

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

This document presents the synthesized text for the application of the Agreement between the Republic of Poland and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Warsaw on 21 April 2005 (the “Agreement”), as modified by the Multilateral Agreement to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Poland and by New Zealand on 7 June 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of New Zealand and represents the shared understanding of the modifications made to the Agreement by the MLI.

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

- by the Republic of Poland on 23 January 2018; and
- by New Zealand on 27 June 2018.

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 to 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 the Republic of Poland: 1 July 2018; and
- for New Zealand: 1 October 2018.

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 provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by 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 3(1), Article 3(2), Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 9(4) and Article 11(1) of the MLI have effect with respect to the application of this 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 2019; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 April 2019;

and

in accordance with Article 35(1) of the MLI, the provisions of Article 3(1), Article 3(2), Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 9(4) and Article 11(1) of the MLI have effect with respect to the application of this Agreement by New Zealand:

- 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 2019; and
- with respect to all other taxes levied by New Zealand, for taxes levied with respect to taxable periods beginning on or after 1 April 2019.

However, in accordance with Article 35(4) of the MLI, the second sentence of Article 16(3) of the MLI have effect with respect to this Convention for a case presented to the competent authority on or after 1 October 2018 (except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates).

#### 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: <http://www.dziennikustaw.gov.pl/du/2018/1369/1>.

The governmental announcement on the entry into force of the MLI was published in the Journal of Laws from 2018 item 1370: <http://www.dziennikustaw.gov.pl/du/2018/1370/1>.

The governmental announcement on the entry into force of the MLI between the Republic of Poland and New Zealand was published in the Journal of Laws from 2018 item 2327: <http://dziennikustaw.gov.pl/DU/2018/2327/1>.

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 REPUBLIC OF POLAND**  
**AND**  
**NEW ZEALAND**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME**

The Republic of Poland and New Zealand

**[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 preamble text described in 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 [*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),

Have agreed as follows:

## **CHAPTER I SCOPE OF THE AGREEMENT**

### **Article 1 PERSONS COVERED**

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

*The following paragraph 1 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:*

#### **ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES**

For the purposes of [the Agreement], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [Contracting State] shall be considered to be income of a resident of a [Contracting State] but only to the extent that the income is treated, for purposes of taxation by that [Contracting State], as the income of a resident of that [Contracting State].

*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 9, paragraph 3 of Article 17 or Articles 18, 19, 21, 22, 23 or 26 of the Agreement].

### **Article 2 TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, 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 New Zealand:
    - the income tax;
  - (b) In the Republic of Poland
    - the personal income tax; and
    - the corporate income tax.
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any significant changes that have been made in their taxation laws.
5. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

## **CHAPTER II DEFINITIONS**

### **Article 3 GENERAL DEFINITIONS**

For the purposes of this Agreement, unless the context otherwise requires:

- a) the term "person" includes an individual, a company and any other body of persons;
- b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- c) the term "enterprise" applies to the carrying on of any business;
- d) 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;
- e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- f) the term "competent authority" means:
  - (ii) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;

- (ii) in the case of the Republic of Poland, the Minister of Finance or an authorised representative;
  - g) the term "national", in relation to a Contracting State, means:
    - (i) any individual possessing the nationality or citizenship of that Contracting State; and
    - (ii) (any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - h) the term "business" includes the performance of professional services and of other activities of an independent character;
  - i) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or the Republic of Poland as the context requires;
  - j)
    - (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
    - (ii) the term "the Republic of Poland" means the territory of the Republic of Poland including any area outside its territorial sea within which under the laws of Poland and in accordance with international law the sovereign rights of Poland with respect to the seabed and its subsoil and their natural resources may be exercised.
2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of that interest or those dividends or royalties.
  3. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4 RESIDENT**

1. For the purposes of this Agreement, a person is a resident of a Contracting State:
  - (a) in the case of New Zealand, if the person is resident in New Zealand for the purposes of New Zealand tax;

- (b) in the case of the Republic of Poland, if the person is resident in the Republic of Poland for the purposes of Polish tax.
2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
3. Where by reason of the provisions of paragraphs 1 and 2 an individual is a resident of both Contracting States, then their status shall be determined as follows:
- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which the individual has their centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
  - (d) if the individual 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]**

