

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

This document presents the synthesized text for the application of the Agreement between the Government of the Republic of Poland and the Government of the State Israel for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income signed in Jerusalem on 22 May 1991 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Poland and by Israel on 7 June 2017 (the “MLI”).

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

- by Poland on 23 January 2018; and
- by Israel on 13 September 2018.

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

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

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

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

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

Entry into force and entry into effect of the MLI

Entry into force of the MLI:

- for Poland: 1 July 2018; and
- for Israel: 1 January 2019.

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of 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(2) of the MLI, solely for the purpose of its own application of Article 35(1)(a) and 5(a), Israel chose to substitute “taxable period” for “calendar year”.

Pursuant to Article 35(3) of the MLI, solely for the purpose of its own application of Article 35(1)(b) and 5(b), Israel chose to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”.

Hence, unless it is stated otherwise elsewhere in this document, in accordance with Article 35(1) of the MLI, the provisions of Article 3(1), Article 3(2), Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 8(1), Article 9(4) and Article 17(1) of the MLI have effect with respect to the application of the Agreement by Poland:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2019; and
- with respect to all other taxes levied by Poland, for taxes levied with respect to taxable periods beginning on or after 1 July 2019;

and

in accordance with Article 35(1), Article 35(2) and Article 35(3) of the MLI, the provisions of Article 3(1), Article 3(2), Article 4(1), Article 5(6), Article 6(1), Article 7(1), Article 8(1), Article 9(4) and Article 17(1) of the MLI have effect with respect to the application of the Agreement by Israel:

- 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 the first day of the next taxable period that begins on or after 1 January 2019; and
- with respect to all other taxes levied by Israel, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

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 Israel was published in the Journal of Laws from 2019 item 209.

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

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

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF POLAND
AND
THE GOVERNMENT OF THE STATE OF ISRAEL
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
FOR THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Poland and the Government of the State of Israel,

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

~~*[Desiring to conclude an Agreement for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income]*~~

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 Agreement:

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

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

and to further develop and facilitate their economic relationship

have agreed as follows,

Article 1 Personal scope

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

The following paragraph 1 (as modified by paragraph 3) of Article 3 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of [*the Agreement*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*]. In no case shall the provisions of this paragraph be construed to affect a [*Contracting State's*] right to tax the residents of that [*Contracting State*].

Article 2 Taxes covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The taxes to which the Agreement shall apply are in particular:
 - a) in the case of Poland:
 - (i) the income tax (podatek dochodowy);
 - (ii) the tax on wages and salaries (podatek od wynagrodzeń);
 - (iii) the equalisation tax (podatek wyrównawczy);
 - (iv) the corporate tax (podatek dochodowy od osób prawnych); and
 - (v) the agricultural tax (podatek rolny)

(hereinafter referred to as "Polish tax");

- b) in the case of Israel:

taxes imposed by the Israeli Income Tax Ordinance, by the Land Appreciation Tax Law, by the Income Tax Law (Adjustments for Inflation), and other taxes on income

administered by the Government of Israel (including but not limited to, the profits tax on banking institutions and insurance companies and including income tax component of a compulsory loan),

(hereinafter referred to as "Israeli tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement, 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 Agreement, unless the context otherwise requires:
 - a) the term "Poland" when used in a geographical sense includes the territory in which the Government of the Republic of Poland may enforce the collection of taxes according to international law and the laws of the Republic of Poland, including the sea, seabed and subsoil of the maritime areas adjacent to the coast thereof, but beyond the territorial sea, over which Poland exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such area;
 - b) the term "Israel" when used in a geographical sense includes the territory in which the Government of Israel may enforce the collection of taxes according to international law and the laws of the State of Israel, including the sea, seabed and subsoil of the maritime areas adjacent to the coast thereof, but beyond the territorial sea, over which Israel exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such area;
 - c) the terms "a Contracting State" and "other Contracting State" mean Poland or Israel 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 "nationals" means:
- (i) all the individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
- h) the term "international traffic" means any transport by a ship, aircraft or road-transport vehicle operated by an enterprise which has its place of effective and central management in a Contracting State, except when the ship, aircraft or road-transport vehicle is operated solely between places in the other Contracting State;
- i) the term "competent authority" means:
- (i) in the case of Poland - the Minister of Finance or his authorized representative;
 - (ii) in the case of Israel - the Minister of Finance or his authorized representative;
- j) the term "fixed base" means a permanent place in which professional activities are exercised.
2. As regards the application of the Agreement by a Contracting State any term not defined therein shall have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

