Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE AMENDING PROTOCOL AND THE SECOND AMENDING PROTOCOL

If you follow the information in this document, and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO will take that into account when determining what action, if any, we should take.

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion* signed on 13 October 1977 as amended by the Amending Protocol signed on 20 March 1984 and the Second Amending Protocol signed on 24 June 2009 (the "Agreement") as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia and Belgium on 7 June 2017.

This document was prepared in consultation with the competent authority of Belgium and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of Belgium submitted to the Depositary upon ratification on 26 June 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement", "Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [2019] ATS 1 (provides the authentic legal text of the MLI).

Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1979] ATS 21 (provides, in the case of Australia, the authentic legal text of the Agreement signed on 13 October 1977).

Protocol amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Canberra on 13 October 1977 [1986] ATS 25 (provides, in the case of Australia, the authentic legal text of the Amending Protocol signed on 20 March 1984).

Second Protocol amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984 [2014] ATS 37 (provides, in the case of Australia, the authentic text of the Second Amending Protocol signed on 24 June 2009).

Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (provides, in the case of Belgium, the authentic legal text of the Agreement signed on 13 October 1977).

Protocol amending the Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes in Income of 13 October 1977 (provides, in the case of Belgium, the authentic legal text of the Amending Protocol signed on 20 March 1984).

Second Protocol amending the Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984 (provides, in the case of Belgium, the authentic legal text of the Second Amending Protocol signed on 24 June 2009).

Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and the MLI position of Belgium submitted to the Depositary upon ratification on 26 June 2019).

Memorandum of Understanding on the Mode of Application on the Implementation of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting between the competent authorities of Australia and the Kingdom of Belgium signed on 3 March 2021 (provides the mutual arrangements to establish the mode of application of the arbitration process pursuant to Part VI of the MLI).

Entry Into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Australia and Belgium in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

26 September 2018 for Australia and 26 June 2019 for Belgium.

Entry into force of the MLI:

1 January 2019 for Australia and 1 October 2019 for Belgium.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure and Part VI Arbitration) have effect with respect to this Agreement:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Agreement for a case presented to the competent authority of a Contracting State on or after 1 October 2019, except for cases that were not eligible to be presented as of that date under the Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Agreement:

a) with respect to cases presented to the competent authority of a Contracting State (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI), on or after 1 October 2019; and

b) with respect to cases presented to the competent authority of a Contracting State prior to 1 October 2019, on the date when both Contracting States have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 of the MLI, along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting State (as described in subparagraph a) of paragraph 1 of Article 19 of the MLI) according to the terms of that mutual agreement.

AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE AMENDING PROTOCOL AND THE SECOND AMENDING PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

> *The following paragraph 3 of Article 6 of the MLI is included in the preamble of this Agreement:*
>
> ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT
>
> Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

[REPLACED by paragraph 1 of Article 6 of the MLI] *DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,*

> *The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*
>
> ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT
>
> Intending to eliminate double taxation with respect to the taxes covered by [*the Agreement*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Agreement*] for the indirect benefit of residents of third jurisdictions),

HAVE AGREED as follows:

CHAPTER I
SCOPE OF THE AGREEMENT
Article 1
PERSONAL SCOPE

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

> *The following paragraph 1 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:*
>
> ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES
>
> For the purposes of [*the Agreement*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*].

The following paragraph 1 of Article 11 of the MLI replaces paragraph 4 of Article 9 and paragraph 1 of Article 27 of this Agreement:

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

[*The Agreement*] shall not affect the taxation by a [*Contracting State*] of its residents, except with respect to the benefits granted under [*paragraph 3 of Article 9, Articles 19, 20, 21, 24,25 or paragraph 2 of Article 27*] of [*the Agreement*].

Article 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are -

a) in Australia:

the Commonwealth income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

b) in Belgium:

the individual income tax (*impôt des personnes physiques – personenbelasting*);

the corporate income tax (*impôt des sociétés – vennootschapsbelasting*);

the income tax on legal entities (*impôt des personnes morales – rechtspersonenbelasting*);

the income tax on non–residents (*impôt des non-residents – belasting der nietverblijfhouders*);

including the prepayments, the surcharges on these taxes and prepayments, and the communal supplement to the individual income tax.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by one of the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes. At the end of each calendar year, the competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any substantial changes which have been made in the laws of his State relating to the taxes to which this Agreement applies.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires -

a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes -

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Coral Sea Islands Territory; and