~~[4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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 [*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 purposes 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*] 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 a construction, installation or assembly project, or supervisory activities in connection with that building site or construction, installation or assembly project, constitutes a permanent establishment if it lasts more than 12 months.
4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:
  - (a) for more than 90 days:
    - (i) it carries on activities which consist of, or which are connected with, the exploration or exploitation of natural resources, including standing timber, situated in that State; or
    - (ii) substantial equipment is being used in that State by, for or under contract with the enterprise; or
  - (b) it furnishes services (including consultancy and independent personal services), but only where activities of that nature continue within the State for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income concerned.
5. For the purposes of determining the duration of activities under paragraphs 3 and 4, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.
6. An enterprise shall not be deemed to have a "permanent establishment" merely by reason of:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that overall activity of the fixed place of business resulting from this combination is of preparatory or auxiliary character.
7. Notwithstanding the provisions of paragraphs 1 and 2, where a person -other than an agent of an independent status to whom paragraph 8 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that 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 6 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.
8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.
9. 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.

### **CHAPTER III TAXATION OF INCOME**

#### **Article 6 INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishing) 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 any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property, rights to explore for or exploit natural resources or standing timber, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit natural resources or standing timber; ships, boats and aircraft 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.

## **Article 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In 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. 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. For the purposes of the preceding paragraphs, 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.
6. Where:
  - (a) a resident of a Contracting State beneficially owns, whether directly or through one or more interposed trusts, a share of the business

profits of an enterprise carried on in the other Contracting State by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

- (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

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

- 7. 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.
- 8. Income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 per cent of the gross premiums paid for the insurance of those risks.

## **Article 8**

### **SHIP AND AIRCRAFT OPERATIONS**

- 1. Profits from ship or aircraft operations derived by a resident of a Contracting State shall be taxable only in that State.
- 2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from ship or aircraft operations confined solely to places in that other State.
- 3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or 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 which are shipped in a Contracting State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

1. Where

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

and in either case conditions 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.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 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 and other income treated as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. 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, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.
4. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is deductible in determining the income, profits or gains

attributable to that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 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 State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind, 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 (including the use of or the right to use any literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design or model, plan, secret formula or process, trade-mark, or other like property or right; or
  - (b) the use of, or the right to use, any industrial, scientific or commercial equipment; or
  - (c) knowledge or information concerning industrial, commercial or scientific experience; or
  - (d) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
  - (e) 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 paragraphs 1 and 2 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 and the right or property in respect of which the royalties are paid

is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a person who is a resident of that State. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are deductible in determining the income, profits or gains attributable to that permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment 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, right or 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 ALIENATION OF PROPERTY**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the enterprise alienating such ships, aircraft or other property is a resident.

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

- ~~[4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other 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].

5. Nothing in this Agreement affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

**Article 14  
INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17 and 18, 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 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 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 commencing or ending in the year of income concerned, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not deductible in determining the taxable profits of a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

## **Article 15**

### **DIRECTORS' FEES**

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

## **Article 16**

### **ENTERTAINERS AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 7 and 14, 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 sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

## **Article 17**

### **PENSIONS**

1. Pensions (including government service pensions) and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.
3. 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 18**

### **GOVERNMENT SERVICE**

1. Salaries, wages and other similar remuneration (other than pensions) paid by the Government of the Republic of Poland to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand for

the purposes of New Zealand tax or is resident in New Zealand for the purposes of New Zealand tax solely for the purpose of rendering those services.

2. Salaries, wages and other similar remuneration (other than pensions) paid by the Government of New Zealand to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Polish tax if the individual is not resident in the Republic of Poland for the purposes of Polish tax or is resident in the Republic of Poland for the purposes of Polish tax solely for the purpose of rendering those services.
3. Paragraphs 1 and 2 shall not apply to payments in respect of services rendered in connection with any trade or business carried on by a Government referred to in those paragraphs. In that case, the provisions of Article 14 or 15, as the case may be, shall apply.

#### **Article 19 STUDENTS**

Payments which a student 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 the student's education receives for the purpose of the student's maintenance or education shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### **Article 20 OTHER INCOME**

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 State except that if such income is derived from sources within the other Contracting State, that income may also be taxed in that other State.

