

SYNTHESISED TEXT
OF THE MLI AND THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE POLISH PEOPLE’S REPUBLIC
AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA
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 Government of the Polish People’s Republic and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed in Warsaw on 21 June 1989 (the “Agreement”), as amended by the Protocol signed in Warsaw on 29 January 2013 (the “Amending Protocol”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Poland and by India on 7 June 2017 (the “MLI”).

This document was prepared jointly by the competent authorities of Poland and India 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 Poland on 23 January 2018; and
- by India on 25 June 2019.

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, the Amending Protocol and the MLI remain the only sources of law.

For legal purposes, the provisions of the MLI must be interpreted alongside the Agreement and the Amending Protocol, 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 India: 1 October 2019.

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

Pursuant to Article 35(2) of the MLI, solely for the purpose of its own application of Article 35(1)(a) and 5(a), India chose to substitute “taxable period” for “calendar year”.

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 2020; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 April 2020;

and

in accordance with Article 35(1) and Article 35(2) 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 India:

- 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 the first day of the next taxable period that begins on or after 1 October 2019; and
- with respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

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 Poland and India was published in the Journal of Laws from 2019 item 2372: <http://dziennikustaw.gov.pl/DU/2019/2372/1>.

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 GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC
AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Polish People's Republic and the Government of the Republic of India,

Desiring to further develop and facilitate the economic relationship between the two countries, and having decided 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 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),

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 10, or Articles 19, 21, 22, 24, 25, 26 or 29] of [the Agreement].

Article 2

Taxes covered

1. The taxes to which this Agreement shall apply are:
 - a) in India the income-tax including any surcharge thereon imposed under the Income- tax Act, 1961;

(hereinafter referred to as "Indian tax").
 - b) in Poland:
 - (i) the personal income tax, and
 - (ii) the corporate income tax,

(hereinafter referred to as "Polish taxes")¹.

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws which are the subject of this Agreement.

¹ The wording of paragraph 1 of Article 2 presented as amended by the Amending Protocol.

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires:
 - a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;²
 - b) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;³
 - c) the terms "a Contracting State" and "the other Contracting State" mean Poland or India, as the context requires;
 - d) the term "tax" means Polish tax or Indian tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
 - e) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
 - f) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
 - 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 "competent authority" means, in the case of Poland, the Minister of Finance or his authorised representative; and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - i) the term "national" means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving the status from the laws in force in the Contracting State;

² The wording of clause a) of paragraph 1 of Article 3 presented as amended by the Amending Protocol.

³ The wording of clause b) of paragraph 1 of Article 3 presented as amended by the Amending Protocol.

- j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- k) the term "fiscal year", in the case of India, means the financial year beginning on the first day of April⁴.

2. As regards the application of the 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 State concerning the taxes to which the Agreement applies.

Article 4 Fiscal residence

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term however, does not include any person who is liable to tax in that State in respect only of income from sources in that State⁵.

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 the question of residence cannot be determined according to the provisions of subparagraphs (a) to (c), 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.]~~

⁴ The wording of clause k) of paragraph 1 of Article 3 presented as amended by the Amending Protocol.

⁵ The wording of paragraph 1 of Article 4 presented as amended by the Amending Protocol.

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 the enterprise is wholly or partly carried on.
 2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop;
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - g) a warehouse in relation to a person providing storage facilities for others;
 - h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
 - i) premises used as a sales outlet or for receiving or soliciting orders;
 - j) an installation or structure used for the exploration of natural resources;
 - k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than six months.
- 2A. The term "permanent establishment" shall also include the furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel engaged by the enterprise for such purpose, but only where such activities continue (for the same or a connected project) in the other

Contracting State for a period or periods exceeding in the aggregate six months within any 12-month period⁶.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character for the enterprise.

However, the provisions of subparagraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting States for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 5 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if:

- a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. 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 itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that

⁶ The wording of paragraph 2A of Article 5 presented as amended by the Amending Protocol.

enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

6. 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 Contracting 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 for 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, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 or similar kind as those sold through that permanent establishment; or
- c) other business activities carried on in that other State of the same or similar kind as those effected 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. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (other than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

5. 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 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

Air transport

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft and the provisions of Article 12 shall not apply in relation to such interest.
4. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

Article 9

Shipping

1. Profits from the operation of ships 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 an enterprise carrying on shipping in international traffic 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 in which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.
4. Notwithstanding anything contained in paragraph 1 and Article VIII of the Agreement dated 27 June 1960, between the Government of India and the Government of the Polish People's Republic regarding shipping cooperation, income derived by an enterprise of a Contracting State from the operation of ships from the ports of the other Contracting State to the ports of third countries and from the ports of third countries to the ports of the other Contracting State may be taxed in the other Contracting State, but the tax imposed in that other Contracting State shall be reduced by an amount equal to 50% thereof.

