Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN AUSTRALIA AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 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 *Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* signed on 21 May 1980 as amended by the Amending Protocol signed on 23 January 2002 (the "Convention") 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 Canada on 7 June 2017.

This document was prepared by the Australian Taxation Office and represents its understanding of the modifications made to the Convention by the MLI. In preparing this document, the Australian Taxation Office consulted with Canadian officials.

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 Canada submitted to the Depositary upon ratification on 29 August 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 Convention.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and it does not constitute a source of law. The authentic legal texts of the Convention 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 Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. 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 Convention (such as "Covered Tax 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 Convention: 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 Convention or to the Convention must be understood as referring to the Convention 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 texts of the MLI).

Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1981] ATS 14 (provides, in the case of Australia, the authentic legal text of the Convention signed on 21 May 1980).

Protocol Amending the Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [2002] ATS 26 (provides, in the case of Australia, the authentic legal text of the Amending Protocol signed on 23 January 2002).

Convention Between Canada 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 Canada, the authentic legal text of the Convention signed on 21 May 1980).

Protocol Amending the Convention Between Canada 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 Canada, the authentic legal text of the Amending Protocol signed on 23 January 2002).

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 Canada submitted to the Depositary upon ratification on 29 August 2019).

Entry Into Effect of the MLI Provisions

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. 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 Canada in their MLI positions.

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

26 September 2018 for Australia and 29 August 2019 for Canada.

Entry into force of the MLI:

1 January 2019 for Australia and 1 December 2019 for Canada.

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 Convention:

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 June 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 Convention for a case presented to the competent authority of a Contracting State on or after 1 December 2019, except for cases that were not eligible to be presented as of that date under the Convention 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 Convention:

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 December 2019; and

b) with respect to cases presented to the competent authority of a Contracting State prior to 1 December 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.

CONVENTION BETWEEN AUSTRALIA AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE AMENDING PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

DESIRING to conclude a Convention 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 is included in the preamble of this Convention:

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

Intending to eliminate double taxation with respect to the taxes covered by [*the Convention*] 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 Convention*] for the indirect benefit of residents of third jurisdictions),

HAVE AGREED as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONAL SCOPE

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

Article 2[1]

TAXES COVERED

1. The existing taxes to which this Convention shall apply are:

   a) in the case of Australia:

      the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia;

   b) in the case of Canada:

      the income taxes imposed by the Government of Canada under the Income Tax Act.

[1] As amended by Article 1 of the *Protocol Amending the Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (2002) ATS 26 (Amending Protocol).

2. This Convention shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of Canada after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the law of their respective States relating to the taxes to which this Convention applies within a reasonable period of time after those changes.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(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 Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;[2]

b) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which is an area where Canada may, in accordance with its national legislation and international law, exercise rights with respect to the seabed and sub-soil and their natural resources;

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

d) the term "person" includes an individual, an estate, a trust, 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 French, the term "société" also means a "corporation" within the meaning of Canadian law;

f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;

g) the term "tax" means Australian tax or Canadian tax, as the context requires;

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[2] As amended by paragraph 1 of Article 2 of the Amending Protocol.

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

i) the term "Canadian tax" means tax imposed by Canada, being tax to which this Convention applies by virtue of Article 2;

j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Canada, the Minister of National Revenue or his authorized representative;

k) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State.[3]

2. In this Convention, the terms "Australian tax" and "Canadian tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies by virtue of Article 2.

3. As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.[4]

Article 4

RESIDENCE

1. Subject to paragraph 2, for the purposes of this Convention, a person is a resident of a Contracting State if that person is a resident of that State for the purposes of its tax. A Contracting State or any political subdivision or local authority thereof or any agency or instrumentality of any such State, subdivision or authority is also a resident of that State for the purposes of this Convention.[5]

2. A person is not a resident of a Contracting State for the purposes of this Convention if the person is liable to tax in that State in respect only of income from sources in that State.[6]

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 with which his personal and economic relations are the closer.

