

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

This document presents the synthesized text for the application of the Agreement between the Government of the Republic of Poland and the Government of Romania for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital signed at Warsaw on 23 June 1994 (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 Romania on 7 June 2017 (the “MLI”).

This document was prepared jointly by the competent authorities of Poland and Romania 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 Romania on 28 February 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 Romania: 1 June 2022.

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.

Pursuant to Article 35(3) of the MLI, solely for the purpose of its own application of Article 35(1)(b) and 5(b), Romania 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”.

As a result of the reservation made by Romania pursuant to Article 35(6) of the MLI, Article 35(4) will not apply. Hence, the general rules will determine the date of the entry into effect of the second sentence of Article 16(2) of the MLI.

Pursuant to Article 35(7)(a) of the MLI, the date of entry into effect of the MLI depends on the receipt by the Depositary of the notification by Romania that it has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to the Agreement. The relevant notification was received by the Depositary on 6 March 2023.

Hence, unless it is stated otherwise elsewhere in this document, in accordance with Article 35(1) and Article 35(7)(a) 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 8(1) and the second sentence of Article 16(2) 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 2024; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 5 October 2023;

and

in accordance with Article 35(1), Article 35(3) and Article 35(7)(a) 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 8(1) and the second sentence of Article 16(2) of the MLI have effect with respect to the application of the Agreement by Romania:

- 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 2024; and

- with respect to all other taxes levied by Romania, for taxes levied with respect to taxable periods beginning on or after 1 January 2024.

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 Romania was published in the Journal of Laws from 2022 item 1093.

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 ROMANIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Poland and the Government of Romania,
DESIRING to promote and strengthen their mutual economic relations by removing
fiscal obstacles,

*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 (as modified by paragraph 3) 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*]. In no case shall the provisions of this paragraph be construed to affect a [*Contracting State's*] right to tax the residents of that [*Contracting State*].

Article 2 Taxes covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its local authorities, administrative-territorial units, 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, as well as taxes on capital appreciation.

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

a) in Poland:

- (i) the personal income tax;
- (ii) the corporate income tax;

(hereinafter referred to as "Polish tax");

b) in Romania:

- (i) tax on income derived by individuals;
- (ii) tax on the profits of legal persons;
- (iii) tax on salaries and other similar remunerations;
- (iv) tax on income realised from agricultural activities;

- (v) tax on dividends;

(hereinafter referred to as "Romanian tax").

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

Article 3 General definitions

1. For the purpose of this Agreement, unless the context otherwise requires:
 - a) the term "Poland" when used in geographical sense means the territory of the Republic of Poland, including any area beyond its territorial waters, within which under the laws of Poland and in accordance with international law, Poland may exercise its sovereign rights over the sea-bed, its subsoil and their natural resources;
 - b) the term "Romania" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone over which Romania exercises sovereignty, sovereign rights, or jurisdiction in accordance with its internal law and with international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea-bed and subsoil of these waters;
 - c) the terms "one of the Contracting States" and "the other Contracting State" mean Poland or Romania as the context requires;
 - d) the term "national" means all individuals possessing the citizenship of a Contracting State and all legal persons, partnerships and associations 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;
 - 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 "fixed base" means a permanent place in which professional activities are exercised;

- i) the term "international traffic" means any transport by ship, boat, aircraft, railway or road vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when such transport is made solely between places in the other Contracting State;
- j) the term "competent authority" means:
 - (i) in the case of Poland, The Minister of Finance or his authorized representative;
 - (ii) in the case of Romania, the Minister of Finance or his authorized representative.

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

Article 4 Resident

- 1. For the purposes of this Agreement, the term "resident of the 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; the term does not include any person who is liable to tax in that Contracting State in respect only if he derives income or capital gains from sources therein.
- 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 Contracting State in which he has an habitual abode;
 - d) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - e) if the status of resident cannot be determined according to sub-paragraphs a-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 doubts 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 paragraph 3 of Article 4 of this Agreement:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

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

**Article 5
Permanent establishment**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include 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. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory or advisory activities

performed in connection therewith, but only where such site, project or activities continue for a period of more than 9 (nine) months.

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 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 advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise;
- f) the sale of goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition after the closing of the said fair or exhibition;
- g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to f), 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.

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 deposit, sources and other natural resources; ships, boats, aircraft, railway or road vehicles 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. However, such deductions shall be subject to the detailed provisions of the tax law of the State in which the permanent establishment is situated.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the

total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purpose of 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 International transport

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

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport 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.

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

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the 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 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;*]

The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Agreement¹:

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

¹ 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.

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 per cent of the gross amount of the dividends in all other cases. 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 the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15 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 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 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 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 if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities or administrative- territorial units thereof, the Central Bank or any financial institution controlled by that Government, or interest derived on loans guaranteed 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 debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 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 local authority, administrative-territorial unit 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 beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 Royalties

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

2. However, 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, if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind 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, satellite or cable transmission for broadcast to the general public through

any form of electronic media; or 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 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other 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 15 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 local authority, administrative-territorial unit 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 a 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 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 be agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article, shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 Commission

1. Commission 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 commission may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the commission the tax so charged shall not exceed 10 per cent of the gross amount of the commission.

3. The term "commission" as used in this Article means a payment made to a broker, a general commission agent or to any other person assimilate to a broker or agent by the taxation law of the Contracting State in which such payment arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the commission, being a resident of a Contracting State, has in the other Contracting

State in which the commission arises, a permanent establishment with which the activity giving rise to the commission is effectively connected. In such case the provisions of Article 7 shall apply.

