

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

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 United Mexican States for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income signed at Mexico City on 30 November 1998 (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 Mexico 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 Mexico on 15 March 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 Mexico: 1 July 2023.

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.

Pursuant to Article 35(3) of the MLI, solely for the purpose of its own application of Article 35(1)(b) and 5(b), Mexico 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 Mexico pursuant to Article 35(6) of the MLI, Article 35(4) will not to apply. Hence, the general rules will determine the date of the entry into effect of the second sentence of Article 16(1), first sentence of Article 16(2) and the second sentence of Article 16(2) of the MLI.

Hence, unless it is stated otherwise elsewhere in this document, in accordance with Article 35(1) of the MLI, the provisions of Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 8(1), Article 9(4), Article 11(1), the second sentence of Article 16(1), the first sentence of Article 16(2), the second sentence of Article 16(2) and Article 17(1) of the MLI have effect with respect to the application of the Convention by Poland:

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

and

in accordance with Article 35(1) and Article 35(3) of the MLI the provisions of Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 8(1), Article 9(4), Article 11(1), the second sentence of Article 16(1), the first sentence of Article 16(2), the second sentence of Article 16(2) and Article 17(1) of the MLI have effect with respect to the application of the Convention by Mexico:

- 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 Mexico, 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 Mexico was published in the Journal of Laws from 2023 item 1026.

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 UNITED MEXICAN STATES
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Poland and the Government of the United Mexican States,

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

~~*[desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which shall hereafter be referred to as the "Convention"]*~~

The following preamble text described in paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:

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

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

have agreed as follows:

Article 1

Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

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

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

[The Convention] shall not affect the taxation by a [Contracting State] of its residents, except with respect to the benefits granted under [paragraph 2 of Article 9, Article 18, Article 19, Article 20, Article 21, Article 23, Article 24, Article 25, Article 27 of the Convention].

Article 2

Taxes covered

1. This Convention shall apply to taxes on income imposed by each of the Contracting States.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention 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 Mexico:
the income tax (el impuesto sobre la renta),
(hereinafter referred to as "Mexican tax").
4. The Convention shall apply also to any identical or substantially similar taxes 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 of any significant changes which have been made in their respective taxation laws.

Article 3

General definitions

1. For the purposes of this Convention, 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 "Mexico" means the United Mexican States; when used in a geographical sense it includes the territory of the United Mexican States; as well as the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs; the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters; and the air space of the national territory to the extent and conditions established by international law;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Poland or Mexico, as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - i) the term "competent authority" means:
 - (i) in Poland, the Minister of Finance or his authorized representative;
 - (ii) in Mexico, the Ministry of Finance and Public Credit.

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, for the purposes of the taxes to which the Convention applies, which it has at that time under the law of that State. Any meaning under the applicable tax laws of that State shall prevail over the meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) if 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 of the State in which its place of effective management is situated.}~~

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of *[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 the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop; and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" shall also include a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, but only if such building site, project or activities last more than six months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, scientific research or for the preparation in relation to the placement of loans, or for similar activities which have a preparatory or auxiliary character, for the enterprise;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 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.

6. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, 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 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 and that in their commercial or financial relations with the enterprise, conditions are not made or imposed that differ from those generally agreed to by independent agents.

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

Article 6

Income from immovable property

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

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise 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 or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries or has carried 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 the goods or merchandise sold through that permanent establishment.

However, the profits derived from the sales described in sub-paragraph (b) shall not be taxable in the other State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Convention.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries or has carried 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, no such deduction shall be allowed in respect of such amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, by way of commission, for specific services performed or for management, or, except in the case of a bank, by way of interest on moneys lent to the permanent establishment.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

Article 8

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits referred to in paragraph 1 shall not include profits from the provision of accommodation or transportation other than from the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 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 taxed 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 the two enterprises, then that other State may, in accordance with paragraph 3 of Article 25, make the appropriate adjustment to the amount of the tax charged therein on those profits, if it agrees with the adjustment made by the first-mentioned Contracting State. In determining such adjustment, due regard shall be paid to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in the case of fraud, gross negligence, or willful default.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10 Dividends

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

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

[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 Convention¹:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

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

- b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, 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

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

undistributed profits even if the dividends paid or the 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:

- a) 5 per cent of the gross amount of the interest in the following cases:
 - (i) if the beneficial owner is a bank or an insurance company;
 - (ii) with respect to interest derived from bonds and securities that are regularly and substantially traded on a recognised securities market;
- b) 15 per cent of the gross amount of the interest in all other cases.