[3] As amended by paragraph 1 of Article 2 of the Amending Protocol.
[4] As amended by paragraph 2 of Article 2 of the Amending Protocol.
[5] As amended by Article 3 of the Amending Protocol.
[6] As amended by Article 3 of the Amending Protocol.

4. **[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 the person's status shall be determined as follows:*

a) it shall be deemed to be a resident of the Contracting State in which it is incorporated or otherwise constituted;

b) if it is not incorporated or otherwise constituted in either of the Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*the Convention*] 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 Convention*], 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 Convention*].

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially -

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, 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. 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 or scientific research.

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 by, for or under contract with the enterprise other than in connection with a building site or construction, installation or assembly project of the enterprise.[7]

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 that enterprise.

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 at 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 Convention 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.

CHAPTER III

TAXATION OF INCOME

Article 6[8]

INCOME FROM REAL PROPERTY

1. Income from real property may be taxed in the Contracting State in which the real property is situated.

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[7] As amended by Article 4 of the Amending Protocol.
[8] As amended by Article 5 of the Amending Protocol.

2. For the purposes of this Convention, the term "real property" in relation to a Contracting State, shall have the meaning which it has under the law of that State and shall include:

a) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

b) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal 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 or has carried 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 or 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. Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.[9]

7. Nothing in this Article shall affect the operation of any law of a Contracting State relating specifically to taxation of any person who carries on a business of any form of insurance, provided that if the law in force in either Contracting State at the date of signature of this Convention is 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 any amendment of this paragraph that may be appropriate.

8. Where:

a) a resident of Canada is beneficially entitled, whether directly or through one or more interposed trusts, to a share of the business profits of an enterprise carried on in Australia by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in Australia,

the enterprise carried on by the trustee shall be deemed to be a business carried on in Australia by that resident through a permanent establishment situated in Australia and that share of business profits shall be attributable to that permanent establishment.[10]

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 one of the Contracting States 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 by ships or aircraft of passengers, livestock, mail, goods or merchandise taken on board in a Contracting State for discharge at a place in that State shall be treated as profits from operations confined solely to places in that State.[11]

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

[9] As amended by paragraph 1 of Article 6 of the Amending Protocol.
[10] Inserted by paragraph 2 of Article 6 of the Amending Protocol.
[11] As amended by Article 7 of the Amending Protocol.

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 this Article.

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 that 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, subject to paragraph 4, make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Convention in relation to the nature of the income, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

4. The provisions of paragraph 3 relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of income or taxation year in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

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. However, those dividends may also 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:

a)

(i) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** *in the case of dividends paid by a company that is a resident of Australia for the purposes of its tax, 5 per cent of the gross amount of the dividends, to the extent to which the dividends have been fully franked in accordance with the law of Australia, if a company that holds directly at least 10 per cent of the voting power of the company paying the dividends is beneficially entitled to those dividends; and*

(ii) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** *in the case of dividends paid by a company that is a resident of Canada for the purposes of its tax, except in the case of dividends paid by a*

non-resident-owned investment corporation that is a resident of Canada for the purposes of its tax, 5 per cent of the gross amount of the dividends if a company that controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends is beneficially entitled to those dividends; and

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

and if the relevant law of either Contracting State is varied in a manner that bears upon this provision, otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.[12]

The following paragraph 1 of Article 8 of the MLI applies to subparagraphs a)(i) and (ii) of paragraph 2 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

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

3. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Canada for the purposes of Canadian tax.

4. The term "dividends" as used in this Article means income from shares, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.[13]

5. 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, carriers on business through a permanent establishment situated in the other Contracting State, or performs professional services from a fixed base situated in that other 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 or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

6. Canada may impose, on the earnings attributable to a permanent establishment in Canada of a company which is a resident of Australia or on the earnings of such company attributable to the alienation of real property situated in Canada where the company is carrying on a trade in real property, a tax (in this paragraph referred to as a "branch tax") in addition to the tax that would be chargeable on the earnings of a company that is a resident of Canada, except that any branch tax so imposed shall not exceed 5 per cent of the amount of such earnings that have not been subjected to such branch tax in previous taxation years.

