to include:

- a) the activities specifically listed in paragraph 4 of Article 5 of the 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 constitute a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Agreement;
or
(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.*

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 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) (REPLACED by paragraph 1 of Article 12 of the MLI) [has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of this paragraph;] or

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

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

Notwithstanding Article 5 of the Agreement, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise, or
b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the*

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

(b) has no such authority, but habitually maintains in the first- mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
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 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.]

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 and forestry) situated in the other Contracting State may be taxed in that other Contracting 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 and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - (a) that permanent establishment;
 - (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
 - (c) other business activities carried on in that other State same of the same or similar kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributable 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. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including only those executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.
 - (b) 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 money lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the head office of the enterprise.

6. For the purposes of paragraphs 1 to 5, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic should be taxable in that State.
2. Profits from sources with a Contracting State derived by an enterprise of the other Contracting State from operation of ships may be taxed in the first-mentioned State in accordance with its domestic law. The profits from sources with a Contracting State shall consist of the amount paid or payable to, or received or deemed to be received, by the enterprise of the other Contracting State, or on its behalf, on account of carriage of passengers, livestock, mail or goods shipped at any port of the first-mentioned State.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where:
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises then any profits which would, but for those conditions have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. [REPLACED by paragraph 1 of Article 17 of the MLI] [Where a Contracting State includes in the profits of an enterprise of that other Contracting 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 Contracting State shall make an appropriate adjustment to the amount of tax charged thereon 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.]

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

ARTICLE 17 OF THE MLI — CORRESPONDING

ADJUSTMENTS

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

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - (a) 10 per cent of the gross amount of the dividends if the recipient is a company which owns directly at least 25 per cent of the capital of the company paying the dividends;
 - (b) 15 per cent of the gross amount of the dividends in all other cases.The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares and 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 dividend 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 Article 7 or Article 15, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.
6. Notwithstanding any other provision 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.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:
 - i) the Government of the other Contracting State or subject to the agreement of the competent authorities, a local authority thereof or any agency or instrumentality of that State;
 - ii) the Central Bank of the other Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind including interest on deferred payment sales, 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other 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 15, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, 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.
7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 films or films or tapes for radio or television broadcasting, any patent, know-how, 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 in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a local authority thereof or a resident of that Contracting State. Where, 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 Contracting 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

FEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to an enterprise of the other Contracting State may be taxed in that other State.
2. However, such fees for technical services 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 thereof, the tax so charged shall not exceed 15 per cent of the gross amount of the fees.
3. The term "fees for technical services" as use in this Article means any consideration (including any lump sum consideration) for the provision of or rendering of any managerial, technical or consultancy services (including the provision by the enterprise of the services of technical or other personnel) but does not include consideration for any

activities mentioned in sub-para (3) of paragraph 5 or consideration which would be income falling under Article 15 of the Agreement.

4. The provisions of paragraphs 1 and 2 do not apply if the beneficial owner of the fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services rise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the contract in respect of which the fees for technical services are paid is effectively connected with:
 - (a) such permanent establishment or fixed base, or
 - (b) business activities referred to under (c) of paragraph (1) of Article 7.In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State, and the services are rendered for the said payer or the services are rendered in that State. Where, however, the person paying the fees for technical service 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 make the payments was incurred, and the payments are borne by such permanent establishment, then such fees for technical services shall be deemed to arise in the State in which the permanent establishment 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 fees for technical services exceeds the amount which would have been paid 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 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in Article 6 or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in the Contracting State in which the said 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. **[MODIFIED by paragraph 4 of Article 9 of the MLI]** (Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 and arising in the other Contracting State may be taxed in that other Contracting State.)

<p><i>The following paragraph 4 of Article 9 of the MLI applies and supersedes the provisions of this Agreement:</i></p>

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

For purposes of this Agreement, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other Contracting State.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:
 - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in any twelve-month period; in that case only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State; or
 - c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State, in that case, only so much of the remuneration as derived therefrom may be taxed in that other Contracting State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:
 - a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 90 days in any twelve-month period concerned; and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic shall be taxable only in that State.

Article 17

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 of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 18

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the other Contracting State.

