

**SYNTHESISED TEXT**  
**OF THE MLI AND THE AGREEMENT BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF POLAND**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**WITH RESPECT TO TAXES ON INCOME**

This document presents the synthesized text for the application of the Agreement between the Government of the Republic of Poland and the Government of the Republic of South Africa for the Avoidance of Double Taxation with Respect to Taxes on Income signed in Warsaw on 10 November 1993 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Poland and by South Africa on 7 June 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of South Africa 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 South Africa on 30 September 2022.

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

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

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

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as “Covered Tax Agreement” and “Agreement”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

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

Entry into force of the MLI:

- for Poland: 1 July 2018; and
- for South Africa: 1 January 2023.

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source on non-residents' income or other taxes levied) and on the choices made by the Contracting States in their MLI positions.

Hence, unless it is stated otherwise elsewhere in this document, in accordance with Article 35(1) of the MLI, the provisions of Article 3(1), Article 3(2), Article 4(1), Article 6(1), Article 7(1), Article 8(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 2023; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 July 2023;

and

in accordance with Article 35(1) of the MLI, the provisions of Article 3(1), Article 3(2), Article 4(1), Article 6(1), Article 7(1), Article 8(1), Article 9(4) and Article 11(1) of the MLI have effect with respect to the application of the Agreement by South Africa:

- 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 2023; and
- with respect to all other taxes levied by South Africa, for taxes levied with respect to taxable periods beginning on or after 1 July 2023.

## References

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

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

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

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

The governmental announcement on the entry into force of the MLI between Poland and South Africa was published in the Journal of Laws from 2022 item 2521.

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

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

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF POLAND**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**WITH RESPECT TO TAXES ON INCOME**

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF POLAND  
**AND**  
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

DESIRING to promote and strengthen the economic relations between the two countries

*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 3 of the MLI applies and supersedes the provisions of this Agreement:*

### ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

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

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

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

[The Agreement] shall not affect the taxation by a [Contracting State] of its residents, except with respect to the benefits granted under [paragraph 2 of Article 9, or Articles 19, 20, 21, 23, 24, 25 or 27 of the Agreement].

## **ARTICLE 2 TAXES COVERED**

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

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

3. The existing taxes to which the Agreement shall apply are in particular:

(a) in Poland:

- (i) the personal income tax (podatek dochodowy od osób fizycznych);
- (ii) the corporate income tax (podatek dochodowy od osób prawnych); and
- (iii) the agricultural tax (podatek rolny)

(hereinafter referred to as "Polish tax"); and

(b) in South Africa:

- (i) the normal tax; and
- (ii) the non-resident shareholders tax

(hereinafter referred to as "South African tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in this Article. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

### **ARTICLE 3 GENERAL DEFINITIONS**

1. For the purposes of this Agreement:

- (a) the term "Poland" when used in a geographical sense means the territory of the Republic of Poland, including any area beyond its territorial waters, within which under the laws of Poland and in accordance with international law, Poland may exercise its sovereign rights over the seabed, its subsoil and their natural resources;
- (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may hereafter be designated, under the laws of South Africa as areas within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Poland or South Africa as the context requires;
- (d) the term "national" means all individuals possessing the nationality of a Contracting State and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in a Contracting State;
- (e) the term "person" comprises an individual, a company or any other body of persons which is treated as an entity for tax purposes;

- (f) 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;
- (g) the term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and
- (i) the term "competent authority" means
  - (i) in the case of Poland the Minister of Finance, or his authorized representative; and
  - (ii) in the case of South Africa the Commissioner for Inland Revenue, or his authorized representative.

2. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies. The meaning of a term under the taxation law of that State shall have priority over the meaning provided for such term in other branches of law of that State.

#### **ARTICLE 4 RESIDENT**

- 1. For the purposes of this Agreement:
  - (a) the term "resident of Poland" means a person who, under the laws of Poland, is liable to taxation therein by reason of his residence, place of management or any other criterion of a similar nature. The term does not include any person who is liable to tax in Poland in respect only of income derived from sources therein; and
  - (b) the term "resident of South Africa" means any individual who is ordinarily resident in South Africa and any legal person which has its place of management in South Africa.
- 2. Where by reason of the provisions of paragraph 1 of this Article 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;

- (b) 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);
- (c) if a Contracting 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 a habitual abode;
- (d) if he has a 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;
- (e) if his status cannot be determined according to subparagraphs (a) to (d), 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 of this Article 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. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.]~~

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

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

Where by reason of the provisions of [*the Agreement*] a person other than an individual is a resident of both [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting State*] of which such person shall be deemed to be a resident for the purposes of [*the Agreement*], having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [*the Agreement*] except to the extent and in such manner as may be agreed upon by the competent authorities of the [*Contracting States*].

**ARTICLE 5  
PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.



2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
  
3. A building site, a construction, assembly or installation project constitutes a permanent establishment only if it lasts more than 12 months, starting from the date when effective work begins.
  
4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purposes 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 advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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.
  
5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if such a person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to purchasing goods or merchandise.

6. 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.

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

8. An enterprise of a Contracting State, notwithstanding that it has no fixed place of business in the other Contracting State, shall be deemed to have a permanent establishment in that other Contracting State if it carries on supervisory activities therein in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State for a period of more than twelve months.