5. Commission shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, a territorial-administrative unit or a resident of that State. Where, however, the person paying the commission, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the activity for which the payment is made was incurred, and such commission is borne by such permanent establishment, then such commission shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the commission, having regard to the activities 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 that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14 **Capital gains**

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

2. Gains from the alienation of movable property forming part of business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ship, boat, aircraft, railway or road vehicle operated in international traffic or movable property pertaining to the operation of such means of transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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.

Article 15
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. Except as provided in paragraph 2 of this Article, such income shall be exempt from tax in the other Contracting State.
2. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character in the other Contracting State may be taxed in that other State, if the resident is present in that other State for a period or periods exceeding in the aggregate 183 days in the calendar year, whether or not such resident maintains a fixed base in that other State.
3. 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 16
Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20 and 21 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, railway or road vehicle or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 17

Director's fees

Director's 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.

Article 18

Artistes and athletes

1. Notwithstanding the provisions of Article 15 and 16 of this Agreement, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or 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, 15 and 16 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 in a considerable part 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 Government of the Contracting States.

Article 19

Pensions

Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in the Contracting State of which the recipient of the pension is a resident.

Article 20

Government service

1. Remuneration, other than a pension, paid by a Contracting State or a local authority or an administrative-territorial unit thereof to any individual in respect of services rendered to that State or local authority or administrative-territorial unit 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 a resident of that State solely for the purpose of performing the services.

2. Any pensions paid by, or out of funds created by, a Contracting State or a local authority or administrative-territorial unit thereof to any individual in respect of services rendered to that State or local authority or administrative-territorial unit 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 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a local authority or an administrative-territorial unit thereof.

Article 21 Students and trainees

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 purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State for a period not exceeding six years, provided that such payments arise from sources outside that State.

Article 22 Professors and researchers

1. An individual who visits a Contracting State for the purpose of teaching or carrying out research at a university, college or other officially recognized educational or research 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 for a period not exceeding two years from the date of his first visit for that purpose.

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 23 Other income

1. Items of income of a resident of a Contracting State, not dealt with in the foregoing Articles of this Agreement, 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, 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 15, as the case may be, shall apply.

Article 24 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 or by 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 may be taxed in that other State.
3. Capital represented by ships, aircraft, railway and road vehicles operated in international traffic and by boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft, railway or road vehicles and boats, 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 25 Elimination of double taxation

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

The following paragraph 6 of Article 5 of the MLI replaces subparagraph a) of paragraph 1 of Article 25 of this Agreement:

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

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

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 [*Romania*].

Where in accordance with any provision of this Agreement 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 items of income, which in accordance with the provisions of Articles 10, 11, 12 and 13 may be taxed in Romania, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Romania. 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 Romania.

2. In the case of a resident of Romania, double taxation shall be avoided as follows:

- a) Taxes paid by a Romanian resident in respect of income or capital taxable in Poland in accordance with the provisions of this Agreement, shall be deducted from the Romanian taxes due according to the Romanian fiscal laws.
- b) 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 Poland.

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

Article 26

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 are or may be subjected. The 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 enterprise 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, of paragraph 7 of Article 11, or of paragraph 6 of Articles 12 and 13 of this Agreement apply, interest, royalties, commission 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 profit of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2 of this Agreement, apply to the taxes of every kind and description.

Article 27
Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 28
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 enforcement or prosecution in respect of, or the determination of appeals in relation to, 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 the 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 29

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 Agreement²:

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

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

Article 30

² Article 7(1) of the MLI applies to all of the provisions of this Agreement (as in practice it is added to the Agreement).

Entry into force

1. The Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force sixty days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall apply:
 - a) in respect of taxes withheld at source, to amounts of income derived on or after 1st January in the calendar year next following the year in which the Agreement enters into force;
 - b) in respect of other taxes on income and taxes on capital, to such taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the Agreement enters into force.
3. In the mutual relations between the Republic of Poland and Romania, the application of Multilateral Convention for the Avoidance of Double Taxation with respect to income and capital of individuals signed in Miskolc on 27 May 1977 and the Multilateral Convention for the Avoidance of Double Taxation with respect to income and capital of Legal Entities signed in Ulan-Bator on 19 May 1978 shall cease to have effect as from the first day of application of this Agreement.

Article 31 Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year 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 1st January in the calendar year next following the year in which such notice has been given;
- b) in respect of other taxes on income and taxes on capital to such taxes chargeable for any taxable year beginning on or after 1st 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 in duplicate at Warsaw this 23d day of June 1994 in the Polish, Romanian and English languages, all texts being equally authentic.
In case of any divergency of interpretation, the English text shall prevail.

Protocol

to the Agreement between the Government of the Republic of Poland and the Government of Romania for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital.

On the signature of the Agreement between the Government of the Republic of Poland and the Government of Romania for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital the signatories below being duly authorized thereto by their respective Governments, have agreed as follows:

As long as Poland does not introduce in its domestic legislation the withholding tax of commissions paid to nonresidents, the provisions of paragraph 2 of Article 13 are not applying and the commissions are taxable only in the residence country of the beneficial owner of the commission.

This Protocol shall form an integral part of the above-mentioned Agreement.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done in duplicate at Warsaw this 23d day of June 1994 in the Polish, Romanian and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.