

**Synthesised text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and Government of New Zealand for the Avoidance of Double Taxation with respect to Taxes on Income and Capital Gains, as amended by protocols signed on 4 November 2003 and 7 November 2007**

This document presents the synthesised text for the application of the Convention between the Government of United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains signed on 4 August 1983 and the Protocols signed on 4 November 2003 (“the 2003 Protocol”) and 7 November 2007 (“the 2007 Protocol”) (together, the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the United Kingdom and New Zealand on 7 June 2017 (the “MLI”).

This document was prepared jointly by the competent authorities of the United Kingdom and New Zealand and represents their shared understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of the United Kingdom submitted to the Depository upon ratification on 29 June 2018 and of the MLI position of New Zealand submitted to the Depository upon ratification on 27 June 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable. Whereas the Convention as presented in this synthesised text incorporates changes contained in the 2003 and 2007 Protocols into the original 1983 Convention for readability, the 1983 Convention, and the 2003 and 2007 Protocols remain the legal texts applicable.

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. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

#### References

The authentic legal texts of the MLI and the Convention can be found at the following links:

In the case of the United Kingdom:

[http://www.legislation.gov.uk/uksi/1984/365/pdfs/uksi\\_19840365\\_en.pdf](http://www.legislation.gov.uk/uksi/1984/365/pdfs/uksi_19840365_en.pdf)

[http://www.legislation.gov.uk/uksi/2004/1274/pdfs/uksi\\_20041274\\_en.pdf](http://www.legislation.gov.uk/uksi/2004/1274/pdfs/uksi_20041274_en.pdf)

[https://www.legislation.gov.uk/ukdsi/2008/9780110814537/pdfs/ukdsi\\_9780110814537\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2008/9780110814537/pdfs/ukdsi_9780110814537_en.pdf)

In the case of New Zealand:

<http://www.legislation.govt.nz/regulation/public/1984/0024/latest/DLM94689.html?src=qs>

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

The MLI position of the United Kingdom submitted to the Depository upon ratification on 29 June 2018 and of the MLI position of New Zealand submitted to the Depository upon ratification on 27 June 2018 can be found [on the MLI Depository \(OECD\) webpage](#).

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 provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the United Kingdom and New Zealand in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 June 2018 for the United Kingdom and 27 June 2018 for New Zealand.

Entry into force of the MLI: 1 October 2018 for the United Kingdom and New Zealand.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- For taxes withheld at source, from 1 January 2019;
- In the United Kingdom, from 1 April 2019 for corporation tax and from 6 April 2019 for income tax and capital gains tax; and
- In New Zealand, for income tax for taxable periods beginning on or after 1 April 2019

**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM  
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT  
OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON  
INCOME AND CAPITAL GAINS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

**[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 and capital gains;]

*The following 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 [*this 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 3 of the MLI applies and supersedes the provisions of this Convention:*

**ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES**

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

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

**ARTICLE 11 OF THE MLI – APPLCIATION OF TAX AGREEMENTS TO  
RESTRICT A PARTY’S RIGHT TO TAX ITS OWN RESIDENTS**

*[This Convention]* shall not affect the taxation by a *[Contracting State]* of its residents, except with respect to the benefits granted *[under Articles 20, 21, 22, 23, 24 and 26]* of *[this Convention]*.

**Article 2  
Taxes Covered**

(1) The taxes which are the subject of this Convention are:

(a) in the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the capital gains tax; and
- (iv) the petroleum revenue tax;

(hereinafter referred to as "United Kingdom tax");

(b) in New Zealand:

- (i) the income tax; and
- (ii) the excess retention tax;

(hereinafter referred to as "New Zealand tax").

(2) Notwithstanding the provisions of paragraph (1) of this Article, the terms "United Kingdom tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies.

(3) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this 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 are made in their respective taxation laws.