[12] As amended by paragraph 1 of Article 8 of the Amending Protocol.
[13] As amended by paragraph 1 of Article 8 of the Amending Protocol.

For the purposes of this provision, the term "earnings" means the earnings attributable to the alienation of such real property situated in Canada as may be taxed by Canada under the provisions of Article 6 or paragraph 1 of Article 13, and the profits, including any gains, attributable to a permanent establishment in Canada in a year and previous years after deducting therefrom all other taxes, other than the branch tax referred to herein, imposed on such profits in Canada.[14]

7. Australia may impose an income tax (in this paragraph called a "branch profits tax") on the reduced taxable income of a company that is a resident of Canada in addition to the income tax (in this paragraph called "the general income tax") payable by the company in respect of its taxable income; provided that any branch profits tax so imposed in respect of a year of income shall not exceed 5 per cent[15] of the amount by which the reduced taxable income of that year of income exceeds the general income tax payable in respect of the reduced taxable income of that year of income.

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[16] 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 right to participate in 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.

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, or performs professional services from a fixed base situated in that other State, being the State in which the interest arises, and the indebtedness giving rise to the interest is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division or a local authority thereof or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that 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.

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

[14] As amended by paragraph 1 of Article 8 of the Amending Protocol.
[15] As amended by paragraph 2 of Article 8 of the Amending Protocol.
[16] As amended by Article 9 of the Amending Protocol.

the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Convention.

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" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the 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, trade mark 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, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph a), any such equipment as is mentioned in subparagraph b) or any such knowledge or information as is mentioned in subparagraph c); or

e) the use of, or the right to use:

(i) motion picture films; or

(ii) films or videotapes or other means of reproduction for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.[17]

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, or performs professional services from a fixed base situated in that other State, being the State in which the royalties arise and the asset giving rise to the royalties is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division or a local authority thereof or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in

[17] As amended by paragraph 1 of Article 10 of the Amending Protocol.

connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that 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, 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 shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Convention.

7. Without prejudice to whether or not such payments would be dealt with as royalties under this Article in the absence of this paragraph, the term "royalties" as used in this Article shall not include payments or credits made as consideration for the supply of, or the right to use, source code in a computer software program, provided that the right to use the source code is limited to such use as is necessary to enable effective operation of the program by the user.[18]

8. Without prejudice to whether or not such payments would be dealt with as royalties under this Article in the absence of this paragraph, the term "royalties" as used in this Article shall include payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

a) the reception of, or the right to receive, visual images or sounds, or both, that are transmitted to the public by satellite or by cable, optic fibre or similar technology; or

b) the use of, or the right to use, in connection with television or radio broadcasting, visual images or sounds, or both, that are transmitted by satellite or by cable, optic fibre or similar technology; or

c) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.[19]

Article 13[20]

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the first-mentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property, other than real property, pertaining to the operation of

[18] Inserted by paragraph 2 of Article 10 of the Amending Protocol.
[19] Inserted by paragraph 3 of Article 10 of the Amending Protocol.
[20] As amended by Article 11 of the Amending Protocol.

those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise alienating such ships, aircraft, or other property is a resident.

4. **[MODIFIED by subparagraph a) of paragraph 1 of Article 9 of the MLI]** *Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity is derived principally, whether directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), from real property situated in the other Contracting State, may be taxed in that other State.*

The following subparagraph a) of paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of *this Convention*:

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

[*Paragraph 4 of Article 13 of the Convention*] shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation.

5. Nothing in this Convention shall affect the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

6. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, is treated for the purposes of taxation in the first-mentioned State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, disposed of and re-acquired the property for an amount equal to its fair market value at that time.

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 and 19, 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, such remuneration as is 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 a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income or taxation year 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.[21]

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 State.[22]

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.

