



SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1996 EXCHANGE OF NOTES AND THE 2002 EXCHANGE OF LETTERS

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 Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* signed on 13 April 1992 as amended by the 1996 Exchange of Notes and the 2002 Exchange of Letters (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 on 7 June 2017 and by Vietnam on 9 February 2022.

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 Depository upon ratification on 26 September 2018 and of the MLI position of Vietnam submitted to the Depository upon ratification on 23 May 2023. 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” and “Agreement”, “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, in the case of Australia, the authentic legal text of the MLI).

[Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income](#) [1992] ATS 44 (provides, in the case of Australia, the authentic legal text of the Agreement).

[Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam to amend the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 13 April 1992](#) [1997] ATS 20 (provides, in the case of Australia, the authentic legal text of the 1996 Exchange of Notes).

[Exchange of Letters, constituting an Agreement to amend the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done at Hanoi on 13 April 1992, as amended by an Exchange of Notes done at Canberra on 22 November 1996](#) [2003] ATS 9 (provides, in the case of Australia, the authentic legal text of the 2002 Exchange of Letters).

[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 Depository upon ratification on 26 September 2018 and the MLI position of Vietnam submitted to the Depository upon ratification on 23 May 2023).

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 Vietnam in their MLI positions.

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

26 September 2018 for Australia and 23 May 2023 for Vietnam.

Entry in force of the MLI:

1 January 2019 for Australia and 1 September 2023 for Vietnam.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI 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 2024;
- b) with respect to all other taxes levied by Australia, for taxes levied with respect to taxable periods beginning on or after 1 March 2024; and
- c) with respect to all other taxes levied by Vietnam, for taxes levied with respect to taxable periods beginning on or after 1 January 2025.

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AS AMENDED BY THE 1996 EXCHANGE OF NOTES AND THE
2002 EXCHANGE OF LETTERS**

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE SOCIALIST
REPUBLIC OF VIETNAM,

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 1

PERSONAL SCOPE

This Agreement 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 Agreement shall apply are:
 - a) in Australia:

the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia;
 - b) in Vietnam:
 - (i) the income tax;
 - (ii) the profit tax; and

- (iii) the withholding tax.

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

Article 3

GENERAL DEFINITIONS

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

- a) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,

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

- b) the term "Vietnam" means the Socialist Republic of Vietnam, and, when used in a geographical sense, includes national territory and any area adjacent to the territorial waters of Vietnam and beyond the territorial limit of Vietnam which in accordance with international law has been designated an area within which the rights of the Socialist Republic of Vietnam with respect to the exploration and the exploitation of any natural resources of the seabed and subsoil and water surface may be exercised;
- c) the term "Contracting State" means Australia or Vietnam, as the context requires, the Governments of which have concluded this Agreement;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any entity which is treated as a company or body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Vietnam, as the context requires;
- g) the term "tax" means Australian tax or Vietnamese tax, as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;

- h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
- i) the term "Vietnamese tax" means tax imposed by Vietnam, being tax to which this Agreement applies by virtue of Article 2;
- j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Vietnam, the Minister of Finance or an authorised representative of the Minister.

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

Article 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of 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 Vietnam, if the person is liable, under the law of Vietnam, to tax therein by reason of the person's domicile, residence, place of management or any other criterion of a similar nature.
2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person 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 a person, being an individual, is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:
 - a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
 - b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's economic and personal relations are closer.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment", in relation to an enterprise, means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - a) a place of management;
 - b) a branch;

- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- g) an agricultural, pastoral or forestry property; and
- h) a building site or construction, installation or assembly project which exists for more than 183 days.

3. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** *An enterprise shall not be deemed to have a permanent establishment merely by reason of:*

- a) *the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise; or*
- b) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; or*
- c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or*
- d) *the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or*
- 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.*

The following paragraph 2 of Article 13 of the MLI modifies paragraph 3 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS
(Option A)

Notwithstanding [Article 5 of the Agreement], the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in [paragraph 3 of Article 5 of the Agreement] as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:

[Paragraph 3 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the

same place or at another place in the same [*Contracting State*] and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*Article 5 of the Agreement*]; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

4. 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 183 days in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that State; or
- b) substantial equipment is being used in that State by, for or under contract with the enterprise.