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

- a) the beneficial owner is a Contracting State, a political subdivision or local authority; or the National Bank of Poland, in the case of Poland and in the case of Mexico, the Banco de Mexico;
- b) the interest is paid by any of the entities mentioned in sub-paragraph a);
- c) the beneficial owner is a recognized pension or retirement fund provided that its income is generally exempt from tax in that State;
- d) the interest arises in Mexico and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured by Bank PKO S.A., Corporation of Export Credit Insurance, and Bank Handlowy w Warszawie S.A.; or
- e) the interest arises in Poland and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured, by Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C.;

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, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, 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 there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the interest exceeds, for whatever reason, 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.

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

~~[8. The provisions of this Article shall not apply if the competent authorities agree that the debt claim in respect of which the interest is paid was created or assigned with the main purpose of taking advantage of this Article. In that case the provisions of the domestic law of the Contracting State in which the interest arises shall apply.]~~

**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 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 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 cinematographic films, and films or tapes for radio or television broadcasting, transmission to the public by satellite, cable, optic fiber or similar technology, 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. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

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 such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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.

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

~~{7. The provisions of this Article shall not apply if the competent authorities agree that the rights in respect of which the royalties are paid were created or assigned with the main purpose of taking advantage of this Article. In that case the provisions of the domestic law of the Contracting State in which the royalties arise shall apply.}~~

**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.

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

~~[2.— Gains from the alienation of shares or other rights of a company which assets consist principally, directly or indirectly, of immovable property situated in a Contracting State or any other right pertaining to such immovable property, may be taxed in that State. For the purposes of this paragraph immovable property used by a company in its industrial, commercial or agricultural activities or in the conduct of independent personal services shall not be taken into account.]~~

The following paragraph 4 of Article 9 of the MLI replaces paragraph 2 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*].

3. In addition to gains taxable in accordance with the provisions of the preceding paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gains, during the twelve month period preceding such alienation, held a participation, directly or indirectly, of at least 20 per cent of the capital of that company.

4. 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.

5. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the enterprise is a resident.

6. Gains from the alienation of any property other than that referred to in Article 12 or in the preceding paragraphs of this Article 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. However, such income may also be taxed in the other Contracting State if:
 - a) the resident, being an individual, is present in the other State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; or
 - b) the resident has a fixed base regularly available in that other State for the purpose of performing its activities, but only so much of the income as is attributable to services performed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
Dependent personal services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16
Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or as a statutory auditor and, in the case of Mexico, in his capacity as an "administrador" or a "comisario" of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
Artistes and sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, 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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. Income referred to in this paragraph shall include income derived from any personal activities performed in the other Contracting State by such resident relating to his reputation as an entertainer or sportsman.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman 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 sportsman 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 of arrangement between the Contracting States.

Article 18
Pensions

Subject to the provisions of paragraph 2 of Article 19, 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.

Article 19
Government service

1.
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an

individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2.

- a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

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

Article 20 Students

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

Article 21 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 recognized educational institution in that Contracting State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempted from taxation in the first-mentioned Contracting State on remuneration for such teaching or research 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 22 Other income

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 be taxed in that other State.

Article 23 Elimination of double taxation

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

[REPLACED by paragraph 6 of Article 5 of the MLI]

~~[a] Where a resident of Poland derives income which, in accordance with the provisions of this Agreement may be taxed in Mexico, Poland shall, subject to the provisions of sub-paragraph b), exempt such income from tax. Poland may, in calculating the amount of tax which would have been applicable if the exempted income had not been so exempted, take into account the exempted income.]~~

The following paragraph 6 of Article 5 of the MLI replaces subparagraph a) of paragraph 1 of Article 23 of this Convention:

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

Where a resident of [Poland] derives income which may be taxed in [Mexico] in accordance with the provisions of [this Convention] (except to the extent that these provisions allow taxation by [Mexico] solely because the income is also income derived by a resident of [Mexico]), [Poland] shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in [Mexico].

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

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

- b) Where a resident of Poland derives items of income which in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Mexico, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the Mexican income tax paid. 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 Mexico.

