Australian Government
Australian Taxation Office

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

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

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* signed on 11 February 1969 as amended by the Amending Protocol signed on 16 October 1989 and the Second Amending Protocol signed on 8 September 2009 (the "Agreement"), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia and Singapore on 7 June 2017.

This document was prepared by the Australian Taxation Office and represents its understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of Singapore submitted to the Depositary upon ratification on 21 December 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

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

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

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

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

References

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

Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1969] ATS 14 (provides, in the case of Australia, the authentic legal text of the agreement signed on 11 February 1969)

Protocol Amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1990] ATS 3 (provides, in the case of Australia, the authentic legal text of the Amending Protocol signed on 16 October 1989)

Second Protocol Amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as Amended by the protocol of 16 October 1989 [2010] ATS 26 (provides, in the case of Australia, the authentic legal text of the Second Amending Protocol signed on 8 September 2009)

Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and the MLI position of Singapore submitted to the Depositary upon ratification on 21 December 2018).

Entry into Effect of the MLI Provisions

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

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

26 September 2018 for Australia and 21 December 2018 for Singapore.

Entry into force of the MLI:

1 January 2019 for Australia and 1 April 2019 for Singapore.

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

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

b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 October 2019.

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

In accordance with paragraphs 1 and 2 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Agreement:

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

b) with respect to cases presented to the competent authority of a Contracting State prior to 1 April 2019:

(i) only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case; and

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

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

THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE,

The following paragraph 3 of Article 6 of the MLI is included in the preamble of this Agreement:

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

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

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

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

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

Intending to eliminate double taxation with respect to the taxes covered by [*the Agreement*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Agreement*] for the indirect benefit of residents of third jurisdictions),

HAVE AGREED as follows:

Article 1A[1]

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

Article 1

1. The existing taxes to which this Agreement applies are-

   a) in Australia-

      the income tax, and the petroleum resource rent tax in respect of offshore projects, imposed under the federal law of the Commonwealth of Australia; [2]

   b) in Singapore:

      the income tax.

[1] Inserted by Article 1 of the *Protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (1990) ATS 3 (Amending Protocol).

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

2. This Agreement applies also to any identical or substantially similar taxes which are imposed subsequent to the date of signature of this Agreement by Singapore or the Commonwealth in addition to, or in place of, the existing taxes to which this Agreement applies.

Article 2

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

a) the term "the Commonwealth" means the Commonwealth of Australia;

b) the term "Australia" means the whole of the Commonwealth and includes-

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

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

(iv) the Territory of Ashmore and Cartier Islands;

(v) any territory which, subsequent to the date of signature of this Agreement, becomes a Territory of the Commonwealth; and

(vi) any area outside the territorial limits of the Commonwealth and the said Territories in respect of which there is for the time being in force a law of the Commonwealth or of a State or part of the Commonwealth or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and sub-soil of the continental shelf;

c) the term "Singapore" means the Republic of Singapore;

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

e) the terms "Australian tax" and "Singapore tax" mean tax imposed by the Commonwealth and tax imposed by Singapore respectively, being tax to which this Agreement applies by virtue of Article 1;

f) the term "company" includes any body or association which is treated as a company for tax purposes;

g) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorised representative and in the case of Singapore, the Minister for Finance or his authorised representative;

h) the term "enterprise" includes undertaking;

i) the term "Malaysian company" means a company which, for the purposes of income tax in Malaysia, is resident in Malaysia;

j) the term "person" includes an individual, a company and any body of persons, corporate or not corporate;

k) the terms "profits of a Singapore enterprise" and "profits of an Australian enterprise" mean profits of a Singapore enterprise or profits of an Australian enterprise respectively, but do not include:

(i) dividends, interest (as defined in Article 9), or royalties (including those payments which come within the meaning of "royalties" for the purposes of Article 10) other than such dividends, interest or royalties that are effectively connected with a trade or business carried on through a permanent establishment in one of the Contracting States by an enterprise of the other Contracting State;

(ii) rent;

(iii) remuneration or other income for personal (including professional) services;

(iv) profits from the operation of ships or aircraft;

(v) payments to the extent to which they are received as consideration for the use of, or the right to use, motion picture films, literary, dramatic, musical or artistic copyrights, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting; or