### **Article 3**

#### **General Definitions**

(1) In this Convention, unless the context otherwise requires:

(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;

(b) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;

(c) the term "national" means:

(i) in relation to the United Kingdom, any individual who has under the law of the United Kingdom the status of United Kingdom national provided he has the right of abode in the United Kingdom, and any legal person or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to New Zealand, any individual who is a New Zealand citizen and any legal person or other entity deriving its status as such from the law in force in New Zealand;

(d) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, the United Kingdom or New Zealand;

(e) the term "person" includes an individual, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the 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;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative.

(2) As regards the application of this Convention by a Contracting State any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which the Convention applies.

#### **Article 4 Residence**

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, as the context requires:

(a) any person who is resident in the United Kingdom for the purposes of United Kingdom tax; or

(b) any person who is resident in New Zealand for the purposes of New Zealand tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(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.

(3) **[REPLACED by paragraph 1 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident

of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.]

*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 an individual is a resident of more than one [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting States*] 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;
- (f) an installation or structure for the exploration or exploitation of natural resources; and
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project or any supervisory activity in connection therewith constitutes a permanent establishment but only if such site, construction, installation or activity lasts more than twelve 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

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

*The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention:*

**ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH SPECIFIC ACTIVITY EXEMPTIONS**

[*Paragraph 4 of Article 5 of this Convention*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*this Convention*] defining a permanent establishment; or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.



(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person, other than an agent of an independent status to whom paragraph (6) of this Article 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) of this Article which, if exercised through a fixed place of business, would not make that 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.

*The following paragraph 1 of Article 15 of the MLI applies to provisions of this Convention:*

#### ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [Article 5 of this Convention], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

### **Article 6 Exploration and Exploitation Activities**

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on in connection with the exploration and exploitation of the sea-bed and subsoil and their natural resources (in this Article called "specified activities") situated in a Contracting State.

(2) An enterprise of a Contracting State which carries on specified activities in the other Contracting State shall be deemed to be carrying on business in that other State through a permanent establishment situated therein.

(3) An individual who is a resident of a Contracting State who carries on specified activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base regularly available to him in that other State.

(4) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment in the other Contracting State may, to the extent that the employment is exercised in connection with specified activities in that other State, be taxed in that other State.

## **Article 7**

### **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) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

## **Article 8**

### **Business Profits**

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

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, and which are reasonably connected with profits attributable to the permanent establishment.

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

(5) 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.

(6) Notwithstanding the provisions of this Article, income or profits from any kind of insurance shall be taxed in accordance with the laws of either Contracting State. However, in the case of insurance other than life insurance, if an enterprise of one of the Contracting States derives premiums paid for the insurance of risks situated in the other Contracting State, otherwise than through a permanent establishment situated in that other State, the income or profits derived by the enterprise from the insurance of those risks shall in that other State not exceed 10 percent of the gross premiums paid for the insurance of those risks.<sup>1</sup>

## **Article 9**

### **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) Where profits referred to in paragraph (1) of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in that State.

(3) Profits of an enterprise of a Contracting State referred to in paragraphs (1) and (2) of this Article from the rental of ships or aircraft or from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that State to the extent that those ships, aircraft or containers are used in international traffic and such profits are incidental to the profits of the enterprise.

## **Article 10**

### **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

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<sup>1</sup> Paragraph 6 of Article 8 as inserted by the 2003 Protocol

(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 replaces paragraph 4 of Article 22 of the Convention:*

#### ARTICLE 17 – 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 [this Convention] and the competent authorities of the [Contracting States] shall if necessary consult each other.

#### **Article 11 Dividends<sup>2</sup>**

(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 15 percent of the gross amount of the dividends.

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

(3) The term "dividends" as used in this 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 Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the State of which the

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<sup>2</sup> The wording of Article 11 as amended by the 2003 Protocol

company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or 15 of this Convention, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI]**[The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]<sup>3</sup>

## **Article 12**

### **Interest**

(1) Interest arising in a Contracting State which is derived by 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 law of that State, but where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State.

