Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AND 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 the Government of Australia and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol* (the "Convention") signed on 12 July 1982 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 the Republic of Korea ("Korea") on 7 June 2017.

This document was prepared in consultation with the competent authority of Korea and represents our shared understanding of the modifications made to the Convention 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 Korea submitted to the Depositary upon ratification on 13 May 2020. 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 the Government of Australia and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with

respect to Taxes on Income, and Protocol [1984] ATS 2 (provides, in the case of Australia, the authentic legal text of the Convention signed on 12 July 1982).

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 Korea submitted to the Depositary upon ratification on 13 May 2020).

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 provision 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 Korea in their MLI positions.

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

26 September 2018 for Australia and 13 May 2020 for Korea.

Entry into force of the MLI:

1 January 2019 for Australia and 1 September 2020 for Korea.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) 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 2021; 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 March 2021.

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 September 2020, 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.

CONVENTION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

[REPLACED by paragraph 1 of Article 6 of the MLI] *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 replaces the text referring to an intent to eliminate double taxation 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

TAXES COVERED

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

   a) in Korea:

      (i) the income tax;

      (ii) the corporation tax; and

      (iii) the inhabitant tax;

   b) in Australia:

      the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company.

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention 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 either State relating to the taxes to which this Convention applies.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, 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;

      (i) the Territory of Christmas Island;

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

      (iii) the Territory of Ashmore and Cartier Islands;

      (iv) the Coral Sea Islands Territory; and

      (v) 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 sea-bed and subsoil of the continental shelf;

   b) the term "Korea" means the Republic of Korea and, when used in a geographical sense, it includes any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and subsoil and their natural resources may be exercised;

   c) the terms "a Contracting State" and "the other Contracting State" mean Australia or Korea, 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;

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

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

   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 "Korean tax" means tax imposed by Korea, 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 Korea, the Minister of Finance or his authorized representative; and

k) the term "international traffic", in relation to the operation of ships or aircraft by a resident of a Contracting State, means operations of ships or aircraft other than operations of ships or aircraft which are confined solely to places in the other Contracting State, and for this purpose 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 operations confined solely to places in that State.

2. In this Convention, the terms "Australian tax" and "Korean 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. In the application of this Convention by a Contracting State, any term not defined in this Convention 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 Convention applies.

Article 4

RESIDENCE

1. For the purposes of this Convention, a person is, subject to paragraph 2, a resident of a Contracting State-

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

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

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

3. Where by reason of the preceding provisions of this Article 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.

For purposes of this paragraph in determining the Contracting State with which an individual's personal and economic relations are the closer, regard shall be given to his citizenship or nationality (if he is a citizen or national of a Contracting State).

4. Where by reason of the provisions of paragraphs 1 and 2 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 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, an oil or gas well, a quarry or any other place of extraction of natural resources;

g) land used for agricultural, pastoral or forestry purposes.

3. A building site or a construction, installation or assembly project constitutes a permanent establishment only if it exists for more than six months.

4. An enterprise shall not be deemed to have a permanent establishment merely by reason of one or more of the following-

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 of 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.

5. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if-

a) it carries on supervisory activities in that State for more than six 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.

6. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 7 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 binding 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.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting 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.

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

9. The principles set forth in paragraphs 1 to 8 inclusive shall also be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 5 of Article 12 of this Convention whether an enterprise of a Contracting State has a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of either Contracting State, has a permanent establishment in a Contracting State.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from land (including any building or other construction) situated in the other Contracting State may be taxed in the other State.

2. The term "land" shall have the meaning which it has under the law of the Contracting State in which the land in question is situated and it shall include any lease of such land and any estate or direct interest in or over such land whether improved or not. A right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources shall be deemed to be an estate or direct interest in land situated in the Contracting State in which the mineral deposits, oil or gas wells, quarries or natural resources are situated.