Article 4 Resident

1. For the purposes of this Agreement, 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.
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 the status of resident cannot be determined according to subparagraphs a) to c), 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. a) 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 and central management is situated.~~

~~b) Where the person has its place of effective and central management in both Contracting States or in neither of them, the competent authorities of the Contracting States shall settle the matter of residence by mutual agreement.]~~

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

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

**Article 5
Permanent establishment**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;

- c) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, construction or installation project constitutes a permanent establishment only if it lasts more than 12 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, supply of information, scientific research or any other activity of a preparatory or auxiliary character;
 - f) an installation project carried on by an enterprise of a Contracting State in connection with the delivery of materials, machinery or equipment from that State to the other Contracting State;
 - g) the maintenance of rented or leased industrial, commercial or scientific equipment; and
 - h) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to g), 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 6 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. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall 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 on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business through a permanent establishment situated therein, there shall

in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International transport

1. Profits from the operation of ships, road-transport vehicles or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective and central management of the enterprise is situated.
2. If the place of effective and central management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
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

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.

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

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 Agreement] and the competent authorities of the [Contracting States] shall if necessary consult each other.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State,

but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

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

[a) 5 per cent of the gross amount of the dividends if the recipient holds directly at least 15 per cent of the capital of the company paying dividends;]

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

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

[Subparagraph a) of paragraph 2 of Article 10 of the Agreement] shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose 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) 10 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the 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 recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, 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

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

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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. 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, and including linkage differentials.
4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, 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, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, 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:
 - a) 5 per cent of the gross amount of royalties paid for the use of, or for a right to use, industrial, commercial, or scientific equipment;
 - b) 10 per cent of the gross amount of the royalties in all other cases.
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, video recordings, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, software, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 Capital gains

1. Capital gains from the alienation of immovable property, as defined in paragraph 2 of Article 6

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

~~[or from the alienation of shares in a company 50 per cent or more of the market value of the assets which consists of immovable property,]~~

may be taxed in the Contracting State in which such immovable property is situated.

The following paragraph 4 of Article 9 of the MLI replaces the fragment of paragraph 1 of Article 13 of this Agreement²:

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

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft or road-transport vehicles operated in international traffic, or movable property pertaining to the operation of such ships, or aircraft, or road-transport vehicles shall be taxable only in the Contracting State in which the place of effective and central management of the enterprise is situated.

² Art. 9(4) of the MLI replaces solely the fragment of art. 13(1) of the Agreement which provides that gains derived by a resident of a Contracting State from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting State provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting State, or provided that more than a certain part of the property of the entity consists of such immovable property (real property). In practice it means that the following fragment of art. 13(1) of the Agreement is replaced: “*or from the alienation of shares in a company 50 per cent or more of the market value of the assets which consists of immovable property*” (i.e. the fragment indicated above in brackets).

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, dentists, lawyers, engineers, architects, and accountants.

Article 15
Dependent personal services

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 fixed period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
 - b) the remuneration is paid by, or on behalf of, 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, aircraft or road-transport vehicle operated in international traffic, may be taxed in the Contracting State in which the place of effective and central management of the enterprise is situated.

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

Article 17
Artists and athletes

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 artist, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived in respect of the activities referred to in paragraph 1 of this Article within the framework of a cultural or sports exchange programme agreed to by both Contracting States shall be exempted from taxation in the Contracting State in which these activities are exercised.