(4) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State which is paid to and beneficially owned by a resident of the other

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<sup>3</sup> Refer to page 36 of this synthesised text, immediately following Article 26

Contracting State shall be exempt from tax in the first-mentioned State if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by:

- (a) the United Kingdom Export Credits Guarantee Department; or
- (b) the New Zealand Export Guarantee Office.

(5) 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 but shall not include any item which is treated as a dividend or distribution under the provisions of Article 11.

(6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 15, as the case may be, shall apply.

(7) 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 that 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.

(8) Where a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the interest paid 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

(9) **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI]**[The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.<sup>4</sup>]<sup>5</sup>

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<sup>4</sup> Paragraph 9 of Article 12 as inserted by 2003 Protocol

<sup>5</sup> Refer to page 36 of this synthesised text, immediately following Article 26

## **Article 13**

### **Royalties**

(1) Royalties arising in a Contracting State which are derived by 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 law of that State, but where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the 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 8 or Article 15, 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 obligation to pay the royalties was incurred, and such royalties are borne by that 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 a special relationship exists between the payer and the beneficial owner or between both of them and some other person and the amount of the royalties paid 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

(7) **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI]**[The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the



royalties are paid to take advantage of this Article by means of that creation or assignment.<sup>6]</sup><sup>7</sup>

## **Article 14**

### **Alienation of Property**

(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 of this Convention and situated in the other Contracting State, or from the alienation of shares in a company deriving their value or the greater part of their value directly or indirectly from such property, may be taxed in that other State.<sup>8</sup>

(2) Income or 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 income or 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) Income or gains derived by an enterprise of a Contracting State 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 that State.

(4) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.<sup>9</sup>

(5) The provisions of this Article shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year.<sup>10</sup>

## **Article 15**

### **Independent Personal Services**

(1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable

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<sup>6</sup> Paragraph 7 of Article 13 as inserted by 2003 Protocol

<sup>7</sup> Refer to page 36 of this synthesised text, immediately following Article 26

<sup>8</sup> Paragraph 1 of Article 14 as amended by 2003 Protocol

<sup>9</sup> Paragraph 4 of Article 14 as amended by 2003 Protocol

<sup>10</sup> Paragraph 5 of Article 14 as inserted by 2003 Protocol

only in that State. However, such income may also be taxed in the other Contracting State if:

- (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any consecutive period of 12 months; or
- (b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities;

but only so much thereof as is attributable to services performed in that 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 16** **Dependent Personal Services**

(1) Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive period of 12 months; 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 17** **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 18**

#### **Artistes and Athletes**

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

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

### **Article 19**

#### **Pensions and Annuities**

(1) Pensions (including pensions paid under the social security legislation of a Contracting State), and similar remuneration in consideration of past employment or services, paid to a resident of a Contracting State, and any annuity paid to a resident of a Contracting State, shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payment in return for adequate and full consideration in money or money's worth.

### **Article 20**

#### **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) The provisions of Articles 15 and 16 shall apply to remuneration 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 21 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 21A Other Income<sup>11</sup>**

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7 of this Convention, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In that case the provisions of Article 8 of this Convention shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

(4) Where, by reason of a special relationship between the person referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which might reasonably have been expected to have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

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<sup>11</sup> Article 21A as inserted by 2003 Protocol

(5) **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI]**[The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.]<sup>12</sup>

## **Article 22**

### **Elimination of Double Taxation**

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) New Zealand tax payable under the law of New Zealand and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within New Zealand (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the New Zealand tax is computed.

(b) In the case of a dividend paid by a company which is a resident of New Zealand to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 percent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any New Zealand tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the New Zealand tax payable by the company in respect of the profits out of which such dividend is paid.

(2)

(a) Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax paid in any country other than New Zealand (which shall not affect the general principle hereof), United Kingdom tax computed by reference to income from sources in the United Kingdom and paid under the law of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in the United Kingdom (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid), shall be allowed as a credit against the New Zealand tax computed by reference to the same income and payable in respect of that income.