5. 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 6 applies - shall be deemed to be a permanent establishment of that enterprise in the firstmentioned State if:

- a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchasing of goods or merchandise for the enterprise; or
- b) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to that enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a person who is a broker, general commission agent or any other agent of an independent status and is acting in the ordinary course of the person's business as such a broker or agent.

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

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 5 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

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

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

For the purposes of the provisions of [*Article 5 of the Agreement*], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has

control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6

INCOME FROM REAL PROPERTY

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":
 - a) in the case of Australia, has the meaning which it has under the laws of Australia and includes:
 - (i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.
 - b) in the case of Vietnam, means property which according to the laws of Vietnam is immovable property, and includes:
 - (i) property accessory to immovable property;
 - (ii) rights to which the provisions of general law in respect of landed property apply; and
 - (iii) usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources, and other natural resources;
 - c) does not include ships and aircraft.
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 paragraph 1 apply to income derived from the direct use, letting or use in any other form, of real property.
5. The provisions of paragraphs 1, 3 and 4 also apply to income from real property of an enterprise and to income from real property used for the performance of independent personal services.

Article 7
BUSINESS PROFITS

1. The profits of an enterprise of 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 in that other State. If the enterprise carries on business in that manner, 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 in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

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

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. 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 or gains 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 nonresidents 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 a Contracting State 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 5, 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 in that other State and that share of business profits shall be attributed to that permanent establishment.

Article 8
SHIPS AND AIRCRAFT

1. Profits from the operation of ships or aircraft derived by a resident of a Contracting State shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.
3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

Article 9
ASSOCIATED ENTERPRISES

1. Where:
 - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
 - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions 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 a Contracting State 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 firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned 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 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. Those dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed, in Australia, 15 per cent, and, in Vietnam, 10 per cent, of the gross amount of the dividends.
3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.
4. The provisions of paragraph 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or 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 in so far 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. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Vietnam for the purposes of Vietnamese tax.

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. That interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness and all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.
4. The provisions of paragraph 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person 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 that interest is borne by that permanent establishment or fixed base, then the interest 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 interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

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

3. The term "royalties" in this Article means payments 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; or
- b) the use of, or the right to use, any industrial, commercial or scientific equipment; or
- c) the supply of scientific, technical, industrial or commercial knowledge or information; or
- d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- e) the use of, or the right to use:
 - (i) motion picture films; or
 - (ii) films or 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 or supply of any property or right referred to in this paragraph.

4. The provisions of paragraph 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 in that other

State, or performs in that other State independent personal services from a fixed base situated in that other State, and the property or right in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In that case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person 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 or credited, having regard to what they are paid or credited 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 lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

Article 13

ALIENATION OF PROPERTY

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

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

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of 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. **[MODIFIED by subparagraph a) of paragraph 1 of Article 9 of the MLI]** *Income, profits or gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in the other Contracting State, may be taxed in that other State.*

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

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

[Paragraph 4 of Article 13 of the Agreement] shall apply if the relevant value threshold is

met at any time during the 365 days preceding the alienation.

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 the preceding paragraphs of this Article apply.

6. In this Article, the term "real property" has the same meaning as it has in Article 6.

7. The situation of real property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

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 a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities. If such a fixed base is available to the individual, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of 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 firstmentioned 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; and
- d) the remuneration is, or upon the application of this Article will be, subject to tax in the firstmentioned 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 State.

Article 16
DIRECTORS' FEES

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

Article 17
ENTERTAINERS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

Article 18
PENSIONS AND ANNUITIES

1. Pensions (including government pensions) and annuities 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.
3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

Article 19
GOVERNMENT SERVICE

1. Remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:
 - a) is a citizen or national of that State; or
 - b) did not become a resident of that State solely for the purpose of performing the services.
2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or local authority of that State. In that case, the provisions of Article 15 or 16, as the case may be, shall apply.