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 the entertainer but to another person, that income may, notwithstanding the provisions of Articles 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer nor persons related to the entertainer, participate directly or indirectly in the profits of the other person referred to in that paragraph.

Article 18

PENSIONS AND ANNUITIES

1. Pensions and annuities arising in a Contracting State for the benefit of and paid to a resident of the other Contracting State may be taxed in that other State.

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[21] As amended by paragraph 1 of Article 12 of the Amending Protocol.
[22] As amended by paragraph 2 of Article 12 of the Amending Protocol.

2. Pensions and annuities arising in a Contracting State in a year of income or taxation year may be taxed in that State and according to the law of that State, but the tax so charged shall not exceed the lesser of -

a) 15 per cent of the pension or annuity received in the year; and

b) the tax that would be payable in respect of the pension of annuity received in the year if the recipient were a resident of the Contracting State in which the pension or annuity arises.

However, the limitation on the tax that may be charged in the Contracting State in which pensions and annuities arise does not apply to payments of any kind under an income-averaging annuity contract.

3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

Article 19

GOVERNMENT SERVICE

1. Remuneration (other than a pension or annuity) paid by a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall 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 of that State; or

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

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division or a local authority thereof. In such a case the provisions of Articles 15 and 16 shall apply.

Article 20

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 21

INCOME NOT EXPRESSLY MENTIONED

1. Subject to the provisions of paragraph 2, items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises and, subject to paragraph 3, according to the law of that State.

3. Where the income is income derived from an estate or trust resident in Canada by a resident of Australia the Canadian tax on that income shall not exceed 15 per cent of the gross amount of the income if it is subject to tax in Australia.

4. The provisions of paragraph 3 shall not apply if the recipient of the income, being a resident of Australia, carries on in Canada a business through a permanent establishment situated therein, or performs in Canada professional services from a fixed base situated therein, and the right or interest in the estate or trust in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or 14, as the case may be, shall apply.

Article 22[23]

SOURCE OF INCOME

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State, shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

2. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State, shall for the purposes of Article 23 and of the law of the first-mentioned Contracting State relating to its tax be deemed to be income from sources in the other Contracting State.

CHAPTER IV

METHODS OF PREVENTION OF DOUBLE TAXATION

Article 23[24]

ELIMINATION OF DOUBLE TAXATION

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 of this Article), Canadian tax paid under the law of Canada and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Canada shall be allowed as a credit against Australian tax payable in respect of that income;

   b) 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 of this Article), where a company which is a resident of Canada and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly at least 10 per cent of the voting power of the first-mentioned company, the credit referred to in subparagraph (a) shall include the Canadian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

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

[23] As amended by Article 13 of the Amending Protocol.
[24] As amended by Article 14 of the Amending Protocol.

a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof) and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Australia on profits, income or gains from sources in Australia shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

b) subject to the existing provisions of the law of Canada regarding the allowance as a credit against Canadian tax of tax payable in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof) where a company which is a resident of Australia pays a dividend to a company which is a resident of Canada and which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account the tax payable in Australia by that first-mentioned company in respect of the profits out of which such dividend is paid; and

c) where, in accordance with any provision of this Convention, income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

CHAPTER V

SPECIAL PROVISIONS

Article 24

MUTUAL AGREEMENT PROCEDURE

1. *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 Convention, he may, without prejudice to the remedies provided by the national laws of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident.*

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:

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 Convention*].

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 Convention.

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

The following first sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:

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 Convention*].

4. The competent authorities of the Contracting States may consult together with respect to the elimination of double taxation in cases not provided for in the Convention.

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

6. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.[25]

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

PART VI OF THE MLI – ARBITRATION

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

   a) under [*paragraph 1 of Article 24 of the Convention*], 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 Convention*]; and

   b) the competent authorities are unable to reach an agreement to resolve that case pursuant to [*paragraph 2 of Article 24 of the Convention*], 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*].

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

[25] Inserted by Article 15 of the Amending Protocol.