(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

b) the term "Belgium" means the Kingdom of Belgium and, when used in a geographical sense, means the territory of the Kingdom of Belgium and includes any territory outside the national sovereignty of Belgium which in accordance with international law has been or may hereafter be designated, under the laws of Belgium concerning the continental shelf, as an area within which the rights of Belgium with respect to the seabed and the subsoil and their natural resources may be exercised;

c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Australia or Belgium, as the context requires;

d) the term "person" means an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity which is assimilated to a body corporate for tax purposes in the Contracting State of which it is a resident;

f) the term "tax" means Australian tax or Belgian tax, as the context requires;

g) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

h) the term "Belgian tax" means tax imposed by Belgium, being tax to which this Agreement applies by virtue of Article 2;

i) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Belgium, the Minister of Finance or his authorized representative;

j) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Belgium, as the context requires;

k) words in the singular include the plural and words in the plural include the singular.

2. In this Agreement, the terms "Australian tax" and "Belgian tax" do not include any charge imposed as a penalty under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

3. In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies.

Article 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States -

a) in the case of Australia, subject to paragraph 2, if the person is a resident of Australia for the purposes of Australian tax; and

b) in the case of Belgium, if the person is a resident of Belgium for the purposes of Belgian tax.

2. In relation to income from sources in Belgium, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Belgium is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Belgian tax.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

4. 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 solely of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the 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 mine, quarry or other place of extraction of natural resources;

g) an agricultural, pastoral or forestry property;

h) a building site or construction, installation or assembly project which exists for more than twelve months.

3. **[MODIFIED by paragraph 4 of Article 13 of the MLI]** *An enterprise shall not be deemed to have a permanent establishment merely by reason of-*

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising, scientific research or the supply of information.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement:

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

[*Paragraph 3 of Article 5 of the Agreement*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions [*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.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if -

a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or

b) substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 6 applies –- shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if -

a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

b) in so acting he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

6. An enterprise of one of the Contracting States 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, where that person is acting in the ordinary course of his business as such a broker or agent.

7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

8. The principles set forth in paragraphs 1 to 7 inclusive shall be applied in determining for the purposes of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

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

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

For the purposes of the provisions 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 per cent 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.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM REAL PROPERTY

1. Income from real property, including royalties and other payments in respect of the operation of mines or quarries or the exploitation of any natural resource, may be taxed in the Contracting State in which the real property, mines, quarries, or natural resources are situated.

2. Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property situated in the Contracting State in which the land is situated.

3. Ships, boats or aircraft shall not be regarded as real property.

4. The provisions of paragraph 1 shall also apply to the income from real property of an enterprise and to the income from real property used for the performance of professional services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of one of the Contracting States 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 that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

6. For the purposes of this Article, except as provided in the Articles referred to in this paragraph, the profits of an enterprise do not include items of income dealt with in Articles 6, 8, 10, 11, 12, 14, 16 and 17 and in paragraph 1 of Article 13.

7. Notwithstanding the provisions of this Article, profits of an enterprise of one of the Contracting States from carrying on a business of any form of insurance, other than life insurance, may be taxed in the other Contracting State according to the law of that State, provided that if the law in force at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting Governments shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. *Deleted.*[1]

9. *Deleted.*[2]

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organization or in an international operating agency.

4. For the purposes of this Article, profits derived from the carriage of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

5. The amount which shall be charged to tax in one of the Contracting States as profits from operations of ships or aircraft in respect of which a resident of the other Contracting State may be taxed in the first-mentioned State under paragraph 2 or 3 shall not exceed 5 per cent of the amount paid or payable (net of rebates) in respect of carriage in such operations.

6. Paragraph 5 shall not apply to profits derived from the operation of ships or aircraft by a resident of one of the Contracting States whose principal place of business is in the other Contracting State, nor shall it apply to profits derived from the operation of ships or aircraft by a resident of a Contracting State if those profits are derived otherwise than from the carriage of passengers, livestock, mail, goods or merchandise.

[1] Deleted by Article I of the *Protocol amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Canberra on 13 October 1997* (1986) ATS 25 (Amending Protocol).

[2] Deleted by Article I of the Amending Protocol.