Article 20
STUDENTS

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

Article 21
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 Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of a Contracting State from sources in the other Contracting State may also be taxed in that other State.
3. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, 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 that case, the provisions of Article 7 or 14, as the case may be, shall apply.

Article 22
SOURCE OF INCOME

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8, 10 to 19 and 21, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.
2. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8, 10 to 19 and 21, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the firstmentioned Contracting State relating to its tax be deemed to be income from sources in the other Contracting State.

Article 23
METHODS OF ELIMINATION OF DOUBLE TAXATION

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 of this Article), Vietnamese tax paid under the law of Vietnam 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 Vietnam shall be allowed as a credit against Australian tax payable in respect of that income.
2. Where a company which is a resident of Vietnam and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in paragraph 1 shall include the Vietnamese tax paid by that firstmentioned 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, Vietnamese tax paid shall include an amount equivalent to the amount of any Vietnamese tax forgone.

4. In paragraph 3, the term "Vietnamese tax forgone" means, subject to paragraphs 5 and 6, the total amount which, under the law of Vietnam relating to Vietnamese tax and in accordance with this Agreement, would have been payable as Vietnamese tax on income but for an exemption from, or reduction of, Vietnamese tax on that income (which total amount shall be deemed to be no greater than 20 per cent of the Vietnamese taxable income that relates to the income the subject of the exemption or reduction), less the actual amount of Vietnamese tax payable on that income.¹

5. Paragraph 4 shall apply only in respect of exemptions or reductions resulting from the operation of²:

- a) (i) Articles 38, 39, 42 or 48 (to the extent that Article 48 relates to Articles 38 and 39) of the Law on Foreign Investment in Vietnam of 1996³; or
- (ii) Articles 53, 54, 55, 56 or 59 of the Government Decree No. 12/CP dated 18 February 1997 on the implementation of the Law on Foreign Investment in Vietnam and by Articles 45, 46, 47, 48 or 51 of the Government Decree No. 24/2000/ND-CP dated 31 July 2000 on the implementation of the Law on Foreign Investment in Vietnam⁴; or
- (iii) Circular No. 48-TC-TCT on Profits Tax Rates and Exemption from and Reduction of Profits Tax dated 30 June 1993; or
- (iv) Part A of Part II of Circular No. 51-TC-TCT on Taxation of Foreign Investment in Vietnam dated 3 July 1993; or
- (v) Decree No. 87-CP on Build-Operate-Transfer (BOT) Contracts dated 23 November 1993 and the regulations issued with that Decree,

to the extent those provisions were in force on, and have not been modified since, the date of this Note, or have been modified only in minor respects so as not to affect their general character; or

- b) any other provision which may subsequently be made granting an exemption from, or reduction of, Vietnamese tax which the Treasurer of Australia and the Minister of Finance of Vietnam determine from time to time in letters exchanged for this purpose to be provisions to which this paragraph applies. Subject to its terms, such a determination of applicable provisions shall be valid for as long as those provisions are not modified after the date of that determination or have been modified only in minor respects so as not to affect their general character.

¹ Replaced by Note I. of the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam to amend the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 13 April 1992* [1997] ATS 20 (1996 Exchange of Notes).

² Replaced by Note II. of the 1996 Exchange of Notes.

³ As amended by the *Exchange of Letters, Constituting an Agreement to amend the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done at Hanoi on 13 April 1992, as amended by an Exchange of Notes done at Canberra on 22 November 1996* [2003] ATS 9 (2002 Exchange of Letters).

⁴ As amended by the 2002 Exchange of Letters.