(vi) payments to the extent to which they are received as consideration for the supply of scientific, technical, industrial or commercial knowledge, information or assistance (other than those payments which come within the meaning of "royalties" for the purposes of Article 10);

l) the term "resident in Singapore" has the meaning which it has under the laws of Singapore relating to Singapore tax; and the term "resident of Australia" has the meaning which it has under the laws of the Commonwealth relating to Australian tax;

m) the term "tax" means Australian tax or Singapore tax, as the context requires;

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

2. The terms "Australian tax" and "Singapore tax" do not include any amount which represents a penalty or interest imposed under the law in force in Australia or Singapore relating to the taxes to which this Agreement applies.

3. Where under this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

4. Unless the context otherwise requires, any term of this Agreement not otherwise defined shall have, in a Contracting State, the meaning which it has under the laws in that Contracting State from time to time in force relating to the taxes to which this Agreement applies.[3]

Article 3

1. For the purposes of this Agreement-

a) the term "Australian company" means any company which being a resident of Australia-

(i) is incorporated in Australia and has its centre of administrative or practical management in Australia whether or not any person outside Australia exercises or is capable of exercising any overriding control or direction of the company or of its policy or affairs in any way whatsoever; or

(ii) is managed and controlled in Australia;

[3] As amended by Article 3 of the Amending Protocol.

b) the term "Singapore company" means any company which is managed and controlled in Singapore and which is not an Australian company;

c) the term "Singapore resident" means any Singapore company and any person (other than a company) who is resident in Singapore; and

d) the term "Australian resident" means any Australian company and any other person (other than a Singapore company) who is a resident of Australia.

2. Where by reason of the provisions of paragraph (1) of this Article an individual is both a Singapore resident and an Australian resident-

a) he shall be treated solely as a Singapore resident-

(i) if he has a permanent home available to him in Singapore and has not a permanent home available to him in Australia;

(ii) if sub-paragraph (a)(i) of this paragraph is not applicable but he has an habitual abode in Singapore and has not an habitual abode in Australia;

(iii) if neither sub-paragraph (a)(i) nor sub-paragraph (a)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Singapore;

b) he shall be treated solely as an Australian resident-

(i) if he has a permanent home available to him in Australia and has not a permanent home available to him in Singapore;

(ii) if sub-paragraph (b)(i) of this paragraph is not applicable but he has an habitual abode in Australia and has not an habitual abode in Singapore;

(iii) if neither sub-paragraph (b)(i) nor sub-paragraph (b)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Australia.

3. Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is both a Singapore resident and an Australian resident-

a) it shall be treated solely as a Singapore resident if it is managed and controlled in Singapore;

b) it shall be treated solely as an Australian resident if it is managed and controlled in Australia.

4. In this Agreement the term "resident of one of the Contracting States" and the term "resident of the other Contracting State" mean a person who is a Singapore resident or a person who is an Australian resident as the context requires.

5. In this Agreement, the term "Singapore enterprise" and the term "Australian enterprise" mean an industrial or commercial enterprise (including a mining, agricultural, pastoral, forestry or plantation enterprise) carried on by a Singapore resident or by an Australian resident respectively, and the term "enterprise of one of the Contracting States" and the term "enterprise of the other Contracting State" mean an Australian enterprise or a Singapore enterprise, as the context requires.

Article 4[4]

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

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

2. The term "permanent establishment" includes but is not limited to-

a) a place of management;

b) a branch;

c) an office;

d) a store or other sales outlet;

e) a factory;

f) a workshop;

g) a warehouse except where it is used solely for any of the purposes mentioned in paragraph (4);

h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

i) a building site, or a construction, installation or assembly project, but only where such site or project or any combination of them continues for a period aggregating more than 6 months within any 12-month period.

3. An enterprise of a Contracting State shall be deemed to have a permanent establishment and to carry on trade or business through that permanent establishment in the other Contracting State if-

a) it carries on supervisory activities in that other State for a period or periods aggregating more than 6 months within any 12-month period in connection with a building site, or a construction, installation or assembly project or any combination of them which is being undertaken in that other State; or

b) substantial equipment is being used in that other State by, for or under contract with the enterprise.