Article 9

ASSOCIATED ENTERPRISES

1. Where -

   a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of paragraph 1.[3]

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to the enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make such adjustment as it considers appropriate to the amount of tax charged on those profits in the first-mentioned State. In determining any adjustment, due regard shall be had to the other provisions of this Agreement, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

4. **[REPLACED by paragraph 1 of Article 11 of the MLI]**[4] *Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that State as if this Article had not come into effect but, so far as it is practicable to do so, in accordance with the principles of paragraph 1*.[5]

[3] As amended by Article II(a) of the Amending Protocol.
[4] Refer to second text box immediately following Article 1 of the Agreement.
[5] Inserted by Article II(b) of the Amending Protocol.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so 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" in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident. In the case of Belgium, the term includes income, even when paid in the form of interest, which is taxable under the head of income from capital invested by the members of a company which is a resident of Belgium for the purposes of its tax and is not a company with share capital.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State of which the company paying the dividends is a resident, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Dividends paid by a company which is a resident of Belgium, being dividends to which a person who is not a resident of Australia is beneficially entitled, shall be exempt from tax in Australia except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in Australia. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Belgium for the purposes of Belgian tax and which is also a resident of Australia for the purposes of Australian tax.

6. Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing on the profits of a company which is a resident of the other Contracting State tax in addition to or at a higher rate than the tax which would be imposed on the profits of a company which is a resident of the first-mentioned State. However, if the provisions of the law in force in either Contracting State which relate to such additional tax or such higher rate are varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to such amendments to this Article as may be appropriate.[6]

Article 11

INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a

[6] Inserted by Article III of the Amending Protocol.

right to participate in the debtor's profits, and interest from any other form of indebtedness as well as all other income assimilated to interest by the taxation law of the Contracting State in which the income arises. The term does not include income which is paid in the form of interest but which is, in accordance with paragraph 3 of Article 10, to be treated as dividends.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State in which the interest arises, and the indebtedness giving rise to the interest is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political subdivision of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however -

a) the person paying the interest is a resident of one of the Contracting States and has in the other State or outside both States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by the permanent establishment, then the interest shall be deemed to arise in the State where the permanent establishment is situated;

b) the person paying the interest is not a resident of either of the Contracting States but has in one of the States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by the permanent establishment, then the interest shall be deemed to arise in the State where the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid may be taxed in the Contracting State in which the interest arises according to the law of that State.

Article 12

ROYALTIES

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments (including credits), whether periodical or not, and however described or computed, to the extent to which they are made as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance of an ancillary or subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies, and includes any payments (including credits) to the extent to which they are made as consideration for the use of, or the right to use, motion picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, or for

total or partial forbearance in respect of the use or supply of a property or right referred to in this paragraph.[7]

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business through a permanent establishment situated in the other Contracting State, being the State in which the royalties arise, and the asset giving rise to the royalties is effectively connected with that permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political subdivision of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however -

a) the person paying the royalties is a resident of one of the Contracting States and has in the other State or outside both States a permanent establishment in connection with which the liability to pay the royalties was incurred and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State where the permanent establishment is situated;

b) the person paying the royalties is not a resident of either of the Contracting States but has in one of the States a permanent establishment in connection with which the liability to pay the royalties was incurred and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State where the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last–mentioned amount. In that case, the excess part of the amount of the royalties paid may be taxed in the Contracting State in which the royalties arise according to the law of that State.

Article 13

ALIENATION OF PROPERTY

1. **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]** *Income from the alienation of real property may be taxed in the Contracting State in which that property is situated.*

2. For the purposes of this Article -

a) the term “real property” shall include -

(i) a lease of land or any other direct interest in or over land;

(ii) rights to exploit, or to explore for, natural resources; and

(iii) **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]** *shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States*;

b) real property shall be deemed to be situated -

(i) where it consists of direct interests in or over land - in the Contracting State in which the land is situated;

[7] As amended by Article IV of the Amending Protocol.

(ii) where it consists of rights to exploit, or to explore for, natural resources - in the Contracting State in which the natural resources are situated or the exploration may take place; and

(iii) **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]** *where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States - in the Contracting State in which the assets or the principal assets of the company are situated*.

The following subparagraph b) of paragraph 1 of Article 9 of the MLI applies to paragraph 1 and subparagraphs a)(iii) and b)(iii) of paragraph 2 of Article 13 of this Agreement:

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

[*Paragraph 1 and subparagraphs a)(iii) and b)(iii) of paragraph 2 of Article 13 of the Agreement*] shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions [*of the Agreement*].

