

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

This document presents the synthesized text for the application of the Convention Between the Republic of Poland and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital signed in Warsaw on 6 December 2001 (the “Convention”), as amended by the Protocol signed in Warsaw on 7 December 2009 (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 Denmark on 7 June 2017 (the “MLI”).

This document was prepared jointly by the competent authorities of Poland and Denmark and represents the shared understanding of the modifications made to the Convention 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 Denmark on 30 September 2019.

The effects of the MLI on the application of the Convention 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 Convention. This document does not constitute a source of law. The authentic legal texts of the Convention, 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 Convention 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 Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. 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 Convention (such as “Covered Tax Agreement” and “Convention”, “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 Denmark: 1 January 2020.

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. 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(3) of the MLI, solely for the purpose of its own application of Article 35(1)(b) and 5(b), Denmark chose to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”.

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 the Convention 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 July 2020;

and

in accordance with Article 35(1) and Article 35(3) 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 the Convention by Denmark:

- 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 Denmark, for taxes levied with respect to taxable periods beginning on or after 1 January 2021.

### 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 Denmark was published in the Journal of Laws from [•] item [•]: *[link – to be provided once published]*.

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>.

**CONVENTION**  
**BETWEEN**  
**THE REPUBLIC OF POLAND**  
**AND**  
**THE KINGDOM OF DENMARK**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Republic of Poland and the Kingdom of Denmark,

**[REPLACED by paragraph 1 of Article 6 of the MLI]**

~~*[desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital,]*~~

*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 Convention:*

**ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED  
TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by *[this Convention]* 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 Convention]* for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

## **Article 1 Persons Covered**

This Convention 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 Convention:*

### ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of [*the Convention*], 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 Convention:*

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

[*The Convention*] 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, or Articles 18, 19, 22, 23, 24 or 26*] of [*the Convention*].

## **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are:

a) in Poland:

(i) personal income tax; and

(ii) corporate income tax;

(hereinafter referred to as "Polish tax");

b) in Denmark:

(i) the income tax to the State (indkomstskatten til staten);

(ii) the income tax to the municipalities (den kommunale indkomstskat);

(iii) the income tax to the county municipalities (den amtskommunale indkomstskat);

(iv) the tax on assessed value of immovable property (ejendomsværdiskatten);

(hereinafter referred to as "Danish tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their taxation laws.

### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:

a) the terms "a Contracting State" and "the other Contracting State" mean Denmark or Poland, as the context requires;

b) the term "Poland" means the Republic of Poland, when used in a geographical sense, means all the territory in which the Polish tax laws are in force;

c) the term "Denmark" means the Kingdom of Denmark, when used in a geographical sense, means all the territory in which the Danish tax laws are in force;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- f) the term "enterprise" applies to the carrying on of any business;
- 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 "international traffic" means any transport by a ship, aircraft or road transport vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or road transport vehicle is operated solely between places in the other Contracting State;
- i) the term "competent authority" means:
  - (i) in Poland: the Minister of Finance or his authorised representative;
  - (ii) in Denmark: the Minister for Taxation or his authorised representative;
- j) the term "national" means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention 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 Convention 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 Convention, 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 State or capital situated therein.

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 only 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 only 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 only 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 only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

~~[3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident 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 Convention:*

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

Where by reason of the provisions of [*the Convention*] 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 Convention*], 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 Convention*] 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 Convention, 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;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. An installation or drilling rig or ship used for the exploration of natural resources constitutes a permanent establishment only if it lasts, or the activities continue for, more than 90 days. Activities carried on by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if the activities in question:

- a) are substantially the same as those carried on by the last-mentioned enterprise, and
- b) are concerned with the same project or operation,

except to the extent that those activities are carried on at the same time. For the purposes of this paragraph enterprises shall be regarded as associated when the same persons participate directly or indirectly in the management, control or capital of the enterprises.

5. 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, 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 sub-paragraphs (a) to (e) provided that the overall activity

of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 7 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 5 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.

7. 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.