4. 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 or display of goods or merchandise belonging to the enterprise;

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

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

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

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

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 the enterprise in the first-mentioned Contracting State if-

a) the person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts for or on behalf of the enterprise unless the exercise of such authority is limited to the purchase of goods or merchandise for that enterprise; or

b) there is maintained in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he or she regularly fills orders on behalf of the enterprise; or

c) the person habitually secures orders in the first-mentioned Contracting State wholly or principally for the enterprise itself or for any other enterprise which is controlled by it or has a controlling interest in it; or

d) in so acting the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the 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 that enterprise carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of that person's business.

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 constitute either company a permanent establishment of the other.

Article 4A[5]

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

2. In this Article, the term "real property", in relation to one of the Contracting States, has the meaning which it has under the laws of that State and also includes-

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

b) a right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, 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 income from real property of an enterprise and to income from real property used for the performance of professional services.

Article 5[6]

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

[5] Inserted by Article 5 of the Amending Protocol.
[6] As amended by Article 6 of the Amending Protocol.

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

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents, provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting 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 one of the Contracting States is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate 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 4, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

Article 6[7]

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

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

b) the same person participates 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently 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 charged to tax in that other State, 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 Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

Article 7[8]

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. Interest earned on funds held in one of the Contracting States by a resident of the other Contracting State in connection with the operation of ships or aircraft, other than operations confined solely to places in the first-mentioned State, shall be treated as profits from the operation of ships or aircraft.

5. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in one of the Contracting States for discharge at another place in that Contracting State, or at one or more structures used in connection with the exploration for or exploitation of natural resources situated in waters adjacent to the territorial waters of that Contracting State, shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

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

Article 8

1. The Australian tax on dividends, being dividends paid by a company which is a resident of Australia, derived by a Singapore resident who is beneficially entitled to the dividends, shall not exceed 15 per centum of the gross amount of the dividends.

2. Subject to the provisions of this Article dividends paid by a company which is resident in Singapore, and dividends paid by a Malaysian company out of profits derived from sources in Singapore, being dividends derived by an Australian resident who is beneficially entitled to the dividends, shall be exempt from any tax in Singapore which may be chargeable on dividends in addition to the tax chargeable in respect of the profits of the company.

3. Nothing in the preceding paragraph shall affect the provisions of Singapore law under which the tax in respect of a dividend paid by a company which is resident in Singapore, or by a Malaysian company out of profits derived from sources in Singapore, from which Singapore tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Singapore year of assessment immediately following that in which the dividend was paid.

4. If Singapore, subsequent to the signing of this Agreement, imposes a tax on dividends paid by a company which is resident in Singapore or by a Malaysian company out of profits derived from sources in Singapore, which is in addition to the tax chargeable in respect of the profits of the company, such tax may be charged but the tax so charged on such dividends derived by an Australian resident who is beneficially entitled to the dividends shall not exceed 15 per centum of the gross amount of the dividends.

5. Paragraphs (1), (2) and (4) of this Article shall not apply if the resident of one of the Contracting States who is beneficially entitled to the dividends has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through that permanent establishment. In any such case, the provisions of Article 5 shall apply.[9]

6. Dividends paid by a company which is a resident of one of the Contracting States, being dividends derived by a person who is beneficially entitled to the dividends and who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting State. This paragraph shall not apply in relation to a Singapore company which is also a resident of Australia or any Australian company which is also resident in Singapore.

Article 9

1. The Australian tax on interest derived by a Singapore resident who is beneficially entitled to the interest shall not exceed 10 per centum of the gross amount of the interest.

2. The Singapore tax on interest derived by an Australian resident who is beneficially entitled to the interest shall not exceed 10 per centum of the gross amount of the interest.

3. Paragraphs (1) and (2) of this Article shall not apply if the resident of one of the Contracting States who is beneficially entitled to the interest has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with a trade or business carried on through that permanent establishment. In any such case, the provisions of Article 5 shall apply.[10]

4. 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 exceeds the amount which might have been expected to have been agreed

[9] As amended by Article 9 of the Amending Protocol.
[10] As amended by Article 10(a) of the Amending Protocol.

upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

5. In this Article the term "interest" means interest, and amounts in the nature of interest, on bonds, securities, debentures or on any other form of indebtedness. The term does not include income to which paragraph (4) of Article 7 applies.[11]

Article 10

1. The Australian tax on royalties derived by a Singapore resident who is beneficially entitled to the royalties shall not exceed 10 per centum of the gross amount of the royalties

2. The Singapore tax on royalties derived by an Australian resident who is beneficially entitled to the royalties shall not exceed 10 per centum of the gross amount of the royalties.