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

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment

situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In 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. Where the correct amount of profits attributable to a permanent establishment is incapable of determination or the ascertaining thereof presents exceptional difficulties, 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 of income 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.

Article 8

SHIPS AND AIRCRAFT

1. Profits of a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits derived from participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where a person subject to the taxing jurisdiction of a Contracting State and any other person are related and where conditions are operative between such related persons in their commercial or financial relations which are different from those which might be expected to operate if such persons were unrelated persons dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of those persons, but by reason of those conditions, have not so accrued, may be included in the profits of that person and taxed accordingly.

2. A person is related to another person for purposes of this Convention if either person participates directly or indirectly in the management, control, or capital of the other, or if any third person or persons participates or participate directly or indirectly in the management, control, or capital of both.

3. This Article shall apply only where both Contracting States have a tax interest.

4. Notwithstanding the provisions of this Article, an enterprise of a Contracting State 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 this Article.

5. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of paragraph 1 or 4, 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 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.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State, 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, 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.

3. The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In any such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Dividends paid by a company which is a resident of a Contracting State, 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 fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which by reason of paragraph (1) of Article 4 is a resident of Australia and which by reason of that paragraph is also a resident of Korea.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the income of a company which is a resident of the other Contracting State, tax in addition to the taxes referred to in Article 2 in relation to the first-mentioned Contracting State which are payable by a company which is a resident of the first-mentioned State, provided that any such additional tax shall not exceed 15 per cent of the amount by which the taxable income of the first-mentioned company of a year of income exceeds the tax payable on that taxable income to the first-mentioned State. Any tax payable to a Contracting State on the undistributed profits of a company which is a resident of the other Contracting State shall be calculated as if that company were not liable to the additional tax referred to in this paragraph and had paid dividends of such amount that tax equal to the amount of that additional tax would have been payable on the dividends in accordance with paragraph 2 of this Article.

Article 11

INTEREST

1. Interest arising in a Contracting State, 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 15 per cent of the gross amount of the interest.

3. Interest derived by the Government of a Contracting State or by any other body exercising governmental functions in or in a part of a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

4. 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 income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political or administrative subdivision of that State or a local authority of that State or a person who, by reason of paragraph 1 of Article 4 is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. 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 taxpayer 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 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 a Contracting State, 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 15 per cent of the gross amount of the royalties.

3. The term "royalties" 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, trademark, or other like property or right;

b) the use of, or the right to use, any industrial, commercial or scientific equipment;

c) the supply of scientific, technical, industrial or commercial knowledge or information;

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 paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);

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

(i) motion picture films;

(ii) films or video tapes 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 of a property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political or administrative subdivision of that State or a local authority of that State or a person who, by reason of paragraph 1 of Article 4, is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the 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.

Article 13

ALIENATION OF PROPERTY

1. 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) shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in a Contracting State or of rights to exploit, or to explore for, natural resources in a Contracting State;

   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;

      (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) 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 a Contracting State or of rights to exploit, or to explore for, natural resources in a Contracting State - in the Contracting State in which the assets or the principal assets of the company are situated.

3. Income derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic while owned by that enterprise or of personal property pertaining to the operation of those ships or aircraft shall be taxable only in that State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other 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 a Contracting State in respect of an employment shall be taxable only in that State unless the employment is

exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income 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 a Contracting State may be taxed in that Contracting State.

Article 16

DIRECTORS' FEES

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

Article 17

ENTERTAINERS

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

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

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer from his personal activities as such in a Contracting State shall be taxable only in the other Contracting State if his visit to the first-mentioned State is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of an entertainer in a Contracting State accrues not to that entertainer himself but to another person, that income shall be taxable only in the other Contracting State if that person is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities, or if that person is a non-profit organisation of that other State.

Article 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, any pension or any annuity paid to a resident of a Contracting State 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. a) Remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or local authority of that Contracting State to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who-

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

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority of that Contracting State to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national or citizen of, that Contracting State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority of that Contracting State.

4. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea, and the Korea Trade Promotion Corporation and, in the case of Australia, by the Reserve Bank of Australia.

Article 20

PROFESSORS AND TEACHERS

An individual who is a resident of a Contracting State and who, at the invitation of any university, college, school or other recognised educational institution, visits the other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be taxable only in the first-mentioned State on his remuneration for such teaching or research.

Article 21

STUDENTS AND TRAINEES

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

Article 22

INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of a Contracting State 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 a Contracting State from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.

3. The provisions of paragraph 1 shall not apply to income derived by a resident of a Contracting State where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

SOURCE OF INCOME

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

CHAPTER IV

METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 24

1. 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), Korean tax paid under the law of Korea 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 Korea shall be allowed as a credit against Australian tax payable on the income on which the Korean tax was paid. However, where the income is a dividend paid by a company which is a resident of Korea, the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid.

2. In the case of a resident of Korea, double taxation shall be avoided in accordance with this paragraph. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof) Australian tax payable (excluding in the case of a dividend tax payable in respect of the profits out of which the dividends are paid) under the laws of

Australia and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Australia shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Australia bears to the entire income subject to Korean tax.

3. a) For the purposes of paragraph 4, the term "Korean tax forgone" means-

(i) in the case of interest derived by a resident of Australia which is exempted from Korean tax in accordance with the relevant legislation, the amount which, under the law of Korea and in accordance with this Convention, would have been payable as Korean tax if the interest had not been so exempt and if the tax referred to in paragraph (2) of Article 11 were not to exceed 10 per cent of the gross amount of the interest; and

(ii) in the case of royalties derived by a resident of Australia which are exempted either wholly or partly from Korean tax in accordance with the relevant legislation, the amount or, where the royalties are partly exempt, the additional amount which, under the law of Korea and in accordance with this Convention, would have been payable as Korean tax if the royalties had not been so wholly or partly exempt, and if the tax referred to in paragraph 2 of Article 12 were not to exceed 10 per cent of the gross amount of the royalties.

b) In sub-paragraph a), the term "the relevant legislation" means those provisions of the laws of Korea relating to Korean tax which are agreed in letters exchanged from time to time between the Minister of Finance of Korea and the Treasurer of Australia for the purposes of this paragraph.

4. a) For the purposes of paragraph 1, an amount of Korean tax forgone shall be deemed to be an equivalent amount of Korean tax paid;

b) for the purposes of the income tax law of Australia-

(i) an amount of interest referred to in sub-paragraph (3)(a)(i) shall be deemed to be increased by the amount of Korean tax forgone in respect of that interest; and

(ii) an amount of royalties referred to in sub-paragraph (3)(a)(ii) shall be deemed to be increased by the amount of Korean tax forgone in respect of those royalties.

5. Paragraphs 3 and 4 shall not apply in relation to income derived in any year of income after the year of income that ends on 30 June in the calendar year fifth following the calendar year in which this Convention is signed or any later date that may be agreed by the Governments of the Contracting States in letters exchanged for this purpose.

CHAPTER V

SPECIAL PROVISIONS

Article 25

MUTUAL AGREEMENT PROCEDURE

1. **[The first sentence of paragraph 1 of Article 25 of this Convention is REPLACED by first sentence of paragraph 1 of Article 16 of the MLI]** *Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, notwithstanding the remedies provided by the domestic law of those States, present his case to the*

competent authority of the Contracting State of which he is a resident. 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 this Convention.

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 Convention:

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 Convention*], 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 objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any solution reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. *The competent authorities of the Contracting States shall seek to resolve by agreement any difficulties or doubts arising as to the application or interpretation of this Convention. In particular the competent authorities of the Contracting States shall seek to agree as to with which of the Contracting States an individual described in sub-paragraph 3b) of Article 4 has closer personal and economic relations or in which of the Contracting States the place of effective management of a person other than an individual described in paragraph 4 of that Article is situated.*

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

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [*the Convention*].

