

**SYNTHESISED TEXT**  
**OF THE MLI AND THE AGREEMENT BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF POLAND**  
**AND**  
**THE GOVERNMENT OF MONGOLIA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

This document presents the synthesized text for the application of the Agreement between the Government of the Republic of Poland and the Government of Mongolia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed at Warsaw on 18 April 1997 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Poland on 7 June 2017 and by Mongolia on 6 October 2022 (the “MLI”).

The document was prepared on the basis of the MLI positions submitted to the Depository upon the deposit of the ratification instrument:

- by Poland on 23 January 2018; and
- by Mongolia on 30 September 2024.

The effects of the MLI on the application of the Agreement can change over time as the MLI is a living instrument and Parties can partially modify their MLI positions in the future.

The purpose of this document is to facilitate the application of the MLI. It constitutes an auxiliary tool only, aimed at documenting the impact of the MLI on the Agreement. This document does not constitute a source of law. The authentic legal texts of the Agreement and the MLI remain the only sources of law.

For legal purposes, the provisions of the MLI must be interpreted alongside the Agreement, in light of the interaction of the MLI positions of the Contracting States.

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.

## Entry into force and entry into effect of the MLI

Entry into force of the MLI:

- for Poland: 1 July 2018; and
- for Mongolia: 1 January 2025.

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 on non-residents' income or other taxes levied) and on the choices made by the Contracting States in their MLI positions.

Hence, unless it is stated otherwise elsewhere in this document, in accordance with Article 35(1) of the MLI, the provisions of Article 4(1), Article 6(1), Article 7(1), Article 9(4) and Article 11(1) of the MLI have effect with respect to the application of the Agreement by Poland:

- 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 2025; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 July 2025;

and

in accordance with Article 35(1) of the MLI, the provisions of Article 4(1), Article 6(1), Article 7(1), Article 9(4) and Article 11(1) of the MLI have effect with respect to the application of the Agreement by Mongolia:

- 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 2025; and
- with respect to all other taxes levied by Mongolia, for taxes levied with respect to taxable periods beginning on or after 1 July 2025.

## References

The authentic legal text of the MLI can be found on the MLI Depository (OECD) webpage:

- in English: <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>; and
- in French: <http://www.oecd.org/fr/fiscalite/conventions/convention-multilaterale-pour-la-mise-en-oeuvre-des-mesures-relatives-aux-conventions-fiscales-pour-prevenir-le-BEPS.pdf>.

The Polish text of the MLI was published in the Journal of Laws from 2018 item 1369 (as amended).

The governmental announcement on the entry into force of the MLI was published in the Journal of Laws from 2018 item 1370 (as amended).

The governmental announcement on the entry into force of the MLI between Poland and Mongolia was published in the Journal of Laws from 2024 item [-].

The MLI positions of the Contracting States can be found on the OECD webpage: <http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>.

The MLI Matching Database is publicly available on the OECD webpage: <http://www.oecd.org/tax/treaties/mli-matching-database.htm>.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF POLAND**  
**AND**  
**THE GOVERNMENT OF MONGOLIA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Government of the Republic of Poland and the Government of Mongolia,

*The following preamble text described in paragraph 1 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**

Intending to eliminate double taxation with respect to the taxes covered by [*this 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),

Desiring to promote and strengthen the economic relations between the two countries by removing fiscal obstacles

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 2 of Article 18, Article 19, Article 20, Article 21, Article 24, Article 25, Article 26, Article 28 of the Agreement].*

## **Article 2 Taxes Covered**

1. This Agreement shall apply to taxes on income and on capital imposed on by each of the Contracting States or by its political subdivisions, or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
  - a) In the case of the Republic of Poland:
    - (i) the personal income tax;
    - (ii) the corporate income tax;  
(hereinafter referred to as "Polish tax");
  - b) In the case of Mongolia:
    - (i) the individual income tax;
    - (ii) the corporate income tax;  
(hereinafter referred to as "Mongolian tax").
4. This Agreement shall apply also to any identical or substantially similar taxes, which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the

Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### **Article 3 General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Poland", when used in a geographical sense, means the territory of the Republic of Poland, including any area beyond its territorial waters, within which under the laws of Poland and in accordance with international law, Poland may exercise its sovereign rights over the sea-bed, its subsoil and their natural resources;
  - b) the term "Mongolia" means, when used in a geographical sense, the territory of Mongolia and any area in which the tax law of Mongolia is in force insofar as Mongolia exercises in such area, in conformity with international law, sovereign rights to exploit its natural resources;
  - c) the terms "a Contracting State" and "the other Contracting State" mean Poland or Mongolia, as the context requires;
  - d) the term "tax" means Polish tax or Mongolian tax, as the context requires;
  - e) the term "person" includes an individual, a company and any other body of persons;
  - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes
  - g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - h) the term "nationals" means all individuals possessing the nationality of a Contracting State and all juridical persons created or organized under the laws of that Contracting State, as well as organizations without juridical personality treated for tax purposes as juridical persons;
  - i) the term "international traffic" means any transport by a ship, an aircraft, land or railway vehicles operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, the aircraft, land or railway vehicles are operated solely between places in the other Contracting State;

- j) the term "competent authority" means:
- (i) in the case of Poland - the Minister of Finance or his authorized representative;
  - (ii) in the case of Mongolia - the Minister of Finance or his authorized representative.

2. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Agreement.

#### **Article 4 Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means a person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

**[REPLACED by paragraph 1 of Article 4 of the MLI]**

~~[3. 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 of the State in which its place of effective management is situated.]~~

*The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Agreement:*

#### ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*this Agreement*] a person other than individual is a resident of both [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting State*] of which such person shall be deemed to be a resident for the purposes of [*this 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 [*this Agreement*] except to the extent and in such manner as may be agreed upon by the competent authorities of the [*Contracting States*].