3. In this Article "royalties" means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are received as consideration for-

a) the use of, or the right to use, any-

(i) copyright (other than a literary, dramatic, musical or artistic copyright), patent, design or model, plan, secret formula or process, trademark, or other like property or right; or

(ii) industrial, commercial or scientific equipment

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

c) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph,

but does not include royalties or other payments in respect of the operation of mines or quarries or of the exploitation of natural resources or payments to the extent to which they are received as consideration for the use of, or the right to use, motion picture films, tapes for use in connection with radio broadcasting or films or video tapes for use in connection with television.[12]

4. Paragraphs (1) and (2) of this Article shall not apply if the resident of one of the Contracting States who is beneficially entitled to the royalties has in the other Contracting State a permanent establishment and the information, right or property giving rise to the royalties is effectively connected with a trade or business carried on through that permanent establishment. In any such case, the provisions of Article 5 shall apply.[13]

5. Where, owing to a special relationship between the payer and the person who is beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

Article 10A[14]

1. Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 4A and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

[11] As amended by Article 10(b) of the Amending Protocol.
[12] As amended by Article 11(a) of the Amending Protocol.
[13] As amended by Article 11(b) of the Amending Protocol.
[14] Inserted by Article 12 of the Amending Protocol.

2. Income or gains from the alienation of property, other than real property referred to in Article 4A, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property referred to in Article 4A) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income or gains derived by a resident of one of the Contracting States from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property in the other Contracting State of a kind referred to in Article 4A and, as provided in that Article, situated in that other State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3) and (4) apply.

Article 11

1. Subject to this Article and to Articles 12, 13 and 14 remuneration or other income derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services shall be subject to tax only in that Contracting State unless the services are performed or exercised in the other Contracting State. If the services are so performed or exercised such remuneration or other income as is derived therefrom shall be deemed to have a source in, and may be taxed in, that other Contracting State.

2. In relation to remuneration of a director of a company derived from the company, the provisions of this Article and of Article 12 shall apply as if the remuneration were remuneration in respect of personal services. Director's 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 shall be deemed to be derived in respect of personal services performed in, and may be taxed in, that other Contracting State.

3. An individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State on remuneration from an employment exercised on ships or aircraft in international traffic.

Article 12

1. Remuneration or other income derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services performed or exercised in the other Contracting State shall be exempt from tax in the other Contracting State if-

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

b) the services are performed or exercised for or on behalf of a person who is a resident of the first-mentioned Contracting State; and

c) the remuneration or other income is not deductible in determining the profits for tax purposes in the other Contracting State of a permanent establishment in that other Contracting State of that person.

2. Paragraph (1) of this Article shall not apply to remuneration or other income derived by public entertainers (such as stage, motion picture, radio or television artistes, musicians and athletes) from their personal activities as such.

3. Notwithstanding anything contained in this Agreement, where an enterprise of one of the Contracting States derives profits arising from, or in relation to, contracts or obligations to provide in the other Contracting State services of public entertainers referred to in paragraph (2) of this Article, the profits may be taxed in the other Contracting State and shall be deemed to have a source in that other Contracting State, except where the enterprise is, in connection with the provision of those services, substantially supported from the public funds of a Government of the first-mentioned Contracting State, in which case the profits shall be exempt from tax in the other Contracting State.

4. For the purposes of paragraph (3) of this Article, "a Government of the first-mentioned Contracting State" means, in the case of Singapore, the Government of Singapore and, in the case of Australia, the Government of the Commonwealth or of any State of the Commonwealth.

Article 13

1. A pension or an annuity, derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting 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.

3. This Article shall not apply to a pension paid to an individual by the Government of the Commonwealth or of any State of the Commonwealth or the Government of Singapore in respect of services rendered in the discharge of governmental functions.