Article 10

Associated enterprises⁷

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 11

Dividends

1. Dividends paid by a company which is 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 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 dividends are paid⁸.

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

⁷ The wording of Article 10 presented as amended by the Amending Protocol.

⁸ The wording of paragraph 2 of Article 11 presented as amended by the Amending Protocol.

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 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 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 15, 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 in so far as such dividends are paid to a resident of that other State or so far 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 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 12 **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 recipient is beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest⁹.

3. Notwithstanding the provisions of paragraph 2,

a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

(i) the Government, a political subdivision or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State;

b) interest arising in a Contracting State shall be exempt from tax in that State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by:

⁹ The wording of paragraph 2 of Article 12 presented as amended by the Amending Protocol.

- (i) in the case of Poland, Bank Gospodarstwa Krajowego (BGK), to the extent such interest is attributable to financing of exports and imports only;¹⁰
- (ii) in the case of India, the Export-Import Bank of India (Exim Bank) to the extent such interest is attributable to financing of exports and imports only;
- (iii) any institution of a Contracting State in charge of public financing of external trade;
- (iv) any other person provided that the loan or credit is approved by the Government of 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 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, 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 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that 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 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 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.

¹⁰ The wording of clause i) of subparagraph b) of paragraph 3 of Article 12 presented as amended by the Amending Protocol.

Article 13
Royalties and fees for technical services

1. Royalties and fees for technical services 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 or fees for technical services 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, or fees for technical services, is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services¹¹.

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 including copyright of literary, artistic or scientific work including cinematograph films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use any industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience¹².

4. The term "fees for technical services" as used in this Article means payments of any kind, other than those mentioned in Articles 15 and 16, as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel¹³.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties and fees for technical services 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 royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

¹¹ The wording of paragraph 2 of Article 13 presented as amended by the Amending Protocol.

¹² The wording of paragraph 3 of Article 13 presented as amended by the Amending Protocol.

¹³ The wording of paragraph 4 of Article 13 presented as amended by the Amending Protocol.

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 royalties or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount, and 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 14 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 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 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 a permanent establishment (alone or together with the whole enterprise), or of such fixed base, 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 of which the alienator is a resident.

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

~~[4. Gains from the alienation of shares 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 State.]¹⁴~~

The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 14 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]*.

¹⁴ The wording of paragraph 4 of Article 14 presented as amended by the Amending Protocol.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15 Independent personal services

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in 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 State; or
- b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 16 Dependent personal services

1. Subject to the provisions of Articles 17, 18, 19, 20, 21 and 22, 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 fiscal year concerned, and;¹⁵

¹⁵ The wording of clause a) of paragraph 2 of Article 16 presented as amended by the Amending Protocol.

- 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 borne by a permanent establishment or a fixed base 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 an enterprise of a Contracting State may be taxed in that State.

Article 17

Directors' fees and remuneration of top level managerial officials

1. Directors' fees and similar payments derived by a resident of a Contracting State in his 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.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

Income earned by entertainers and athletes

1. Notwithstanding the provisions of Articles 15 and 16, 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 an athlete, from his 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 athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are within the framework of cultural or sports exchange programmes agreed to by both Contracting States and are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political subdivisions or local authorities.
4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself

but to another person, that income shall be taxable only in the other Contracting State, if the activities of that other person are within the framework of cultural or sports exchange programmes agreed to by both Contracting States and are supported wholly or substantially from the public funds of that other State, including any of its political subdivisions or local authorities.

Article 19
Remuneration and pensions in respect of Government service

1.
 - a) Remuneration other than pension paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or a political subdivision or local authority thereof in the discharge of functions of a Governmental nature shall be taxable only in that Contracting State.
 - b) However, such remuneration shall be taxable only in the other Contracting State, if the services are rendered in that other State and the individual is a resident of that 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 the services.
2.
 - a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or 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 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 20
Non-government pensions and annuities

1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.
2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 21
Payments received by students and apprentices¹⁶

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

2. Notwithstanding the provisions of Article 16, remuneration which a student, or an apprentice 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 or training, receives for dependent personal services rendered in that first-mentioned State shall not be taxable in that State, provided that such services are directly related, and incidental, to his education or training or the remuneration for those services is necessary to supplement the resources for his maintenance. However, in any case the benefits of this paragraph shall not be granted for a period of more than five consecutive years from the date of his first arrival in the first-mentioned State.