### **CHAPTER IV METHODS FOR THE ELIMINATION OF DOUBLE TAXATION**

#### **Article 21 ELIMINATION OF DOUBLE TAXATION**

1. Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Polish tax paid under the laws of the Republic of Poland and consistent with this Agreement, in respect of income derived by a resident of New Zealand from sources in the Republic of Poland (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

2. In case of the Republic of Poland, double taxation shall be avoided as follows:

**[REPLACED by paragraph 6 of Article 5 of the MLI]**

~~[a) where a resident of Poland derives income which, in accordance with the provisions of this Agreement, may be taxed in New Zealand, Poland shall, subject to the provisions of subparagraph b), exempt such income from tax, Poland may in calculating the amount of tax on the remaining income of such resident apply the rate of tax which would have been applicable if the exempted income had not been so exempted;]~~

*The following paragraph 6 of Article 5 of the MLI replaces subparagraph a) of paragraph 1 of Article 21 of this Agreement:*

**ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION (Option C)**

Where a resident of [Poland] derives income which may be taxed in New Zealand in accordance with the provisions of [this Agreement] (except to the extent that these provisions allow taxation by [New Zealand] solely because the income is also income derived by a resident of [New Zealand]), [Poland] shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in [New Zealand].

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in [New Zealand].

Where in accordance with any provision of [the Agreement] income derived by a resident of [Poland] is exempt from tax in [Poland], [Poland] may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

b) where a resident of Poland derives items of income which in accordance with the provisions of paragraph 8 of Article 7, Article 10, 11 and 12, may be taxed in New Zealand, Poland shall allow as a deduction from the tax of income of that resident an amount equal to the income tax paid in New Zealand. 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 New Zealand.

*The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:*

#### ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

[Article 21 of the Agreement] shall not apply to the extent that such provision allows taxation by that other [Contracting State] solely because the income is also income derived by a resident of that other [Contracting State].

### CHAPTER V SPECIAL PROVISIONS

#### Article 22 NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement 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 the profits, as determined in accordance with Article 7 of a permanent establishment which an enterprise of one Contracting State has in the other Contracting State and which are attributable to that permanent establishment in accordance with Article 7 shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall 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.
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 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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

**Article 23**  
**MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law 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 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 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.

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

**ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE**

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

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**Article 24**  
**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or their political subdivisions, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1 or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interest in a person.

**Article 25**  
**ASSISTANCE IN THE COLLECTION of TAXES**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted



the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## **Article 26**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts 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

<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).

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*].

## **CHAPTER VI FINAL PROVISIONS**

### **Article 27 ENTRY INTO FORCE**

This Agreement shall enter into force on the last 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 the Agreement the force of law in New Zealand and in the Republic of Poland, as the case may be, and, in that event, the Agreement shall have effect:

- a) in respect of withholding tax imposed by a Contracting State on income that is derived by a non - resident of that State, in relation to income derived on or after 1 January in the calendar year next following that in which the exchange of notes takes place; and
- b) in respect of other tax, in relation to profits, income or gains of any year of income beginning:
  - (i) in the case of New Zealand, on or after 1 April; and
  - (ii) in the case of Republic of Poland, on or after 1 January,in the calendar year next following that in which the exchange of notes takes place.

### **Article 28 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 on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- a) in respect of withholding tax imposed by a Contracting State on income that is derived by a non - resident of that State, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given; and
- b) in respect of other tax, in relation to profits, income or gains, of any year of income beginning:
  - (i) in the case of New Zealand, on 1 April; and

(ii) in the case of Republic of Poland, on 1 January, 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 Warsaw this 21st day of April 2005 in the Polish and English languages, both text being equally authentic.

### **PROTOCOL**

At the moment of signing the Agreement between New Zealand and the Republic of Poland for the Avoidance of Double Taxation with respect to Taxes on Income the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. With reference to paragraph 8 of Article 7

With reference to paragraph 8 of Article 7 it is understood that, in relation to taxes imposed by one Contracting State on the income or profits derived by an enterprise from insurance, the other Contracting State will provide relief from double taxation in accordance with Article 21 of the Agreement.

2. With reference to Article 20

It is agreed that if an item of income arises to be dealt with under that Article the competent authorities of the Contracting States shall negotiate to reach a satisfactory solution as to how the item should be taxed.

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

DONE in duplicate at Warsaw this 21st day of April 2005 in the Polish and English languages, both text being equally authentic.