

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

This document presents the synthesized text for the application of the Convention between the Government of the Republic of Poland and the Government of the Republic of Armenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed at Warsaw on 14 July 1999 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Poland and by Armenia on 7 June 2017 (the “MLI”).

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

- by Poland on 23 January 2018; and
- by Armenia on 25 September 2023.

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

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

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

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

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

Entry into force and entry into effect of the MLI

Entry into force of the MLI:

- for Poland: 1 July 2018; and
- for Armenia: 1 January 2024.

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of 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), and Article 9(4) of the MLI have effect with respect to the application of the Convention by Poland:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 July 2024;

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), and Article 9(4) of the MLI have effect with respect to the application of the Convention by Armenia:

- 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 Armenia, for taxes levied with respect to taxable periods beginning on or after 1 July 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 Armenia was published in the Journal of Laws from 2023 item [•].

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

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

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

The Government of the Republic of Poland and the Government of the Republic of Armenia,

proceeding from intention to promote and strengthen the economical, scientific, technical and cultural relations between the both States and in order to avoid double taxation on income and on capital, and to prevent fiscal evasion,

The following preamble text described in paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

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

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Convention*] for the indirect benefit of residents of third jurisdictions),

have decided to conclude this Convention, have agreed as follows:

Chapter I Scope of the Convention

Article 1 Personal scope

This Convention 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 Convention:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of [*the Convention*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*]. 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 Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its administrative-territorial subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
 - a) in the case of Poland:
 - (i) corporate income tax;
 - (ii) personal income tax
(hereinafter referred to as "Polish tax");
 - b) in the case of Armenia:
 - (i) the profit tax;
 - (ii) the income tax
(hereinafter referred to as "Armenian tax").

4. The Convention shall apply also to any identical or substantially similar taxes classified in accordance with the definition in paragraph 1 in this Article which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time on any significant changes which have been made in their respective taxation laws.

Chapter II Definitions

Article 3 General definition

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "a Contracting State" means Poland or Armenia as the context requires;
 - b) the term "Poland" means the Republic of Poland and when used in the geographical sense means its territory, including exclusive economic zone beyond the territorial waters over which the Republic of Poland exercises the right to carry on the exploration and exploitation of the seabed, its subsoil and their natural resources in compliance with the domestic and international laws;
 - c) the term "Armenia" means the Republic of Armenia, and when used in geographical sense means the territory over which the Republic of Armenia exercises its sovereign rights and jurisdiction in accordance with internal legislation and international law;
 - d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - e) the term "person" includes an individual, a company and any other body of persons;
 - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - g) the term "international traffic" means any transport by a ship, boat or aircraft, road or railway vehicle, except when such transport is operated solely between places in the other Contracting State;
 - h) the term "competent authority" means:
 - (i) in the case of Poland - the Minister of Finance or his authorized representative;
 - (ii) in the case of Armenia - the Minister of Finance and Economy and the Minister of State Revenue or their authorized representatives;

- i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person derived its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, place of registration, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States, or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

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

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

~~[3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State under the laws of which it is registered.]~~

The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*this Convention*] 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 Convention*], having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [*this Convention*] except to the extent and in such manner as may be agreed upon by the competent authorities of the [*Contracting States*].

Article 5 Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which an enterprise of a Contracting State wholly or partly carries on the business in the other Contracting State.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop;
 - f) a mine, an oil or gas well, a quarry or any other place of extraction, exploration or exploitation of natural resources.
3.
 - a) A building site, a construction, assembly, or installation project or supervisory activities in connection therewith, constitutes a permanent establishment but only where such site, project or activities continue for a period of more than 12 months.
 - b) The term "permanent establishment" also includes the furnishing of services, including consultative services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the following activities of an enterprise of a Contracting State in the other Contracting State shall not be deemed as carrying on through the permanent establishment:

- a) the use of facilities solely for the purpose of storage, delivery of the goods according to the contracts concluded prior to their storage, or display of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in sub-paragraphs a) to e).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting 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 in respect of any activities which that person undertakes for the enterprise, if such a person:

- a) 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 those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, commission agent, or any agent of an independent status, provided that such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Chapter III Taxation of income

Article 6 Income from immovable property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. Ships, boats and aircraft, road or railway vehicles shall not be regarded as immovable property.

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

4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 Business profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

a) that permanent establishment;

- b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment;
- c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business 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 business profits of a permanent establishment, there shall be allowed as deductions actual 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, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the enterprise, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

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

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is a good and sufficient reason to the contrary.

6. 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 the apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International traffic

1. Profits of an enterprise of a Contracting State from the operation of ships, boats or aircraft, road or railway vehicles in international traffic shall be taxable only in that State.
2. Profits of an enterprise of a Contracting State from the direct use, the letting or any other way of exploitation of containers and pertaining to them equipment shall be taxable only in that State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Convention means income from any shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, 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 (Business profits) or Article 14 (Independent personal services), 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 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 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 5 per cent of the gross amount of the interest.

3. The term "interest" as used in this Convention 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 Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, 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 the definitions referred to in paragraph 1 of Article 7 (Business profits). In such cases the provisions of Article 7 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, an administrative-territorial 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.

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

Article 12 Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the 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 Convention 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 cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, 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 the definitions referred to in paragraph 1 of Article 7 (Business profits). In such case the provisions of Article 7 (Business profits) or Article 14 (Independent personal services), 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, an administrative-territorial 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 beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 derived by an enterprise of a Contracting State from the alienation of ships, boats or aircraft, road or railway vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or boats, road or railway vehicles, shall be taxable only in that State.