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

## **Article 6**

### **Income from Immovable Property**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and road transport vehicles shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

## **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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the 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.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8 Profits from International Traffic**

1. Profits derived from the operation of ships, aircraft or road transport vehicles shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits derived by an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that 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. With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium the Scandinavian Airlines System (SAS), the provisions of paragraphs 1 – 3 shall apply only to such proportion of the profits as corresponds to the participation held in that consortium by SAS Denmark A/S, the Danish partner of Scandinavian Airlines System.

### **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 Convention 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:

- a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period;
- b) 5 per cent of the gross amount of the dividends if the beneficial owner is a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, when such pension fund or other similar institution is established, recognized for tax purposes and controlled in accordance with the laws of that other State;
- c) 15 per cent of the gross amount of the dividends in all other cases.

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

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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of 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.

6. Where a Contracting State has levied the tax at source in excess of the amount of tax chargeable under the provisions of this Convention, application for the refund of

the excess amount must be lodged with the competent authority of that State within a period of three years after the expiration of the calendar year in which the tax was levied. The refund shall be given within a six-month period from the date on which the application was submitted to the competent authority. The six-month period may be extended if both of the Contracting States agree that the necessary documentation has not been presented to the competent authority of the first-mentioned 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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, any such interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if such interest is paid:

- a) on a loan whatever kind granted, insured or guaranteed by a financial institution owned or controlled by a Contracting State;
- b) in connection with the sale on credit of any industrial, commercial or scientific equipment;
- c) in respect of a bond, debenture or other similar obligation of the government of a Contracting State, or of a political subdivision or local authority thereof;
- d) to the other Contracting State, or to a political subdivision or local authority thereof.

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.

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, 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.

6. 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 he 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 borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

## **Article 12** **Royalties**

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, the royalties referred to in paragraph 1 of this Article may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, 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 experience.

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 that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such 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 Convention.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in 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 place of effective management of the enterprise is situated.

4. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods and merchandise in international traffic shall be taxable only in that State.

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

~~[5.— Gains from the alienation of shares, rights or an interest in a company, in any other legal person or in a partnership, the assets of which consist principally of, or of rights in, immovable property situated in a State or of shares in a company the assets of which consist principally of, or of rights in, such immovable property situated in a State may be taxed in the State in which the immovable property is situated where, under the laws of that State, such gains are subject to the same taxation rules as gains from the alienation of immovable property.]~~



*The following paragraph 4 of Article 9 of the MLI replaces paragraph 5 of Article 13 of this Convention:*

**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 Convention*], 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*].

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

7. With respect to gains derived by the Danish, Norwegian and Swedish air transport consortium the Scandinavian Airlines System (SAS), the provisions of paragraph 3 shall apply only to such proportion of the gains as corresponds to the participation held in that consortium by SAS Denmark A/S, the Danish partner of Scandinavian Airlines System.

8. Where a person who is a resident of a Contracting State becomes a resident of the other Contracting State, and the first-mentioned Contracting State taxes deemed capital gains on property of that person at the time of change of residence, then - in the case of subsequent alienation of such property - capital gains on such property as derived up to the time of change of residence shall not be taxed in the other Contracting State.

**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 fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is a resident of the first-mentioned State, and
- c) the remuneration is not borne by 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 operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 15 Directors' Fees**

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

#### **Article 16 Artists and Sportsmen**

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 artist, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artists or sportsmen if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof. In such case, the income is taxable only in the Contracting State in which the artist or the sportsman is a resident.

**Article 17**  
**Pensions, Social Security Payments and Similar Payments**

1. Payments received by an individual, being a resident of a Contracting State, under the social security legislation of the other Contracting State, or under any other scheme out of funds created by that other State or a political subdivision or a local authority thereof, may be taxed in that other State.
2. Subject to the provisions of paragraph 1 of this Article and paragraph 2 of Article 18, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State, whether in consideration of past employment or not, shall be taxable only in the other Contracting State, unless:
  - (i) contributions paid by the beneficiary to the pension scheme were deducted from the beneficiary's taxable income in the first-mentioned Contracting State under the law of that State; or
  - (ii) contributions paid by an employer were not taxable income for the beneficiary in the first-mentioned Contracting State under the law of that State.

In such case, the pensions may be taxed in the first-mentioned Contracting State.