3. Subject to the provisions of paragraph 1, income from the alienation of capital assets of an enterprise of a Contracting State shall be taxable only in that Contracting State, but, where those assets form part of the business property of a permanent establishment situated in the other Contracting State, such income may be taxed in that other State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar 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. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base.

2. The term “professional services” includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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, the remuneration derived from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or in the taxable period, as the case may be, of that other State; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and

c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

Article 16

DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State. In relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 15 shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

Article 17

ENTERTAINERS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes, and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

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

Article 18

PENSIONS AND ANNUITIES

1. Pensions, other than pensions to which Article 19 applies, and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid to an individual in respect of services rendered in the discharge of governmental functions to one of the Contracting States or to a political sub-division of one of the Contracting States or to a local authority of one of the Contracting States shall be taxable only in that State. Such remuneration shall, however, be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who -

a) is a citizen or national of that State; or

b) did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid to an individual in respect of services rendered in the discharge of governmental functions to one of the Contracting States or to a political sub-division of one of the Contracting States or to a local authority of one of the Contracting States shall be taxable only in that State. Such pension shall, however, be taxable only in the other Contracting State if the recipient is a citizen or national of that State and a resident of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration, including pensions, paid in respect of services rendered in connection with any business carried on by one of the Contracting States or by a political sub-division of one of the Contracting States or by a local authority of one of the Contracting States.

Article 20

PROFESSORS AND TEACHERS

1. Salaries, wages and other similar remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other recognized educational institution, receives for those activities shall be taxable only in the first-mentioned State.

2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research, if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 21

STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of his education, receives payments from sources outside the other State for the purpose of his maintenance or education, those payments shall be exempt from tax in the other State.

Article 22

INCOME OF DUAL RESIDENT

Where a person, who by reason of the provisions of paragraph 1 of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph 3 or 4 of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

Article 23

SOURCE OF INCOME

1. Income derived by a resident of Belgium which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in Australia, shall for the purposes of the income tax law of Australia be deemed to be income from sources in Australia.

2. Income derived by a resident of Australia which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in Belgium, shall for the purposes of paragraph 1 of Article 24 and of the income tax law of Australia be deemed to be income from sources in Belgium.

CHAPTER IV

METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 24

1. In the case of Australia, double taxation shall be avoided as follows:

    a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Belgian tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Belgium (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Australian tax payable in respect of that income.

    b) In the event that Australia should cease to allow a company which is a resident of Australia a rebate in its assessment at the average rate of tax payable by the company in respect of dividends derived from sources in Belgium and included in the taxable income of the company, the Contracting Governments will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

2. In the case of Belgium, double taxation shall be avoided as follows:

    a) Where a resident of Belgium derives income which may be taxed in Australia in accordance with this Agreement and which is not subject to the provisions of subparagraph b) or c) below, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

    b) In the case of -

        (i) dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to subparagraph c) below;

(ii) interest taxable in accordance with paragraph 2 or 6 of Article 11; and

(iii) royalties taxable in accordance with paragraph 2 or 6 of Article 12, there shall be allowed as a credit against Belgian tax relating to such income the fixed proportion in respect of foreign tax for which provision is made under Belgian law, under the conditions and at the rate fixed by such law, provided that this rate shall not be less than the rate of tax which may be levied in Australia in accordance with paragraph 2 of Article 10, paragraph 2 of Article 11 or paragraph 2 of Article 12.

c) Where a company which is a resident of Belgium owns shares in a company with share capital which is a resident of Australia and which is subject to Australian tax on its profits, the dividends which are paid to it by the latter company and which may be taxed in Australia in accordance with paragraph 2 of Article 10 shall be exempt from the corporate income tax in Belgium to the extent that exemption would have been accorded if the two companies had been residents of Belgium.

d) Where, in accordance with Belgian law, losses of an enterprise carried on by a resident of Belgium which are attributable to a permanent establishment situated in Australia have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided in subparagraph (a) of this paragraph shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been freed from tax in Australia by reason of a deduction for the said losses.

The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

[*Article 24 of the Agreement*] shall not apply to the extent that [*the*] provisions [*of the Agreement*] allow taxation by that other [*Contracting State*] solely because the income is also income derived by a resident of that other [*Contracting State*].

