Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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 Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the "Agreement") signed on 22 April 1992 as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia and the Republic of Indonesia ("Indonesia") on 7 June 2017.

This document was prepared in consultation with Ministry of Finance of Indonesia and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of Indonesia submitted to the Depositary upon ratification on 28 April 2020. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the 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 the authentic legal texts of the MLI).

Agreement between the Government of Australia and the Government of the Republic of Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income [1992] ATS 40 (provides, in the case of Australia, the authentic legal text of the Agreement signed on 22 April 1992).

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 Indonesia submitted to the Depositary upon ratification on 28 April 2020).

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 provision of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Australia and Indonesia in their MLI positions.

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

26 September 2018 for Australia and 28 April 2020 for Indonesia.

Entry into force of the MLI:

1 January 2019 for Australia and 1 August 2020 for Indonesia.

In accordance with paragraph 1 and 7 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 2021;

b) with respect to all other taxes levied by Australia, for taxes levied with respect to taxable periods beginning on or after 26 June 2021; and

c) with respect to all other taxes levied by Indonesia, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

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

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA,

[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.

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:

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

[*The Agreement*] shall not affect the taxation by a [*Contracting State*] of its residents, except with respect to the benefits granted under [*paragraph 3 of Article 9, paragraph 4 of Article 18, Articles 19, 20, 21, 24, 25, or 27*] of [*the Agreement*].

Article 2

TAXES COVERED

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

   a) in Indonesia:

   the income tax imposed under the Undang-undang Pajak Penghasilan 1984 (Law No. 7 of 1983);

   b) 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.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of Indonesia 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 exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

b) the term "Indonesia" means the territory under the sovereignty of the Republic of Indonesia and such parts of the continental shelf and the adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights as well as other rights in accordance with the 1982 United Nations Convention on the Law of the Sea;

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

g) the term "tax" means Australian tax or Indonesian 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 "Indonesian tax" means tax imposed by Indonesia, 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 Indonesia, the Minister of Finance or an authorised representative of the Minister.

2. The references in paragraph 4 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12 and paragraph 3 of Article 22 to a permanent establishment or fixed base situated in one of the Contracting States include references to an enterprise's sales and other business activities referred to in subparagraphs 1b) and c) of Article 7 and to an individual's activities referred to in subparagraph 1b) of Article 14.

3. In the application of this Agreement by one of the Contracting States, 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 relating to the taxes to which this Agreement applies in force at the time of the application.

Article 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States if the person is a resident of that Contracting State under the law of that State relating to its tax.

2. A person is not a resident of one of the Contracting States 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 in which the person has an habitual abode;

c) if the person has an habitual abode 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. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** *Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.*

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of provisions of [*the Agreement*] a person other than an individual is a resident of both [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting State*] of which such person shall be deemed to be a resident for the purpose of [*the Agreement*], having regard

to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [*the Agreement*].

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" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources or a place of exploration for natural resources;

g) a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;

h) an installation, drilling rig or ship used for exploration for or exploitation of natural resources, where that use continues for more than 120 days;

i) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** *a building site or construction, installation or assembly project or supervisory activities in connection with that site or project, where that site, project or activities exist for more than 120 days;*

j) the furnishing of services, including consultancy services, by an enterprise within one of the Contracting States through employees or other personnel engaged by the enterprise for that purpose, if those services are furnished, for the same or a connected project, within that State for a period or periods aggregating more than 120 days within any 12 month period.

The following paragraph 1 of Article 14 of the MLI applies and supersedes subparagraph i) of paragraph 2 of Article 5 of this Agreement:

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the period referred to in [*subparagraph i) of paragraph 2 of Article 5 of the Agreement*] has been exceeded:

a) where an enterprise of a [*Contracting State*] carries on activities in the other [*Contracting State*] at a place that constitutes a building site, construction project, installation project or other specific project identified in [*subparagraph i) of paragraph 2 of Article 5 of the Agreement*] or carries on [*supervisory activities*] in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period referred to in [*subparagraph i) of paragraph 2 of Article 5 of the Agreement*]; and

b) where connected activities are carried on in that other [*Contracting State*] at [*or in connection with*] the same building site, construction or installation project or other place identified in [*subparagraph i) of paragraph 2 of Article 5 of the Agreement*] during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that a building site, construction project, installation project or other place identified in [*subparagraph i) of paragraph 2 of Article 5 of the Agreement*].

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 or display 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 or display; 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 Convention*], 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. 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 5 applies - shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if:

a) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise; or

b) 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 purchase of goods or merchandise for the enterprise; or

c) the person has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise.

5. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a 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. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

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

7. 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 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

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

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

For the purposes of [*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", in relation to one of the Contracting States, has the meaning which it has under the laws of that State and includes:

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

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

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

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 shall also apply to income derived from the direct use, letting or use in any other form of real property.

5. 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 independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated 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:

a) that permanent establishment; or

b) sales in that other State of goods or merchandise of the same or a similar kind as those sold through that permanent establishment; or

c) other business activities carried on in that other State of the same or a similar kind as those carried on through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, of amounts charged, (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the head office of the enterprise or any of its other offices.

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 one of the Contracting States 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 affects the operation of any law of one of the Contracting States relating to tax imposed on profits derived by nonresidents on insurance premiums collected, or from insurance relating to risks arising or to property, in that State, whether or not that law deems the existence of a permanent establishment in relation to the relevant activity. 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 5, have a permanent establishment in that other Contracting 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 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 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 one of the Contracting States 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 one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of the enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any law of one of the Contracting States 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 10

DIVIDIENDS

1. Dividends paid by a company which is a resident of one of the Contracting States under the law of that State relating to 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 first mentioned Contracting State and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 under that law.