3. Pensions shall be deemed to arise in a Contracting State if paid by a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, when such pension fund or other similar institution is established, recognized for tax purposes and controlled in accordance with the laws of that State.
4. For the purposes of this Article, the pension schemes referred to in paragraph 3 shall include:
  - a) in the case of Poland: pensions granted in accordance with the Act of 17.12.1998 (Journal of Law No.162, pos. 1118) on Pensions and Disability Pensions from Social Security Fund;
  - b) in the case of Denmark: pension schemes falling under Section I of the Act on Taxation of Pension Schemes (pensionsbeskatningsloven).

**Article 18**  
**Government Service**

1.
  - a) Salaries, wages and other similar remuneration, other than a 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 State or subdivision or authority shall be taxable only in that State.

- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that 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 State.
- 3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

### **Article 19 Students**

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.

### **Article 20 Other Income**

- 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## Article 21 Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by 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, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## Article 22 Elimination of Double Taxation<sup>1</sup>

1. In case 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 Convention may be taxed in Denmark, Poland shall, subject to the provisions of sub-paragraph (b) of this paragraph exempt such income from tax.]~~

*The following paragraph 6 of Article 5 of the MLI replaces subparagraph (a) of paragraph 1 of Article 22 of this Convention:*

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

Where a resident of [Poland] derives income or owns capital which may be taxed in [Denmark] in accordance with the provisions of [this Convention] (except to the extent that these provisions allow taxation by [Denmark] solely because the income is also income derived by a resident of [Denmark]), [Poland] shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in [Denmark];

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<sup>1</sup> The wording of Article 22 presented as amended by the Amending Protocol.

ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in [*Denmark*].

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

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

(b) Where a resident of Poland derives income or capital gains which, in accordance with the provisions of Articles 10, 11, 12 or 13 of this Convention, may be taxed in Denmark, Poland shall allow as a deduction from the tax on the income or capital gains of that resident an amount equal to the tax paid in Denmark. 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 Denmark.

(c) Where in accordance with any provision of this Convention, 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 or capital gains of such resident, take into account the exempted income.

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

(a) Subject to the provisions of sub-paragraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Poland, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Poland.

(b) 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 Poland.

(c) Where a resident of Denmark derives income which in accordance with the provisions of this Convention shall be taxable only in Poland, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from Poland.

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

### ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

*[Article 22 of the Convention]* shall not apply to the extent that *[the provisions of the Convention]* allow taxation by that other *[Contracting State]* solely because the income is also income derived by a resident of that other *[Contracting State]*.

### **Article 23 Non-Discrimination**

1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. 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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, 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.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any

requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

#### **Article 24** **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 Convention. 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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 25** **Exchange of Information<sup>2</sup>**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention 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 their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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<sup>2</sup> The wording of Article 25 presented as amended by the Amending Protocol.



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 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 tax 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 relates to ownership interests in a person.

## **Article 26**

### **Members of Diplomatic Missions and Consular Posts**

Nothing in this Convention 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 Convention<sup>3</sup>:*

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

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

**Article 27**  
**Territorial extension**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the Faroe Islands or Greenland. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 29 shall also terminate, in the manner provided for in that Article, the application of the Convention to the Faroe Islands or Greenland.

**Article 28**  
**Entry into Force**

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.
2. The Convention shall enter into force on the date of the receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes for the income tax year immediately following that in which the Convention enters into force and subsequent income years.

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<sup>3</sup> Article 7(1) of the MLI applies to all the provisions of the Convention (as in practice it is added to the Convention).

3. In case of Poland the provisions of paragraph 3 of Article 14 shall have effect in respect of remuneration derived by a resident of Poland prior to the entry into force of this Convention.

4. The Agreement between the Government of the Polish People's Republic and the Government of the Kingdom of Denmark for the avoidance of double taxation with respect to taxes on income and on capital, signed in Copenhagen on April 6 1976, as amended by Protocol signed in Warsaw on 17 May 1994, shall be terminated and its provisions cease to have effect from the day on which the present Convention becomes effective.

### **Article 29 Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year, following after a period of five years from the year in which the Convention enters into force. In such event, the Convention shall cease to have effect in respect of taxes for the income tax year immediately following that in which the notice of termination is given and subsequent income years.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

Done at Warsaw this 6th day of December 2001, in two copies, each in the Polish, Danish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.