Article 14

1. Remuneration (other than pensions) paid by the Government of the Commonwealth or of any State of the Commonwealth to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Singapore tax, except where the individual is resident in Singapore and is not an Australian citizen.

2. Remuneration (other than pensions) paid by the Government of Singapore to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax, except where the individual is a resident of Australia and is not a Singapore citizen.

3. This Article shall not apply to any remuneration in respect of services rendered in connection with any trade or business carried on by a Government for purposes of profit.

Article 15

A student or trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education or training shall not be taxed in that first-mentioned Contracting State on payments which he receives for the purpose of his

maintenance, education or training provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 16

1. This Article shall apply to a person who is a resident of Australia and is also resident in Singapore.

2. Where such a person is treated for the purposes of this Agreement solely as a resident of one of the Contracting States he shall be exempt in the other Contracting State from tax on any income in respect of which he is subject to tax in the first-mentioned Contracting State if the income is derived-

a) from sources in the first-mentioned Contracting State; or

b) from sources outside both Contracting States.

Article 16A[15]

Items of income which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable according to the laws of the respective Contracting States relating to tax.

Article 17[16]

Profits, income or gains derived by a resident of one of the Contracting States which, under any one or more of Article 4A, Article 5, Articles 7 to 14 and Article 16A, may be taxed in the other Contracting State shall for the purposes of Article 18 and of the laws of the respective Contracting States relating to tax be deemed to be income from sources in that other State.

Article 18[17]

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

2. Where a company which is a resident of Singapore pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in paragraph (1) shall include the Singapore tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

3. For the purposes of paragraphs (1) and (2), "Singapore tax paid" shall be deemed to include an amount equivalent to the amount of Singapore tax which, under the law of Singapore relating to Singapore tax and in accordance with this Agreement, would have been payable but for an exemption from or reduction of Singapore tax granted under-

a) Section 13(2) of the Income Tax Act 1985 of Singapore;

[15] Inserted by Article 13 of the Amending Protocol.
[16] As amended by Article 14 of the Amending Protocol.
[17] As amended by Article 15 of the Amending Protocol.

b) Parts II, IIIA, IV, VI, VII, VIII, IX, X or XI of the Economic Expansion Incentives (Relief from Income Tax) Act 1988 of Singapore; and

c) Parts III, V, VIA or XII of the Economic Expansion Incentives (Relief from Income Tax) Act 1988 of Singapore except where the exemption or reduction is granted in respect of income attributable to the provision of financial (including insurance) services provided directly or indirectly to a person who is a resident of Australia,

insofar as those provisions were in force on, and have not been modified since, the date of signature of the Protocol which first amended the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Canberra on 11 February 1969, or have been modified only in minor respects so as not to affect their general character or any other provision which may subsequently be made granting an exemption from or reduction of tax which the Treasurer of Australia and the Minister for Finance of Singapore, or their authorised representatives, agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. The provisions of paragraph (3) shall apply only in relation to income derived in any of the 10 years of income beginning with the year of income that commenced on 1 July 1987 and in any later year of income that may be agreed in an exchange of letters for this purpose by the Treasurer of Australia and the Minister for Finance of Singapore, or their authorised representatives.

5. Subject to the provisions of the laws of Singapore regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, Australian tax payable, whether directly or by deduction, in respect of income from sources within Australia shall be allowed as a credit against Singapore tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Australia to a company which is a resident of Singapore and which owns directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit shall take into account the Australian tax paid by the first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

Article 19[18]

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

2. Any information received under paragraph (1) by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph (1), or the oversight of the above. Such persons or authorities shall use the information only for

[18] As amended by Article 1I of the *Second protocol amending the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the protocol of 16 October 1989* (2010) ATS 26 (Second Amending Protocol).

such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

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

5. In no case shall the provisions of paragraph (3) be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 20[19]

1. *Where a taxpayer considers that the action of the competent authority in one of the Contracting States has resulted, or is likely to result, in double taxation contrary to the provisions of this Agreement, he shall be entitled to present the facts to the competent authority in the Contracting State of which he is a resident and, should the taxpayer's claim be deemed worthy of consideration, the competent authority in that Contracting State shall endeavour to come to an agreement with the competent authority in the other Contracting State with a view to the avoidance of the double taxation in question*.