CHAPTER V

SPECIAL PROVISIONS

Article 25

MUTUAL AGREEMENT PROCEDURE

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

> *The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 25 of this Agreement:*
>
> ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE
>
> Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*the Agreement*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

2. The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

> *The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:*
>
> ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE
>
> Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the [*Contracting States*].

3. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

> *The following paragraph 3 of Article 16 of the MLI applies to this Agreement:*
>
> ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE
>
> The competent authorities of the [*Contracting States*] shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of [*the Agreement*]. They may also consult together for the elimination of double taxation in cases not provided for in [*the Agreement*].

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

The following Part VI of the MLI applies to this Agreement:

PART VI OF THE MLI – ARBITRATION

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

   a) under [*paragraph 1 of Article 25 of the Agreement*], a person has presented a case to the competent authority of a [*Contracting State*] on the basis that the actions of one or both of the [*Contracting States*] have resulted for that person in taxation not in accordance with the provisions of [*the Agreement*]; and

   b) the competent authorities are unable to reach an agreement to resolve that case pursuant to [*paragraph 2 of Article 25 of the Agreement*], within a period of two years beginning on the start date referred to in paragraph 8 or 9 [*of Article 19 of the MLI*], as the case may be (unless, prior to the expiration of that period the competent authorities of the [*Contracting States*] have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the [*Contracting States*] pursuant to the provisions [*of paragraph 10 of Article 19 of the MLI*].[8]

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 [*of Article 19 of the MLI*] because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*], the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4.

   a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 [*of Article 19 of the MLI*]. The arbitration decision shall be final.

   b) The arbitration decision shall be binding on both [*Contracting States*] except in the following cases

      i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case,

[8] Refer to the *Memorandum of Understanding on the Mode of Application on the Implementation of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting between the competent authorities of Australia and the Kingdom of Belgium* signed on 3 March 2021.

the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

ii) if a final decision of the courts of one of the [*Contracting States*] holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 [*of Article 19 of the MLI*] shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) [*of the MLI*]). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 [*of Article 19 of the MLI*] shall, within two calendar months of receiving the request:

a) send a notification to the person who presented the case that it has received the request; and

b) send a notification of that request, along with a copy of the request, to the competent authority of the other [Contracting State].

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other [*Contracting State*]) it shall either:

a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or

b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

a) that it has received the requested information; or

b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 [*of Article 19 of the MLI*]; and

b) the date that is three calendar months after the notification to the competent authority of the other [*Contracting State*] pursuant to subparagraph b) of paragraph 5 [*of Article 19 of the MLI*].

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 [*of Article 19 of the MLI*]; and

b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7 [*of Article 19 of the MLI*], such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 [*of Article 19 of the MLI*].

10. The competent authorities of the [*Contracting States*] shall by mutual agreement pursuant to [*Article 25 of the Agreement*] settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.[9]

11. *Omitted.*

12.

a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by [*the MLI*] shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either [*Contracting State*];

b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a decision concerning the issue is rendered by a court or administrative tribunal of one of the [*Contracting States*], the arbitration process shall terminate.

Article 20 (Appointment of Arbitrators) of the MLI

1. Except to the extent that the competent authorities of the *[Contracting States]* mutually agree on different rules, paragraphs 2 through 4 [*of Article 20 of the MLI*] shall apply for the purposes of this Part.

2. The following rules shall govern the appointment of the members of an arbitration panel:

a) The arbitration panel shall consist of three individual members with

[9] Refer to the *Memorandum of Understanding on the Mode of Application on the Implementation of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting between the competent authorities of Australia and the Kingdom of Belgium* signed on 3 March 2021.

expertise or experience in international tax matters.

b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 [*of the MLI*] (Mandatory Binding Arbitration). The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either [*Contracting State*].

c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the [*Contracting States*] and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a [*Contracting State*] fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of [*the Agreement*] and of the domestic laws of the [*Contracting States*] related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of [*the Agreement*] related to the exchange of information and administrative assistance.

2. The competent authorities of the [*Contracting States*] shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of [*the Agreement*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting States*].

Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI

For the purposes of this Part and the provisions of [*the Agreement*] that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*]:

a) the competent authorities of the [*Contracting States*] reach a mutual agreement to resolve the case; or

b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 (Type of Arbitration Process) of the MLI

Final offer arbitration

1. Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

a) After a case is submitted to arbitration, the competent authority of each [*Contracting State*] shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the [*Contracting States*]). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to [*the Agreement*], for each adjustment or similar issue in the case. In a case in which the competent authorities of the [*Contracting States*] have been unable to reach agreement on an issue regarding the conditions for application of a provision of [*the Agreement*] (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

b) The competent authority of each [*Contracting State*] may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.

c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the [*Contracting States*]. The arbitration decision shall have no precedential value.