Article 22
Payments received by professors, teachers and research scholars

1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State or any remuneration for such teaching or research for a period not exceeding 2 years from the date of his arrival in that other State.

2. This Article shall not apply to income from research if such research is not in public interest but is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

¹⁶ The wording of Article 21 presented as amended by the Amending Protocol.

Article 23

Other income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly 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 State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 15, 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 be taxed in that other State.

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 preceding paragraphs. The competent authorities shall through consultations develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this article.

Article 24

Elimination of double taxation¹⁷

1. In case of India, double taxation shall be avoided as follows:

a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Poland, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Poland.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Poland.

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

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

¹⁷ The wording of Article 24 presented as amended by the Amending Protocol.

- a) Where a resident of Poland derives income which, in accordance with the provisions of this Agreement may be taxed in India, Poland shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income or capital gains derived from India.
- b) Where in accordance with any provision of this 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.

Article 25

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 and under the same conditions 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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7. However, the difference in tax rate shall not exceed 10 percentage points¹⁸.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes, which are by law available only to persons who are so resident.

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 Contracting 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 that first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

¹⁸ The wording of paragraph 2 of Article 25 presented as amended by the Amending Protocol.

6. Except where the provisions of Article 11, paragraph 7 of Article 12, or paragraph 7 of Article 13 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 to a resident of the other 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.

7. The exemptions, reliefs, reductions, deductions and allowances for taxation purposes available under the domestic laws of the two Contracting States shall not be adversely affected by any provision of this Agreement

Article 26

Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within 3 years of the date of receipt of notice of the action which gives rise to taxation not in accordance with 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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

3. The competent authorities of the Contracting States shall 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 preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 27
Exchange of information¹⁹

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

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

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

¹⁹ The wording of Article 27 presented as amended by the Amending Protocol.

6. A Contracting State may allow representatives of the competent authority of the other Contracting State to enter the territory of the first-mentioned Contracting State to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Contracting State shall notify the competent authority of the first-mentioned Contracting State of the time and place of the meeting with the individuals concerned.

7. At the request of the competent authority of one Contracting State, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned Contracting State to be present at the appropriate part of a tax examination in the second-mentioned Contracting State.

8. If the request referred to in paragraph 7 is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Contracting State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting State conducting the examination.

Article 28

Assistance in collection of taxes²⁰

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 or local authorities, 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

²⁰ The wording of Article 28 presented as amended by the Amending Protocol.

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 it, 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. When a Contracting State, under its law, takes interim measures of conservancy by freezing assets before a revenue claim is raised against a person, the competent authority of the other Contracting State, it requested by the competent authority of the first-mentioned State, shall take interim measures for freezing the assets of that person in that other Contracting State to the extent permitted in the provisions of its law.

6. 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.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

8. 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.

9. 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.

[REPLACED by paragraph 1 of Article 7 of the MLI]²¹

~~**[Article 28A
Limitation of benefits²²**~~

~~*Benefits of this Agreement shall not be available*~~

- ~~a) — to a resident (not being an individual) of a Contracting State if the main purpose or one of the main purposes of the creation or existence of such a resident; or~~
- ~~b) — with respect to any arrangement or transaction undertaken by a resident of a Contracting State, if the main purpose or one of the main purposes of the creation or existence of such an arrangement or transaction,~~

~~*was to obtain the benefits under this Agreement.]*~~

**Article 29
Diplomatic and consular activities**

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

²¹ The wording of Article 7(1) of the MLI is presented in this document immediately after Article 29. Please note that Article 7(1) of the MLI replaces Article 28A of the Agreement. In addition, it also applies to all the provisions of the Agreement (as in practice it is added to the Agreement).

²² The wording of Article 28A presented as added by the Amending Protocol.

The following paragraph 1 of Article 7 of the MLI replaces Article 28A of this Agreement²³:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

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

Article 30
Entry into force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- a) in Poland, in respect of income arising in any year of income beginning on or after the first day of January next following the calendar year in which the later of the notifications is given.
- b) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given.

Article 31
Termination

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

- a) in Poland, in respect of income arising in any year of income beginning on or after the 1st day of January next following the calendar year in which the notice of termination is given.

²³ Please note that Article 7(1) of the MLI replaces Article 28A of the Agreement and, in addition, it also applies to all the provisions of the Agreement (as in practice it is added to the Agreement).

- b) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice is given;

In witness whereof the undersigned, being duly authorised thereto, have signed the present Agreement.

Done in duplicate at Warsaw this June 21, 1989, in the Polish, Hindi and English languages, all the texts being equally authentic. In case of divergence between the Polish and Hindi texts, the English text shall prevail.