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

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of [*the Agreement*].

The following paragraph 2 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

[19] As amended by Article 16 of the Amending Protocol.

[*Contracting State*].

2. The competent authority in a Contracting State may communicate directly with the competent authority in the other Contracting State for the purpose of giving effect to the provisions of this Agreement and in an endeavour to assure its consistent interpretation and application. In particular, the competent authorities may consult together to endeavour to resolve disputes arising out of the application of paragraph (2) of Article 5 or Article 6.

The following paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The competent authorities of the [*Contracting States*] shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of [*the Agreement*]. They may also consult together for the elimination of double taxation in cases not provided for in [*the Agreement*].

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

PART VI OF THE MLI - ARBITRATION

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

   a) under [*paragraph 1 of Article 20 of the Agreement*], a person has presented a case to the competent authority of a [*Contracting State*] on the basis that the actions of one or both of the [*Contracting States*] have resulted for that person in taxation not in accordance with the provisions of [*the Agreement*]; and

   b) the competent authorities are unable to reach an agreement to resolve that case pursuant to [*paragraph 1 of Article 20 of the Agreement and paragraph 2 of Article 16 of the MLI*], 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

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

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

2. The competent authorities of the [*Contracting States*] shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with

the confidentiality and nondisclosure obligations described in the provisions of [*the Agreement*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting 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 Agreement*] that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*]:

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

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

Article 23 (Type of Arbitration Process) of the MLI

Final offer arbitration

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

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

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

c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the

[*Contracting States*]. The arbitration decision shall have no precedential value.

2. *Omitted.*

3. Omitted.

4. Omitted.

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

6. *Omitted.*

7. *Omitted.*

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

Article 25 (Costs of Arbitration Proceedings) of the MLI

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

Article 26 (Compatibility) of the MLI

1. *Omitted*

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

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

4. *Omitted.*

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

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

Australia reserves the right to exclude from the scope of Part VI [*of the MLI*] any case to the extent that it involves the application of Australia's general anti-avoidance rules

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

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

a) The Republic of Singapore reserves the right to exclude from the scope of Part VI [*of the MLI*] (Arbitration) cases involving the application of its domestic general anti-avoidance rules contained in Section 33 of the Income Tax Act, case law or juridical doctrines. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Singapore shall notify the Depositary of any such subsequent provisions.

b) Where a reservation made by the other Contracting Jurisdiction to a Covered Tax Agreement pursuant to Article 28(2)(a) refers exclusively to its domestic law (including legislative provisions, case law, judicial doctrines and penalties), the Republic of Singapore reserves the right to exclude from the scope of Part VI [*of the MLI*] those cases that would be excluded from the scope of Part VI [*of the MLI*] if the other Contracting Jurisdiction's reservation were formulated with reference to any analogous provisions of the Republic of Singapore's domestic law or any subsequent provisions which replace, amend or update those provisions. The competent authority of the Republic of Singapore will consult with the competent authority of the other Contracting Jurisdiction in order to specify any such analogous provisions which exist in the Republic of Singapore's domestic law in the agreement concluded pursuant to Article 19(10).

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(*Principal purposes test provision)*

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

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

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

under this paragraph by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before rejecting the request.

Article 21

This Agreement shall come into force on the date on which the last of all such things shall have been done in Australia and Singapore as are necessary to give the Agreement the force of law in Australia and Singapore so far as its provisions affect Australian tax and Singapore tax respectively[20] and shall thereupon 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 1st July, 1969;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1st July, 1969;

b) in Singapore-

for any year of assessment beginning on or after 1st January, 1970.

Article 22

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30th June in any calendar year give to the other Contracting State notice of termination and, in that event, this Agreement 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 the commencement of the financial year beginning on 1st July in the calendar year next following that in which the notice is given;

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

b) in Singapore-

for any year of assessment beginning on or after 1st January in the second calendar year next following that in which the notice is given.

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

DONE in duplicate at Canberra this Eleventh day of February in the year one thousand nine hundred and sixty-nine in the English language.

FOR THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA:	FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE:
WILLIAM MCMAHON	S. T. STEWART

[20] The Agreement entered into force 4 June 1969.