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) 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 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 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

1. Payments which a university student or a post graduate 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. Income derived by a university student or a post graduate apprentice in respect of activities exercised in a Contracting State in which he is present solely for the purpose of his education or training, shall not be taxable in that State, unless it exceeds the amount reasonably necessary for maintenance, education or training of a student or apprentice.
3. The exemptions according to paragraphs 1 and 2 shall be granted for a period that shall not exceed five years (or seven years in the case of medical studies or apprenticeship) from the date on which the student or apprentice first entered the country.

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 exempt 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

1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and Article 14, as the case may be, shall apply.

Article 23 Elimination of double taxation

Double taxation shall be eliminated as follows:

- 1) In Poland³:

[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 Israel, Poland shall, subject to the provisions of sub-paragraph (b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.]~~

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

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

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

³ Please note that in the English language version of the Agreement, the provision regarding the Polish method of elimination of double taxation is numbered as art. 23(1), while the provision regarding the Israeli method of elimination of double taxation is numbered as art. 23(2). In the Polish language version, the Polish method of elimination of double taxation is numbered as art. 23(2), while the provision regarding the Israeli method of elimination of double taxation is numbered as art. 23(1).

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 [Israel].

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

- b) Where a resident of Poland derives income, which in accordance with the provisions of Articles 10, 11 and 12 may be taxed in Israel, Poland shall allow as a deduction from the tax on the income of that person an amount equal to the income tax paid in Israel. Such deduction shall not, however, exceed that part of the tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Israel.

2) In Israel:

Where a resident of Israel derives income which, in accordance with the provisions of this Agreement, may be taxed in Poland, Israel shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Poland; such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Poland. The deduction from tax shall be allowed in accordance with the provisions of the law of Israel concerning the allowance of foreign tax credits.

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

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

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

Article 24
Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation of 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. Except where the provisions of Article 9, paragraph 6 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.
4. An enterprise 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 Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall 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.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25
Limitation of benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled, in that other Contracting State, to all the benefits of this Agreement only if such person is:
 - a) an individual;
 - b) (i) a person, more than fifty per cent of the beneficial interest in which (or in the case of a company, more than fifty per cent of the rights to any of the following: votes in a general meeting; distribution of profits; distribution of

assets upon liquidation) are owned, directly or indirectly, by persons entitled to the benefits of this Agreement under subparagraphs a) or c); and

- (ii) a person, more than fifty per cent of the gross income of which are not used, directly or indirectly, to meet liabilities (including liabilities for interest royalties) to persons not entitled to the benefits;
 - c) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange in either of the Contracting States; or
 - d) engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank insurance company), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.
2. In addition to the provisions of paragraph 1 of this Article, the competent authorities of the Contracting States, upon their mutual agreement, may:
- a) deny the benefits of this Agreement to any person, or with respect to any transaction, if in their opinion the receipt of those benefits, under the circumstances, would constitute an abuse of the Agreement according to its purposes, or
 - b) grant the benefits of this Agreement to any person otherwise not entitled thereto by virtue of paragraph 1 of this Article.

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 Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or

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

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

Article 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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, or for the prevention of fiscal evasion. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State or in such manner as may be requested by the other Contracting State giving the information and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of 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 (ordre public).

Article 28 **Members of diplomatic or consular missions**

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement⁴:

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

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

Article 29
Entry into force

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

Article 30
Termination

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

⁴ Article 7(1) of the MLI applies to all the provisions of the Agreement (as in practice it is added to the Agreement).

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

IN WITNESS WHEREOF THE UNDERSIGNED, DULY AUTHORIZED THERETO BY THEIR RESPECTIVE GOVERNMENTS, HAVE SIGNED THIS AGREEMENT.

Done in duplicate at Jerusalem this 22 May 1991, which corresponds to the 9th day of Sivan 5751, in the English, Hebrew, and Polish languages, all three texts to be equally authentic.

In case of diversions of interpretations, the English text shall prevail.