## **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 in this Agreement 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, buildings, 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article 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 that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 profit 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8 SHIPPING AND AIR TRANSPORT**

1. Profits from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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

## **ARTICLE 10 DIVIDENDS**

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

### **[MODIFIED by paragraph 1 of Article 8 of the MLI]**

- [(a) *5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends*];

*The following paragraph 1 of Article 8 of the MLI applies to subparagraph (a) of paragraph 2 of Article 10 of this Agreement<sup>1</sup>:*

#### ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

*[Subparagraph (a) of paragraph 2 of Article 10 of the Agreement]* shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

(b) 15% 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, 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 taxation law of that State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and 2 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, 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 insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other 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 consists wholly or partly of profits or income arising in such other State.

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<sup>1</sup> In practice it means that the application of Article 10(2)(a) of the Agreement is modified by adding the condition of a minimum holding period (365 days), which is provided in Article 8(1) of the MLI.

## **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 State.
2. However, interest referred to in paragraph 1 of this Article may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed 10% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities thereof, the Central Bank or any financial institution controlled by that Government, shall be exempt from tax in the first-mentioned 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 debtors'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 purposes of this Article.
5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, 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 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 State in which the permanent establishment or fixed base is situated.
7. Where by reason of a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12 ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, 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 the tax so charged shall not exceed 10% of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the recipient 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 be agreed upon between the payer and the recipient in the absence of such relationship, the provisions of this Article, shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## ARTICLE 13 CAPITAL GAINS

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

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

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

*The following paragraph 4 of Article 9 of the MLI applies and supersedes paragraph 4 of Article 13 of this Agreement<sup>2</sup>:*

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]*.

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<sup>2</sup> In practice it means that the application of Article 13(4) of the Agreement is modified by adding to the Agreement the real-estate clause, which is provided in Article 9(4) of the MLI.



**ARTICLE 14  
INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

**ARTICLE 15  
DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20 of this Agreement, 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 of this Article, 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 the calendar year concerned; and
  - (b) the remuneration is paid by, or on behalf of a person 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

**ARTICLE 16  
DIRECTORS' FEES**

1. 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 Contracting State.

2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions as an employee, shall be taxed in accordance with the provisions of Article 15.

## **ARTICLE 17 ARTISTES AND ATHLETES**

1. Notwithstanding the provisions of Articles 14 and 15 of this Agreement, income derived by a resident of a Contracting State as an entertainer, such as a theater, 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 an 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, 14 and 15 of this Agreement, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or athlete is exercised provided that this activity is supported mainly out of public funds of that State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

## **ARTICLE 18 PENSIONS AND ANNUITIES**

1. Any pension (other than pension of the kind referred to in paragraph 2 of Article 19) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State and is subject to tax on the whole or portion thereof in the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State to the extent that it is included in income for the purpose of the other Contracting State.

2. 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 19 GOVERNMENT SERVICE**

1. Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

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

- (a) is a national of that State; or
- (b) did not become resident of that State solely for the purpose of performing the services; or
- (c) is not subject to tax in respect of such remuneration in the Contracting State from which the remuneration is paid.

2. Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State. However, such pension shall be taxable only in the other Contracting State if the recipient is a national of, and a resident of, that State.

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

## **ARTICLE 20 STUDENTS**

Payments which a student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first- mentioned State solely for the purposes of his education or training, receives for the purposes of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

## **ARTICLE 21 PROFESSORS AND RESEARCHERS**

1. An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college or other recognized educational institution in that Contracting State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempted from taxation in the first-mentioned Contracting State on remuneration for such teaching or research during that period.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

## **ARTICLE 22 OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article 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 or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

## **ARTICLE 23 ELIMINATION OF DOUBLE TAXATION**

1. Double taxation shall be avoided as follows:
  - (a) In the case of Poland, where a resident of Poland derives income which, in accordance with the provisions of this Agreement may be taxed in South Africa, Poland shall, subject to the provisions of paragraphs 2 and 3, exempt such income from tax.
  - (b) In the case of South Africa, taxes paid by South African residents in respect of income taxable in Poland, in accordance with the provisions of this Agreement, shall be deducted from the South African taxes due according to the South African fiscal law. 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.
2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10, 11 and 12 of this Agreement may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.
3. 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.

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

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

[Article 23 of the Agreement] shall not apply to the extent that the provisions [of the Agreement] allow taxation by the other [Contracting State] solely because the income is also income derived by a resident of that other [Contracting State].

#### ARTICLE 24 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 residents of that other State in the same circumstances 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. 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.

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

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

5. The provisions of this Article shall apply to taxes referred to in Article 2 of this Agreement.

**ARTICLE 25**  
**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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:*

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

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 endeavor 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 paragraphs 1, 2 and 3 of this Article. 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 26**  
**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities

(including courts and administrative bodies) involved in the assessment or collection of the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information received will be treated as secret on request of the Contracting State giving the information.

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

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

## **ARTICLE 27 DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement<sup>3</sup>:*

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

Notwithstanding any provisions of [*the Agreement*] a benefit under [*the Agreement*] shall not be granted in respect of an item of income 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*].

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

**ARTICLE 28  
ENTRY INTO FORCE**

1. The Contracting Parties shall notify to each other that the constitutional requirements for entry into force of this Agreement have been complied with.
2. This Agreement shall enter into force sixty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall apply:
  - (a) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force; and
  - (b) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.

**ARTICLE 29  
TERMINATION**

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

- (a) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which such notice has been given; and
- (b) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which such notice has been given.

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

DONE at Warsaw this 10th day of November 1993 in duplicate, in the Polish and English languages, both texts being equally authentic.