(b) In the event that the Government of New Zealand should impose tax on dividends received by companies which are resident in New Zealand the

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<sup>12</sup> Refer to page 36 of this synthesised text, immediately following Article 26

Contracting States will enter into negotiations in order to establish new provisions concerning the taxation of such dividends derived from sources in the United Kingdom.

(3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

(4) **[REPLACED by paragraph 1 of Article 17 of the MLI]**[Where, under the provisions of Article 10, profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made or imposed between the two enterprises in their commercial or financial relations had been those which would have been made or imposed between independent enterprises, the amount included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.]<sup>13</sup>

(5) **[REPLACED by paragraphs 1 and 4 of Article 7 of the MLI]**[Nothing in this Article shall entitle a person who is a resident of a Contracting State to credit against tax of that Contracting State of tax of the other Contracting State if the terms of the transactions giving rise to the profits on which the tax of the other State is payable are not such as might be expected in a bona fide commercial transaction and if they have as their main object, or one of their main objects, the obtaining of that credit.]<sup>14</sup>

### **Article 23 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.

(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; provided that this paragraph shall not prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State a tax not exceeding 5 percent

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<sup>13</sup> Refer to Article 9 of the Convention

<sup>14</sup> Refer to page 36 of this synthesised text, immediately following Article 26

of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the first-mentioned State.

(3) 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 enterprises of the first-mentioned State carrying on the same activities, the capital of which is owned or controlled by residents of the first-mentioned State, are or may be subjected.

(4) Except where the provisions of Article 10, paragraph (8) of Article 12, or paragraph (6) of Article 13, 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) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any exemption, relief, reduction or allowance for tax purposes which is granted to persons resident in that State.

(6) In this Article the term "taxation" means the taxes to which this Convention applies.

## **Article 24** **Mutual Agreement Procedure**

(1) **[REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI]**[Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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.]

*The following first sentence of paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 24 of this Convention<sup>15</sup>:*

### ARTICLE 16 – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*the Convention*], that person may, irrespective of the remedies provided by the domestic law

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<sup>15</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 October 2018, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

*The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention<sup>16</sup>:*

#### ARTICLE 16 – 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 [*this Convention*].

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

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention<sup>17</sup>:*

#### ARTICLE 16 – 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.

*The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention.<sup>18</sup>*

#### ARTICLE 16 – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [*this Convention*].

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

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<sup>16</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 October 2018, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

<sup>17</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 October 2018, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

<sup>18</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 October 2018, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.



The following Part VI of the MLI applies to this Convention<sup>19</sup>:

## PART VI – ARBITRATION

[Article 19 (Mandatory Binding Arbitration) of the MLI]

(1) Where:

(a) under [paragraph 1 of Article 24 of this Convention] that provides that a person may present a case to a competent authority of a [Contracting State] where that person considers that the actions of one or both of the [Contracting State] result or will result for that person in taxation not in accordance with the provisions of [this Convention], a person has presented a case to the competent authority of a [Contracting State] on the basis that the actions of one or both of the [Contracting State] have resulted for that person in taxation not in accordance with the provisions of [this Convention]; and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to [paragraph 1 of Article 24 of this Convention] that provides that the competent authority shall endeavour to resolve the case by mutual agreement with the competent authority of the other [Contracting State], within a period of two years beginning on the start date referred to in paragraph 8 or 9 [of Article 19 of the MLI], as the case may be (unless, prior to the expiration of that period the competent authorities of the [Contracting States] have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the [Contracting States] pursuant to the provisions [of paragraph 10 of Article 19 of the MLI].