2. *Omitted.*

3. *Omitted.*

4. *Omitted.*

5. Prior to the beginning of arbitration proceedings, the competent authorities of the [*Contracting States*] shall ensure that each person that presented the case and their

advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under [*the Agreement*], as well as the arbitration proceeding under this Part, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a person that presented the case or one of that person's advisors materially breaches that agreement.

6. *Omitted.*

7. *Omitted.*

Article 24 (Agreement on a Different Resolution) of the MLI Omitted.

Article 25 (Costs of Arbitration Proceedings) of the MLI

In an arbitration proceeding under this Part, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the [*Contracting States*], shall be borne by the [*Contracting States*] in a manner to be settled by mutual agreement between the competent authorities of the [*Contracting States*]. In the absence of such agreement, each [*Contracting State*] shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the [*Contracting States*] in equal shares.

Article 26 (Compatibility) of the MLI

1. *Omitted.*

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. [*Nothing*] in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the [*Contracting States*] are or will become parties.

4. *Omitted.*

Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI

Pursuant to Subparagraph a) of paragraph 2 of Article 28 of the MLI, Australia formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI:

> Australia reserves the right to exclude from the scope of Part VI [*of the MLI*] any case to the extent that it involves the application of Australia's general anti-avoidance rules contained in Part IVA of the *Income Tax Assessment Act 1936* and section 67 of the *Fringe Benefits Tax Assessment Act 1986*. Australia also reserves the right to extend the scope of the exclusion for Australia's general anti-avoidance rules to any provisions replacing, amending or updating those rules. Australia shall notify the Depositary of any such provisions that involve substantial changes.

Article 26

EXCHANGE OF INFORMATION[10]

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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*).

4. If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. To the extent necessary to obtain such information, the tax administration of the requested Contracting State shall have the power to require the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws.

[10] As amended by Article I of the *Second Protocol amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984* (2014) ATS 37 (Second Amending Protocol).

Article 27

MISCELLANEOUS

1. **[REPLACED by paragraph 1 of Article 11 of the MLI]**[11] *With respect to a company which is a resident of Belgium for the purposes of Belgian tax, the provisions of this Agreement shall not limit the taxation of that company in accordance with the Belgian law in the event of the repurchase by the company of its own shares or in the event of the distribution of its assets.*

2. Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international Agreements.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of [*the Agreement*], a benefit under [*the Agreement*] shall not be granted in respect of an item of income […] if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Agreement*].

The following paragraph 4 of Article 7 of the MLI applies to paragraph 1 of Article 7 of the MLI:

Where a benefit under [*the Agreement*] is denied to a person under [*paragraph 1 of Article 7 of the MLI*], the competent authority of the [*Contracting State*] that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income […], if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in [*paragraph 1 of Article 7 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under this paragraph by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before rejecting the request.

CHAPTER VI

FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

This Agreement shall come into force on the fifteenth day after the date on which the Government of Australia and the Government of the Kingdom of Belgium exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Belgium respectively, and thereupon this Agreement shall have effect -

a) in Australia -

[11] Refer to second text box immediately following Article 1 of the Agreement.

(i) with respect to 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 immediately following that in which the Agreement enters into force;

(ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the Agreement enters into force;

b) in Belgium -

(i) with respect to all tax due at source, on income credited or payable on or after 1 January in the calendar year immediately following that in which the Agreement enters into force;

(ii) with respect to all tax other than tax due at source, on income of any accounting period beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

Article 29

TERMINATION

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of the Kingdom of Belgium may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective -

a) in Australia -

(i) with respect to 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 immediately following that in which the notice of termination is given;

(ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given;

b) in Belgium -

(i) with respect to all tax due at source, on income credited or payable on or after 1 January in the calendar year immediately following that in which the notice of termination is given;

(ii) with respect to all tax other than tax due at source, on income of any accounting period beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this thirteenth day of October, One thousand nine hundred and seventy-seven in the English, French and Dutch languages, the three texts being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:
PHILLIP R LYNCH	G BARTHELEMY