4. The provisions of paragraph 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except 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 under the law of Australia relating to its tax and which is also a resident of Indonesia under the law of Indonesia relating to its tax.

6. Notwithstanding any other provisions of this Agreement, where a company which is a resident of one of the Contracting States has a permanent establishment in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 15 per cent of the amount of such profits after deducting from those profits

the tax imposed on them in that other State.

7. The provisions of paragraph 6 of this Article shall not affect the rate of any such additional tax payable under any production sharing contracts and contracts of work (or any other similar contracts) relating to oil and gas or other mineral products negotiated by the Government of Indonesia, its instrumentality, its relevant State oil company or any other entity thereof with a person who is a resident of Australia.

Article 11

INTEREST

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

2. 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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 one of the Contracting States, 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 one of the Contracting States 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 under the law of that State relating to its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States 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.

7. Interest derived from the investment of official foreign exchange reserve assets by the Government of one of the Contracting States, its monetary institutions or a bank performing central banking functions in that State shall be exempt from tax in the other Contracting State.

Article 12

ROYALTIES

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

2. 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:

a) in the case of royalties described in subparagraphs 3b) and c) and, to the extent to which they relate to those royalties, in subparagraphs 3d) and f) - 10 per cent; and

b) in all other cases - 15 per cent.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term "royalties" in this Article means payments, 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 initial application 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 one of the Contracting States, 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 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 one of the Contracting States 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 under the law of that State relating to its tax. Where, however, the person paying the royalties, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the

royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Agreement shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

7. In this Article, the term "payments" includes credits and the terms "paid", "payer" and "person paying" have the corresponding meanings.

Article 13

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of one of the Contracting States 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 one of the Contracting States has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the first mentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of 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 paragraph 1 of Article 9 of the MLI]** *Income, profits 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 situated in the other Contracting State, may be taxed in that other State.*

The following 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*]:

a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions [*of the Agreement*].

5. Nothing in this Agreement affects the application of a law of one of the Contracting States 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.

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

b) 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 one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:

a) a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities; in that case, so much of the income as is attributable to activities exercised from that fixed base may also be taxed in the other State; or

b) the individual is present in that other State for a period or periods exceeding 120 days in any period of 12 months; in that case, so much of the income as is derived from the individual's activities in that other State may also be taxed in that other State.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, 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 one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State if:

a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 120 days in any period of 12 months; 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 one of the Contracting States may be taxed in that State.

Article 16

DIRECTORS' FEE

Directors' fees and similar payments derived by a resident of one of the Contracting States as a member of the board of directors or any other similar organ 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the other Contracting State, a local authority or public institution of that other State.

Article 18

PENSIONS AND ANNUITIES

1. Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, a pension (including a government pension) or an annuity paid to a resident of one of the Contracting States from sources in the other Contracting State may be taxed in that other State but the tax so charged may not exceed 15 per cent of the gross amount of the pension or annuity.

3. 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.

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

Article 19

GOVERNMENT SERVICE

1. Remuneration, other than a pension or annuity, paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services

rendered to it 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 one of the Contracting States 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

PROFESSORS AND TEACHERS

1. Where a professor or teacher who is a resident of one of the Contracting States visits the other Contracting State for a period not exceeding 2 years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution in that other State, any remuneration the person receives for such teaching, advanced study or research shall be exempt from tax in that other State to the extent to which that remuneration is, or upon the application of this Article will be, subject to tax in the firstmentioned State.

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

Article 21

STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in 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 22

INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of one of the Contracting States 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 one of the Contracting States 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 derived by a resident of one of the Contracting States 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 23

SOURCE OF INCOME

Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 19 and 22, may be taxed in the other Contracting State shall, for the purposes of Article 24 and the law of each Contracting State relating to its tax, be deemed to be income from sources in that other State.

Article 24

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), Indonesian tax paid under the law of Indonesia 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 Indonesia shall be allowed as a credit against Australian tax payable in respect of that income.

2. Where a company which is a resident of Indonesia and is not a resident of Australia under the law of Australia relating to its 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 first mentioned company, the credit referred to in paragraph 1 shall include the Indonesian tax paid by that first mentioned company in respect of that portion of its profits out of which the dividend is paid.

3. Where a resident of Indonesia derives income from Australia which may be taxed in Australia in accordance with the provisions of this Agreement, the amount of Australian tax payable in respect of that income shall be allowed as a credit against the Indonesian tax imposed on that resident in respect of the income. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to that income.

4. The amount of Australian tax payable on income derived by a resident of Indonesia to whom paragraph 3 applies shall be increased, before the application of that paragraph in that case, by an amount equal to any amount paid by that resident under the Fringe Benefits Tax Act 1986 of Australia.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of one of the Contracting States 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 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 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.

Article 26

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 one of the Contracting States 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 one of the Contracting States 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 27

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 28

MISCELLANEOUS

Nothing in this Agreement shall affect the operation of the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, done over the Zone of Cooperation on 11 December 1989.[1]

Article 29

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 Indonesia, 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 Indonesia:

   (i) in respect of tax withheld at source, on or after 1 July in the calendar year next following that in which the Agreement enters into force; and

   (ii) in respect of other Indonesian tax, for taxable years beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force.

Article 30

TERMINATION

This 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

[1] ATS 1991 No. 9 Act 1990 No. 36; ILM 29 p. 469

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 Indonesia:

(i) in respect of tax withheld at source, 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 Indonesian tax, for taxable years beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Jakarta this twenty-second day of April, One thousand nine hundred and ninety-two in the English language.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA:
[Signed:]	[Signed:]
PHILIP FLOOD	ALI ALATAS