(2) Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 [of Article 19 of the MLI] because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 [of Article 19 of the MLI] will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have

<sup>19</sup> In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI has effect with respect to this Convention:

a) with respect to cases presented to the competent authority of a [Contracting State] on or after 1 October 2018; and  
b) with respect to cases presented to the competent authority of a [Contracting State] prior to 1 October 2018, on the date when both [Contracting States] have notified [the Secretary-General of the OECD] that they have reached mutual agreement pursuant to paragraph 10 of Article 19 (Mandatory Binding Arbitration), along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting Jurisdiction (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)) according to the terms of that mutual agreement.

agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] will stop running until the suspension has been lifted.

- (3) Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*], the period provided in subparagraph b) of paragraph 1 [*of Article 19 of the MLI*] shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.
- (4) a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 [*of Article 19 of the MLI*]. The arbitration decision shall be final.
- b) The arbitration decision shall be binding on both [*Contracting States*] except in the following cases:
- i. if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
  - ii. if a final decision of the courts of one of the [*Contracting States*] holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 [*of Article 19 of the MLI*] shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings)) [*of the MLI*]. In such a case, a new request

for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

- iii. if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

(5) The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 [*of Article 19 of the MLI*] shall, within two calendar months of receiving the request:

- a) send a notification to the person who presented the case that it has received the request; and
- b) send a notification of that request, along with a copy of the request, to the competent authority of the other [*Contracting State*].

(6) Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other [*Contracting State*]) it shall either:

- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- b) request additional information from that person for that purpose.

(7) Where pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

(8) Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 [*of Article 19 of the MLI*]; and
- b) the date that is three calendar months after the notification to the competent authority of the other [*Contracting State*] pursuant to subparagraph b) of paragraph 5 [*of Article 19 of the MLI*].

(9) Where additional information has been requested pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 [*of Article 19 of the MLI*]; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7 [*of Article 19 of the MLI*], such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 [*of Article 19 of the MLI*].

(10) The competent authorities of the [*Contracting States*] shall by mutual agreement pursuant to [*Article 24 of this Convention*] settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

(12)

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by [*the MLI*] shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either [*Contracting State*];
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a decision concerning the issue is rendered by a

court or administrative tribunal of one of the [*Contracting States*], the arbitration process shall terminate.

[*Article 20 (Appointment of Arbitrators) of the MLI*]

- (1) Except to the extent that the competent authorities of the [*Contracting State*] mutually agree on different rules, paragraphs 2 through 4 [*of Article 20 of the MLI*] shall apply for the purposes of this Part.
- (2) The following rules shall govern the appointment of the members of an arbitration panel:
  - a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
  - b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 (Mandatory Binding Arbitration) [*of the MLI*]. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either [*Contracting State*].
  - c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the [*Contracting States*] and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.
- (3) In the event that the competent authority of a [*Contracting State*] fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].
- (4) If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

[Article 21 (*Confidentiality of Arbitration Proceedings*) of the MLI]

- (1) Solely for the purposes of the application of the provisions of this Part and of the provisions of [*this Convention*] and of the domestic laws of the [*Contracting States*] related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions [*this Convention*] related to the exchange of information and administrative assistance.
- (2) The competent authorities of the [*Contracting States*] shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of [*this Convention*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting States*].

[Article 22 (*Resolution of a Case Prior to the Conclusion of the Arbitration*) of the MLI]

For the purposes of this Part and the provisions of [*this Convention*] that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*]:

- a) the competent authorities of the [*Contracting States*] reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

[Article 23 (*Type of Arbitration Process*) of the MLI]

*Final offer*

- (1) Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:
  - a) After a case is submitted to arbitration, the competent authority of each [*Contracting State*] shall submit to the arbitration panel, by a date set by

agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the [*Contracting States*]). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to [*this Convention*], for each adjustment or similar issue in the case. In a case in which the competent authorities of the [*Contracting States*] have been unable to reach agreement on an issue regarding the conditions for application of a provision of [*this Convention*] (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

- b) The competent authority of each [*Contracting State*] may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the [*Contracting States*]. The arbitration decision shall have no precedential value.