6. Paragraph 4 shall apply only to the extent that the exemption or reduction is granted in respect of Vietnamese tax on income from the following activities⁵:

- a) construction of infrastructure facilities including communications, power production and supply, construction of infrastructure facilities for the export processing and industry intensive zones and information and telecommunication facilities in mountainous areas in which naturally and socio-economically difficult conditions exist; or
- b) plantation of new forests for commercial exploitation; or
- c) extremely important activities listed in the investment portfolio announced by the Vietnamese State Committee for Co-operation and Investment for each period; or
- d) exploitation of natural resources except oil, gas or rare and precious natural resources; or
- e) heavy industry projects including metallurgy, mechanical engineering production, base chemical production, cement production, electrical and electronic materials manufacturing, fertiliser manufacturing and anti-epidemic medicines for use in animal production or forestry; or
- f) plantation of long-term industrial crops; or
- g) activities in mountainous areas in which naturally and socio-economically difficult conditions exist including hotel undertaking projects; or
- h) any project satisfying at least 2 of the following criteria:
 - (i) employing at least 500 Vietnamese; or
 - (ii) applying advanced technology which satisfies the requirements listed in Article 4 of the Ordinance on the Transfer of Foreign Technology dated 5 December 1988, subject to the approval of the Ministry of Science and Technology and Environment; or
 - (iii) exporting at least 80% of the products manufactured by the project itself; or
 - (iv) the prescribed capital or contributed capital for the implementation of the business co-operation contract is at least US \$10 million dollars; or
- j) projects carrying out infrastructure activities within a definite time period in which the foreign partner transfers the infrastructure to the Vietnamese Government without any compensation.

7. Notwithstanding the operation of paragraph 4, Vietnamese tax forgone shall not be deemed to have been paid in respect of income derived from⁶:

- a) banking, insurance, consulting, accounting, auditing and commercial services of any kind; or
- b) the operation of ships or aircraft, other than ships or aircraft operated principally from places in Vietnam and used solely in carrying on a business in Vietnam; or
- c) any scheme entered into by an Australian resident with the purpose of using Vietnam as a conduit for income or as a location of property in order to evade or avoid Australian tax through the exploitation of the Australian foreign tax

⁵ Inserted by Note III. of the 1996 Exchange of Notes.

⁶ Inserted by Note III. of the 1996 Exchange of Notes.

credit provisions or to confer a benefit on a person who is neither a resident of Australia, nor of Vietnam.

8. Paragraphs 4, 5, 6 and 7 shall not apply in relation to income derived in any year of income after the year of income that ends on⁷:

- a) 30 June 2003; or
- b) any later date that may be agreed by the Treasurer of Australia and the Minister of Finance of Vietnam in letters exchanged for this purpose,

whichever is the later in time occurring.

9. Where a resident of Vietnam derives income, profits or gains which under the law of Australia and in accordance with this Agreement may be taxed in Australia, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in Australia.⁸

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within 3 years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

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

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

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

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

⁷ Inserted by Note III. of the 1996 Exchange of Notes.

⁸ Renumbered to paragraph 9 by Note IV. of the 1996 Exchange of Notes.

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the national laws of the Contracting States concerning the taxes to which this Agreement applies in so far as the taxation under those laws is not contrary to this Agreement. 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 national 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 Agreement 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 the competent authority of a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State; or
 - b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 26

DIPLOMATIC AND CONSULAR OFFICIALS

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

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

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

Article 27

ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Vietnam, as the case may be, and, in that event, this Agreement shall have effect:

- a) in Australia:
 - (i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July in the calendar year next following that in which the Agreement enters into force;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;
- b) in Vietnam:
 - (i) in respect of taxes withheld at source, in relation to taxable amounts paid on or after 1 January following the calendar year in which the Agreement enters into force;
 - (ii) in respect of other Vietnamese tax, in relation to income, profits or gains arising in the calendar year following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

Article 28

TERMINATION

The Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written 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 nonresident, in relation to income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- b) in Vietnam:
 - (i) in respect of taxes withheld at source, in relation to taxable amounts paid on or after 1 January following the calendar year in which the notice of termination is given;
 - (ii) in respect of other Vietnamese tax, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in subsequent calendar years.

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

DONE in duplicate at Hanoi this thirteenth day of April, One thousand nine hundred and ninety-two in the English and Vietnamese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
AUSTRALIA:

JOHN DAWKINS

Minister of State for the Treasury

FOR THE SOCIALIST REPUBLIC OF
VIETNAM:

HOANG QUY

Minister of Ministry of finance