#### **Article 5 Permanent Establishment**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop, and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;



- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the sale of goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition after the closing of the said fair or exhibition;
- f) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character for the enterprise;

5. Notwithstanding the provisions of paragraph 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies-is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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 broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 constitute either company a permanent establishment of the other.

## **Article 6**

### **Income from Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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. Ships, aircraft, land and railway vehicles shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable 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 therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall,

however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. For the purpose of paragraphs 1, 2, 3, 4 and 5, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where the 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.

### **Article 8** **Shipping, Air, Land and Railway Transport**

1. Profits from the operation of ships, aircraft, and land and railway vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

### **Article 9** **Associated Enterprises**

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 are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued, 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.

## **Article 10 Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10% per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights, which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

## **Article 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, political subdivision or a local authorities and the central bank thereof or any financial institution wholly owned by that Government, or by any other resident of that other Contracting State with respect to debt-claim indirectly financed by the Government of that other Contracting State, a local authority, and the central bank thereof or any financial institution wholly owned by that Government, shall be exempt from tax in the first mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12 Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties, tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, know-how, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, political subdivision or a local authority thereof or a resident of that Contracting State. Where however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or a fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use of, or the right to use information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base

available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships, aircraft, land and railway vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft, land and railway vehicles shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

**[REPLACED by paragraph 4 of Article 9 of the MLI]**

~~[4.— Gains from the alienation of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.]~~

*The following paragraph 4 of Article 9 of the MLI replaces 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**

For purposes of [*the Agreement*], gains derived by a resident of a [*Contracting State*] from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other [*Contracting State*] if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other [*Contracting State*].

**Article 14  
Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in of the following circumstances, when such income may also be taxed in the other Contracting State:

- a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;
- b) if he stays in the other Contracting State for a period exceeding in the aggregate 183 days in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as 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 a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft or land and railway vehicle operated by an enterprise of a Contracting State in the international traffic, shall be taxable in the Contracting State in which the place of effective management of the enterprise is situated.

### **Article 16 Directors' Fees**

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

### **Article 17 Artistes and Sportsmen**

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



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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of the both Contracting States, shall be exempt from tax in that other Contracting State.

### **Article 18 Pensions**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or political subdivision or a local authority thereof under a public scheme which is part the social security system of that Contracting State shall be taxable only in that Contracting State.

### **Article 19 Government Service**

1.  
a) Remuneration, other than a pension, paid by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State or political subdivision or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that State.

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

- i) is a national of that State; or
- ii) did not become a resident of that State solely for the purpose of rendering services.

2.  
a) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of

that State or political subdivision or a local authority shall be taxable only in that State.

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

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

### **Article 20 Teachers and Researchers**

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first - mentioned Contracting State, for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution recognized by the Government of the first- mentioned Contracting State, shall be exempt from tax in the first-mentioned Contracting State, for a period of two years from the date of his first arrival in the first -mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.

### **Article 21 Students and Trainees**

A student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education, training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for purpose of his maintenance, education or training:

a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;

b) income derived from personal services performed in that Contracting State with a view to supplementing the resources available to him from his maintenance.

### **Article 22 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such

income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

### **Article 23 Taxation of Capital**

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State, in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise or by movable property pertaining to a fixed base used for the performance of independent personal services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships, aircraft, land and railway vehicles operated in international traffic, and movable property pertaining to the operation of such means or transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State in which the capital is located.

### **Article 24 Methods for the Elimination of Double Taxation**

1. In Poland double taxation shall be eliminated as follows:

a) Where a resident of Poland derives income or owns capital which, in accordance with the provisions of this Agreement may be taxed in Mongolia, Poland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax. Poland may in calculating the amount of tax on the remaining income or capital of such resident apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

b) Where a resident of Poland derives items of income which in accordance with the provisions of Articles 10, 11 and 12 of this Agreement may be taxed in Mongolia, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Mongolia. Such deduction shall not, however, exceed that part of the tax, as computed before the

deduction is given, which is attributable to such items of income derived from Mongolia.

c) Where the amount of tax exempted or reduced under certain special incentive measures by Mongolia is deemed to have been paid in Mongolia then it shall become a deductible from Polish taxes.

2. In Mongolia double taxation shall be eliminated as follows:

Where a resident of Mongolia derives income from Poland the amount of tax that is payable in Poland in accordance with the provisions of this Agreement, may be deducted from the Mongolian tax imposed on that resident. The amount of the deduction, however, shall not exceed the amount of the Mongolian tax on that income computed in accordance with the taxation laws and regulations of Mongolia.

## **Article 25 Non-Discrimination**

1. National of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 of this Agreement apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 26**

### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

3. 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 reaching an agreement in the sense of the paragraph 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

## **Article 27**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of the Contracting States the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 28 Diplomatic Agents and Consular Officers**

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement<sup>1</sup>:*

#### 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 or capital 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 29 Entry into Force**

1. The Contracting States shall notify to each other that the constitutional requirements for entry into force of this Agreement have been complied with.

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<sup>1</sup> Article 7(1) of the MLI applies to all of the provisions of this Agreement (as in practice it is added to the Agreement).

2. This Agreement shall enter into force sixty days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall apply:

- a) with respect to taxes withheld at source, for amounts paid or credited on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
- b) with respect to other taxes for any taxable year beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force.

### **Article 30 Termination**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the period of five years following its entry into force. In such event, the Agreement shall cease to have effect:

- a) with respect to taxes withheld at source, for amounts paid or credited on or after the first day of January in the calendar year next following the year in which such notice has been given;
- b) with respect to other taxes, for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

Done in duplicate at Warsaw this 18 day of April 1997, in the Polish, Mongolian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.