- (5) Prior to the beginning of arbitration proceedings, the competent authorities of the [*Contracting States*] to [*this Convention*] shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under [*this Convention*], as well as the arbitration proceeding under this Part, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision

to the competent authorities of the [*Contracting States*], a person that presented the case or one of that person's advisors materially breaches that agreement.

[*Article 25 (Cost of Arbitration Proceedings) of the MLI*]

In an arbitration proceeding under this Part, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the [*Contracting States*], shall be borne by the [*Contracting States*] in a manner to be settled by mutual agreement between the competent authorities of the [*Contracting States*]. In the absence of such agreement, each [*Contracting State*] shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the [*Contracting States*] in equal shares.

[*Article 26 (Compatibility) of the MLI*]

- (2) Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.
- (3) [*Nothing*] in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the [*Contracting States*] are or will become parties.

[*Subparagraph a) of paragraph 2 of Article 28 of the MLI*]

*Pursuant to Subparagraph a) of paragraph 2 of Article 28 of the MLI, New Zealand formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI:*

New Zealand reserves the right to exclude from the scope of Part VI (Arbitration) [*of the MLI*] any case involving the application of New Zealand's general anti-avoidance rule contained in section BG 1 of the Income Tax Act 2007. Any subsequent provisions replacing, amending or updating these anti avoidance rules would also be included in this reservation. New Zealand shall notify the Depository of any such subsequent provisions.

New Zealand reserves the right to exclude from the scope of Part VI (Arbitration) [*of the MLI*] any case involving the application of anti-avoidance rules concerning the avoidance of a permanent establishment in New Zealand<sup>20</sup>. Any subsequent provisions replacing,

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<sup>20</sup> Currently section GB 54 of the Income Tax Act 2007



amending or updating these anti-avoidance rules would also be included in this reservation. New Zealand shall notify the Depository of any such provisions.

## **Article 25**

### **Exchange of Information<sup>21</sup>**

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by Articles 1 and 2 of this Convention.

(2) Any information received under paragraph (1) of this Article 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1), or the oversight of the above. 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.

(3) In no case shall the provisions of paragraphs (1) and (2) of this Article 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.

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be

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<sup>21</sup> Wording of Article 25 as amended by 2007 Protocol

construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

### **Article 25A** **Assistance in the Collection of Taxes<sup>22</sup>**

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this Article, a revenue claim accepted by a Contracting State for purposes of paragraph (3) or (4) shall not, in that State, be accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a

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<sup>22</sup> Wording of Article 25A as inserted by 2007 Protocol

Contracting State for the purposes of paragraph (3) or (4) shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph (3) or (4) of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph (3), a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph (4), a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

(e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

**Article 26**  
**Diplomatic Agents and Consular Officials**

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

(2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

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

**ARTICLE 7 – PREVENTION OF TREATY ABUSE**

*(Principal purposes test provision)*

Notwithstanding any provisions of [*this Convention*], a benefit under [*this 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 [*this Convention*].

*The following paragraph 4 of Article 7 of the MLI applies to paragraph 1 of Article 7 of the MLI:*

Where a benefit under [*this Convention*] a is denied to a person under provisions of [*paragraph 1 of Article 7 of the MLI*], the competent authority of the [*Contracting States*] that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in [*paragraph 1 of Article 7 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under this paragraph by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before rejecting the request.

**Article 27**  
**Entry Into Force**

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The

Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1984;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1984;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1984;

and

(b) in New Zealand:

for any income year beginning on or after 1 April 1984.

(2) The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was made in 1966 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand, as modified by the Protocol made in 1980, shall terminate and cease to have effect from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

## **Article 28 Termination**

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;

(iii) in respect of petroleum revenue tax for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given; and

(b) in New Zealand: for any income year beginning on or after 1 April in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed the present Convention.

Done in duplicate at London this 4th day of August 1983.