2. In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:

- a) the Polish tax paid on income arising in Poland, in an amount not exceeding the tax payable in Mexico on such income; and
- b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Poland and from which the first-mentioned company receives dividends, the Polish tax paid by the distributing company with respect to the profits out of which the dividends are paid.

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

Article 25 **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 24, to that of the Contracting State of which he is a national.

The following second sentence of paragraph 1 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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*].

[MODIFIED by first sentence of paragraph 2 of Article 16 of the MLI]

2. [*The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention, provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or the date of filing the return in that other State, whichever is later.*]

The following first sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

[MODIFIED by second sentence of paragraph 2 of Article 16 of the MLI]

[In such case, any agreement reached shall be implemented within ten years from the due date or the date of filing of the return in that other State, whichever is later, or a longer period if permitted under the domestic law of that other State.]

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

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 Convention. They may also consult together regarding cases not provided for in the Convention.

4. 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 regarding cases not provided for in the Convention.

5. 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.

6. Notwithstanding any treaty on international trade or investment which the Contracting States are or may become parties, any dispute over a measure taken by a Contracting State involving a tax covered by Article 2 or, in the case of non-discrimination, any taxation measure taken by a Contracting State including a dispute whether this Convention applies, shall be settled only under the Convention unless the competent authorities of the Contracting State agree otherwise.

**Article 26
Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes imposed by the Contracting States insofar as the taxation thereunder is not contrary to the Convention. The exchange of information shall apply to taxes of every kind and description and 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 imposed on behalf of that State. 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.

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

- a) carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) 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) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27

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 replaces subparagraph 8 of Article 11 and subparagraph 7 of Article 12 of this Convention²:

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 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*].

² Please note that Article 7(1) of the MLI replaces subparagraph 8 of Article 11 and subparagraph 7 of Article 12 of this Convention and, in addition, it also applies to all the provisions of the Convention (as in practice it is added to the Convention).

Article 28
Entry into force

1. The Contracting States shall notify each other in writing, through diplomatic channels that the procedures required by its law for the entry into force of this Convention. The Convention shall enter into force on the date of receipt of the last notification.
2. The Convention shall have effect, on or after the first day of the calendar year next following the date on which the Convention enters into force.

Article 29
Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force.
2. The Convention shall cease to have effect on or after the first day of the calendar year next following the date on 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 Mexico City, this day of 30 November, 1998, in the Polish, Spanish and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

Protocol

At the moment of signing the Convention between the Government of the Republic of Poland and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income, the undersigned have agreed upon the following provisions which shall be integral part of the Convention.

1. With reference to paragraph 1 of Article 4

It is understood that a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident, either in the hands of its partnership, estate or trust, or in the hands of its partners or beneficiaries.

2. With reference to Article 8

Residents of Poland, whose profits derived from Mexico may not be taxed by Mexico under the provisions of Article 8 of this Convention, may not be subjected to the Mexican asset tax on the assets used to produce such profits.

3. With reference to Article 10

If the law of a Contracting State calls for a payment to be characterised in whole or in part as dividend or limits the deductibility of such payment because of thin capitalization rules or because the relevant debt instrument includes an equity interest, the Contracting State may treat such payment in accordance with such law.

4. With reference to Article 12

(a) It is understood that the asset tax imposed by Mexico may be applied notwithstanding any other provisions of the Convention also in the case of rentals of machinery and similar equipment used by any person liable to the asset tax in Mexico. In such a case, Mexico shall grant a credit against the asset tax on such assets by an amount to the income tax that would have been imposed on the royalties paid for the furnishing of those assets, applying the rate of tax provided in its national legislation as if this Convention is not applicable.

(b) It is understood that the term "information concerning industrial, commercial or scientific experience" will be defined in accordance with paragraph 11 of the commentary on Article 12 of the 1992 Model Convention for the Avoidance of Double taxation with Respect to Taxes on Income and on Capital of the Organisation for Economic Co-operation and Development.

5. With reference to paragraph 2 of Article 13

The provision of the said paragraph shall apply if the shares of rights held or owned by the alienator and its related persons referred therein amount to at least 25 per cent of the total shares or of the total rights at any time during the taxable year in which the alienation takes place or its two preceding taxable years.

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

Done in duplicate at Mexico City, this day of 30 November 1998, in the Polish, Spanish and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.