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 Convention.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes to which this Convention applies 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 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 to supply information, the disclosure of which would be contrary to public policy.

Article 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this 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 28

ENTRY INTO FORCE

1. Each Contracting State shall notify the other by note through the diplomatic channel of the completion of the procedure required by its law for the bringing into force of this Convention.[1] This Convention shall enter into force on the first day of the month second following the month in which the later of these notifications is given.

2. This Convention shall have effect-

a) in Australia-

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year in which this Convention is signed; and

(ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year in which this

[1] Notes to this effect were exchanged 16 November 1983.

Convention is signed;

b) in Korea-

(i) in respect of tax withheld at source on amounts paid or credited to a non-resident, in relation to income derived on or after 1 January in the calendar year in which this Convention is signed; and

(ii) in respect of other Korean tax, in relation to income of any year of income beginning on or after 1 January in the calendar year in which this Convention is signed.

Article 29

TERMINATION

This Convention shall remain in force indefinitely, but the Government of Australia or the Government of Korea may on or before 30 June in any calendar year 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 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 relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given; and

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

b) in Korea-

(i) in respect of tax withheld at source on amounts paid or credited to a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given; and

(ii) in respect of other Korean tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Canberra this twelfth day of July of the year one thousand nine hundred and eighty-two in the English and Korean languages, both texts being equally authoritative.

FOR GOVERNMENT OF AUSTRALIA:	FOR GOVERNMENT OF THE REPUBLIC OF KOREA:
JOHN HOWARD	HA JONG YOON

PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

HAVE AGREED AT THE SIGNING of the Convention between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provisions which shall form an integral part of the said Convention.

1. With reference to Article 2,

the Convention shall also apply to the Korean defence tax where charged by reference to the income tax or the corporation tax.

2. With reference to Article 7,

the Convention shall not apply to profits of an enterprise from carrying on a business of any form of insurance, other than life insurance.

3. With reference to paragraph 6 of Article 10,

the Governments of the Contracting States acknowledge that the additional tax referred to in that paragraph applicable at the time at which the Convention is signed is, in the case of Australia, only a tax of 5 per cent levied on the reduced taxable income of a company which is not a resident of Australia, in accordance with Section 128T of the Income Tax Assessment Act 1936.

4. With reference to paragraph 1 of Article 24,

the Governments of the Contracting States acknowledge that a company which is a resident of Australia is, in accordance with the provisions of the taxation law of Australia in force at the date of signature of the Convention, entitled to a rebate in its assessment at the average rate of tax payable by the company in respect of dividends that are included in its taxable income and are received from a company which is a resident of Korea. 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 Korea and included in the taxable income of the company, the Governments of the Contracting States will enter into negotiations in order to establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

5. With reference to paragraph 2 of Article 24,

if subsequently to the signature of the Convention Korea provides relief from its tax on intercorporate dividends, or in a convention with another country agrees to give credit for the tax of the other country on profits out of which dividends are paid to a resident of Korea, it shall immediately notify Australia and enter into negotiations in order to establish new provisions concerning the credit to be allowed by Korea against its tax on dividends.

6. In general,

if in a convention for the avoidance of double taxation that is subsequently made between Australia and a third State Australia should agree-

a) to reduce below 15 per cent the rate of its tax on dividends paid by a company which is a resident of Australia and to which a resident of the third State is beneficially entitled; or

b) to include an Article dealing with non-discrimination,

the Government of Australia shall immediately inform the Government of Korea and shall enter into negotiations with the Government of Korea with a view to providing treatment in relation to Korea comparable with that provided in relation to that third State.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Canberra this twelfth day of July of the year one thousand nine hundred and eighty-two in the English and Korean languages, both texts being equally authoritative.

FOR GOVERNMENT OF AUSTRALIA:	FOR GOVERNMENT OF THE REPUBLIC OF KOREA:
JOHN HOWARD	HA JONG YOON