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

~~[4.—Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights in a company the assets of which consist mainly of immovable property situated in the other Contracting State may be taxed in that other State.]~~

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

**ARTICLE 9 OF THE MLI - CAPITAL GAINS FROM ALIENATION OF SHARES
OR INTERESTS OF ENTITIES DERIVING THEIR VALUE
PRINCIPALLY FROM IMMOVABLE PROPERTY**

For purposes of *[the Convention]*, gains derived by a resident of a *[Contracting State]* from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other *[Contracting State]* if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other *[Contracting State]*.

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

**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 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, accountants.

**Article 15
Dependent personal services**

1. Subject to the provisions of Articles 16 (Directors' fees and Remuneration of top-level managerial officials), 18 (Pensions) and 19 (Government services), wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in

the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship, boat or aircraft, road or railway vehicle operated in international traffic may be taxed only in that State.

Article 16

Directors' fees and remuneration of top-level managerial officials

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 or any other similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and athletes

1. Notwithstanding the provisions of Articles 14 (Independent personal services) and 15 (Dependent personal services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or 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 (Business profits), 14 (Independent personal services) and 15 (Dependent personal services), 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, the income derived by an entertainer or a sportsman from the activities referred to in paragraph 1 performed within the framework of cultural or sport exchanges agreed to by the Governments of

the Contracting States and carried out other than profit, shall be exempt from tax in the Contracting State in which these activities are exercised.

Article 18 Pensions

1. Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1 pensions and other similar payments made under the social security legislation of a Contracting State shall be taxable only in that State.

Article 19 Government services

1.
 - a) Remuneration, other than a pension, paid by, or out of public funds of, a Contracting State or an administrative-territorial subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i) is a national of that State; or
 - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 15 (Dependent personal services) and 16 (Directors' fees and remuneration of top-level managerial officials) shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or an administrative-territorial subdivision or a local authority thereof.

Article 20 Students

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. Remuneration paid to the student, apprentice, or trainee, as the case may be, for services rendered in the other Contracting State shall not be taxed in that State for a period of 5 years provided that such services are connected with his education, maintenance, or training.

Article 21
Professors and researchers

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and who, at the invitation of any university, college, school or other similar non-profitable educational institution which is recognized by the Government of that other Contracting State, solely for the purpose of teaching or research or both, at such educational institution shall be exempt from tax in that other Contracting State on his remuneration for teaching or research, but no more than for two years.
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 for the private benefit of any 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 Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from immovable property), 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 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Chapter IV
Taxation of capital

Article 23
Capital

1. Capital represented by immovable property referred to in Article 6 (Income from immovable property), 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, boats or aircraft, road or railway vehicles, owned by a resident of a Contracting State, operated in international traffic and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in that State.

4. Capital represented by shares or other corporate rights in a company the assets of which consist mainly of immovable property situated in a Contracting State may be taxed in that State.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for elimination of double taxation

Article 24

Elimination of double taxation

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, in the first-mentioned State shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;
- ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with any provision of this Convention, income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State 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.

3. For the purpose of deduction from the tax on income or capital in a Contracting State, the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other Contracting State but has been reduced or waived by that Contracting State under its legal provisions for tax incentives.

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

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

[Article 24 of the Convention] shall not apply to the extent that *[the provisions of the Convention]* allow taxation by that other *[Contracting State]* solely because the income is also income derived by a resident of that other *[Contracting State]*.

Chapter VI Special provisions

Article 25 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. This provisions shall, notwithstanding the provisions of Article 1 (Personal scope), also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9 (Associated enterprises), paragraph 6 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties), apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

Article 26

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25 (Non-discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

Article 27

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not

restricted by Article 1 (Personal scope). 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 Convention. 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 competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

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

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

Article 28 **Aid in recovery**

1. The competent authorities of the Contracting States will enter into direct agreement in respect of mutual assistance in the recovery of tax covered by this Convention, including the interest, penalties for late payment and fines, excluding the cases of penal proceedings before the courts or tribunals.

2. The agreement referred to in paragraph 1 of this Article shall be based on principles contained in the domestic laws and administrative practice of the Contracting States as referred to in Article 27 of this Convention.

Article 29 **Members of diplomatic missions and consular posts**

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention¹:

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

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

Chapter VII
Final provisions

Article 30
Entry into force

1. Each Contracting States shall notify the other Contracting State of the completion of procedures required by its laws for the bringing into force of this Convention. The Convention shall enter into force on the 30th day after the date of the latter of these notifications.
2. The provisions of the Convention shall have effect:
 - a) in respect of taxes withheld at source -- on income derived on or after January 1 in the calendar year next following the year in which the Convention enters into force;
 - b) in respect of other taxes on income, and on capital -- for taxes chargeable on or after January 1 in the calendar year next following the year in which the Convention enters into force.

Article 31
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, by giving notice of termination,

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

through diplomatic channels, at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source -- on income derived on or after January 1 in the calendar year next following the year in which the Convention enters into force;
- b) in respect of other taxes on income, and on capital -- for taxes chargeable for any tax year beginning January 1 in the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

Done in duplicate at Warsaw on 14th day of July, 1999, in duplicate, in the Armenian, Polish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.