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, 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 24 of the Convention*] 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.

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 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*]. 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 Convention*] 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 Convention*] 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 Convention*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting State*s].

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 Convention*] 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 Convention*], 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 Convention*] (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 Convention*], 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.

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, Canada 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:

1. Canada reserves the right to limit the scope of issues eligible for arbitration to the following:

   a) Issues arising under provisions akin to Article 4 (Resident) of the OECD Model Tax Convention, but only insofar as the issue relates to the residence

of an individual;

b) Issues arising under provisions akin to Article 5 (Permanent Establishment) of the OECD Model Tax Convention;

c) Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention;

d) Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention;

e) Issues arising under provisions akin to Article 12 (Royalties) of the OECD Model Tax Convention, but only insofar as such a provision might apply in transactions involving related persons to which provisions akin to Article 9 of the OECD Model Tax Convention might apply; and

f) Any other provisions subsequently agreed by the Contracting [*States*] through an exchange of diplomatic notes.

2. Canada reserves the right to exclude from the scope of the arbitration provisions [*of the MLI*] issues pertaining to the application of anti-abuse provisions whether contained in [*the MLI*], [*the Convention*], or the domestic law of a Contracting [*State*].

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by the competent authority of 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, collection or enforcement of the taxes to which this Convention applies, or with the determination of appeals in relation thereto, and shall be used only for such purposes.

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 or the administrative practice of that or of the other Contracting State;

b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that 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 to supply information the disclosure of which would be contrary to public policy.

Article 26

DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting

State to the same obligations in relation to tax on their total world income as are residents thereof.

ARTICLE 26A[26]

VARIOUS INTERESTS OF CANADIAN RESIDENTS

Nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada with respect to a partnership, trust, or controlled foreign affiliate, in which that resident has an interest.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] 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 Convention*].

CHAPTER VI

FINAL PROVISIONS

Article 27

ENTRY INTO FORCE

1. This Convention shall come into force on the date on which the Government of Australia and the Government of Canada exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Convention the force of law in Australia and in Canada, as the case may be, and thereupon this Convention shall have effect -

a) in Australia -

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July 1975

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July 1975

b) in Canada -

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1976

(ii) in respect of other Canadian tax, for taxation years beginning on or after 1 January 1976.

2. Subject to paragraph 3 of this Article, the Agreement between the Government of the Commonwealth of Australia and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at

[26] Inserted by Article 16 of the Amending Protocol.

Mont Tremblant on 1 October 1957 (in this Article referred to as "the 1957 Agreement") shall cease to have effect in relation to any tax in respect of which this Convention comes into effect in accordance with paragraph 1 of this Article.

3. Where any provision of the 1957 Agreement would have afforded any greater relief from tax in one of the Contracting States than is afforded by this Convention, any such provision shall continue to have effect in that Contracting State -

a) in the case of Australia in respect of withholding tax on income that is derived by a non-resident, in respect of income derived during any financial year beginning before the date of signature of this Convention and, in respect of other Australian tax, for any year of income beginning before that date;

b) in the case of Canada in respect of tax withheld at the source on amounts paid or credited to non-residents before 31 December in the calendar year during which this Convention was signed and, in respect of other Canadian tax for any taxation year beginning on or before that date.

4. The 1957 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

Article 28

TERMINATION

This Convention shall continue in effect indefinitely, but the Government of Australia or the Government of Canada may, on or before 30 June in any calendar year after the year 1983, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Convention shall cease to be effective -

(a) in Australia -

(i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;

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

(b) in Canada -

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the second calendar year next following that in which the notice of termination is given;

(ii) in respect of other Canadian tax, for any taxation year beginning on or after 1 January in the second calendar year next following that in which the notice of termination is given.

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

DONE in Canberra on the twenty-first day of May 1980 in the English and French languages, the two versions being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA: FOR THE GOVERNMENT OF CANADA:

JOHN HOWARD EDWARD C LUMLEY