Article 19

PENSIONS AND ANNUITIES

1. Any pension, other than a pension referred to in paragraph 2 of Article 20, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.
2. Notwithstanding the provisions of paragraph 1, pensions paid out of a pension fund approved by the Government of a Contracting State (or its authorised Agency) to a resident of the other Contracting State in consideration of past employment may be taxed in the first-mentioned State.

3. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.
4. The term "annuity" means a stated sum payable periodically at stated times during life or during a specific or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 20

GOVERNMENT SERVICE

1.
 - a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other 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 rendering the services.
2.
 - a) Any pension paid by, or out of funds to which contributions are made by, the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State or a 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 State.
3. The provisions of Articles 16, 17, 18 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a local authority thereof.

Article 21

TEACHERS AND RESEARCHERS

1. An individual who is, or immediately before visiting a Contracting State, was a resident of the other Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution accredited by the Government of the first- mentioned State shall be exempt from tax in the first-mentioned Contracting State, for a period of two years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research, or income received by him from sources outside the first-mentioned Contracting State.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22

STUDENTS AND TRAINEES

A student, business apprentice or 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 shall be exempt from tax for a period or periods aggregating to five years from the date of his arrival in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:

- a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;
- b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organization; and
- c) income not exceeding a sum of U.S.\$ 1,200 per annum or its equivalent in Pakistani or Indonesian currency, as the case may be, derived from personal services performed in that Contracting State.

Article 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Article 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 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other Contracting State.

Article 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In Pakistan double taxation shall be eliminated as follows :
Subject to the provisions of the laws of Pakistan, regarding the allowance as a credit against Pakistan tax, the amount of Indonesian tax payable, under the laws of Indonesia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Pakistan, in respect of income from sources within Indonesia which has been subject to a tax both in Pakistan and Indonesia shall be allowed as a credit against the Pakistan tax payable in respect of such income but in an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.
2. In Indonesia, double taxation shall be eliminated as follows :
Where a resident of Indonesia derives income from Pakistan and such income may be taxed in Pakistan in accordance with the provisions of this Agreement, the amount of Pakistan tax payable in respect of the income shall be allowed as a credit against the

Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to such income.

3. Notwithstanding anything contained in the foregoing paragraphs 1 and 2, where any profits, income or chargeable gains are not subject to tax or are taxed at a reduced rate in one of the Contracting States by virtue of any exemption or concession allowed under the laws of that State or in accordance with this Agreement and the same profits, income or chargeable gains are subject to tax in the other Contracting State, credit shall be allowed in the later mentioned State for the whole of the tax, which would have been payable on the said profits, income or chargeable gains had the same profits, income or chargeable gains not been exempted from tax or had it not been taxed at a reduced rate in the first-mentioned State.

Article 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own resident.
3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Nothing contained in the preceding paragraphs of this Article shall be construed:
 - (i) as obliging either Contracting State, to grant to persons not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to persons who are so resident;
 - (ii) as affecting any provision of the law of either Contracting State regarding the imposition of tax on a non-resident person; or
 - (iii) as affecting any provision of the law of Pakistan regarding the grant of rebate of tax to companies fulfilling specific requirements regarding the declaration and payment of dividends.

Article 26

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.

[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 this Agreement]

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

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

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.
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 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. The competent authorities shall through consultations develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 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 later of the dates on which the respective Governments may notify each other in writing that the formalities constitutionally required in their respective States have been complied with.
2. This Agreement shall have effect :
 - a) In Pakistan
 - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of July of the year in which the Agreement enters into force; and
 - (ii) in respect of other taxes for assessment years beginning on or after the first day of July in which the Agreement enters into force;
 - b) In Indonesia :

- (i) in respect of tax withheld at the source on or after the first day of January of the year in which the Agreement enters into force; and
- (ii) in respect of other taxes for assessment years beginning on or after the first day of January of the year in which the Agreement enters into force.

Article 30

TERMINATION

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

Done at Islamabad on the Seventh day of October, 1990 in the English language.

FOR THE GOVERNMENT OF
THE
REPUBLIC OF INDONESIA

(KARJADI SINDUNEGORO)
Ambassador Extraordinary
and Plenipotentiary

FOR THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF PAKISTAN

(AHADULLAH AKMAL)
Chairman Central Board of Revenue