SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

General disclaimer on synthesised text

This document presents the synthesised text for the application of the Agreement between the Government of Ireland and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed on 31 May 1983 (the "Agreement") as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Ireland and by Australia on 7 June 2017 (the "MLI").

This document was prepared in consultation with the Australian Taxation Office and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Ireland submitted to the Depositary upon ratification on 29 January 2019 and of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 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 Agreement.

The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

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

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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/this Agreement or to the/this Agreement must be understood as referring to the Agreement 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 Agreement can be found:

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

In Ireland at the following links:
http://www.irishstatutebook.ie/eli/2018/si/440
http://www.irishstatutebook.ie/eli/1983/si/406

In Australia at the following link:
http://www.austlii.edu.au/au/other/dfat/treaties/1983/25.html

The MLI position of Ireland submitted to the Depository upon ratification on 29 January 2019 and the MLI position of Australia submitted to the Depository upon ratification on 26 September 2018 can be found on the MLI Depositary (OECD) webpage. (http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf)

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and the choices made by Ireland and Australia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 January 2019 for Ireland and 26 September 2018 for Australia.

Entry into force of the MLI: 01 May 2019 for Ireland and 01 January 2019 for Australia.

The provisions of the MLI (except for Article 16 (Mutual Agreement Procedure) and Part VI (Arbitration)) have effect with respect to the Agreement:

- in Ireland and Australia with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

- in Ireland and Australia with respect to all other taxes levied by each Contracting State with respect to taxable periods beginning on or after 1 November 2019.

Article 16 (Mutual Agreement Procedure) of the MLI has effect with respect to this Agreement for a case presented to the competent authority of a Contracting State on or after 1 May 2019, except for cases that were not eligible to be presented as of that date under the Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

The provisions of Part VI (Arbitration) of the MLI have effect with respect to this Agreement with respect to cases presented to the competent authority of a Contracting State on or after 1 May 2019. For cases presented to the competent authority of a Contracting State prior to 1 May 2019 the provisions of Part VI (Arbitration) of the MLI will apply only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of Ireland and the Government of Australia,

[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI] ~~[desiring to conclude an Agreement 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 and paragraph 3 of Article 6 of the MLI replace the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

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

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

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

Have agreed as follows:

ARTICLE 1
PERSONAL SCOPE

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

The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

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

ARTICLE 2
TAXES COVERED

(1) The existing taxes to which this Agreement shall apply are—

(a) in Australia:

the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in Ireland:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. As soon as possible after the end of each calendar year, the competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any substantial changes which have been made in the laws of the State relating to the taxes to which this Agreement applies.

ARTICLE 3
GENERAL DEFINITIONS

(1) In this Agreement, unless the context otherwise requires—

(a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes—

(i) the Territory of Norfolk Island;
(ii) the Territory of Christmas Island;
(iii) the Territory of Cocos (Keeling) Islands;
(iv) the Territory of Ashmore and Cartier Islands;
(v) the Coral Sea Islands Territory; and
(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;

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

(c) the terms "Contracting State", "one of the Contracting States" and "the other Contracting State" mean Australia or Ireland, as the context requires;

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

(e) the term "company" means any body corporate or any entity which is assimilated to a body corporate for tax purposes;

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" means an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Ireland, as the context requires;

(g) the term "tax" means Australian tax or Irish tax, as the context requires;

(h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

(i) the term "Irish tax" means tax imposed by Ireland, being tax to which this Agreement applies by virtue of Article 2;

(j) the term "competent authority" means:

(i) in the case of Australia, the Commissioner of Taxation or his authorised representative;

(ii) in the case of Ireland, the Revenue Commissioners or their authorised representative.

(2) In this Agreement, the terms "Australian tax" and "Irish tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

(3) In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which this Agreement applies.

ARTICLE 4
RESIDENCE

(1) For the purposes of this Agreement, a person is a resident of one of the Contracting States—

(a) in the case of Australia, subject to the provision of paragraph (2) of this Article, if the person is a resident of Australia for the purposes of Australian tax; and

(b) in the case of Ireland, if the person is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature but not if he is liable to tax in Ireland in respect only of income from sources therein.

(2) In relation to income from sources in Ireland a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Ireland is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Irish tax.

(3) Where by reason of the preceding provisions 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 solely of the Contracting State in which he has a permanent home available to him;

(b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

(4) 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 solely of the Contracting State in which its place of effective management is situated.

ARTICLE 5
PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially—

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
(g) an agricultural, pastoral or forestry property;
(h) a building site or construction, installation or assembly project which exists for more than twelve months; **[refer to the box immediately following paragraph 4 of Article 5 of this Agreement]**
(i) an installation or structure used for the exploration of natural resources.

(3) An enterprise shall not be deemed to have a permanent establishment merely by reason of—

(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 for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement:

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

Paragraph 3 of Article 5 of this Agreement 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 *Article 5 of this Agreement*; 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.

(4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if—

(a) it carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; **[refer to the box immediately following paragraph 4 of Article 5 of this Agreement]**

(b) substantial equipment is being used in that State by, for or under contract with the enterprise; or

(c) it carries on activities in that State in connection with the exploration or exploitation of the sea-bed, subsoil or their natural resources in that State.

The following paragraph 1 of Article 14 of the MLI applies and supersedes subparagraph (h) of paragraph 2 and subparagraph (a) of paragraph 4 of Article 5 of this Agreement.

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the twelve months referred to in *subparagraph (h) of paragraph 2 and subparagraph (a) of paragraph 4 of Article 5 of this Agreement* have been exceeded:

a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction, installation or assembly project or carries on supervisory activities in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months; and

b) where connected activities are carried on in that other Contracting State at (or, where supervisory activities apply, in connection with) the same building site or construction, installation or assembly project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, installation or assembly project.

(5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) of this Article applies—shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if—

(a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.

(7) The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

(8) The principles set forth in paragraphs (1) to (7) of this Article shall be applied in determining for the purposes of paragraph (5) of Article 12 and paragraph (5) of Article 13 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an

enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

The following paragraph 1 of Article 15 of the MLI applies to this Agreement:

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

For the purposes of *Article 5 of this Agreement*, 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
LIMITATION OF RELIEF

Where under any provision of this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State—

(a) the income or a part thereof is exempt from tax; or

(b) a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply—

(c) where (a) above applies, only to so much of the income as is not exempt from tax in the other State; or

(d) where (b) above applies, only to so much of the income as is remitted to or received in the other State.

ARTICLE 7
INCOME FROM REAL PROPERTY

(1) Income from real property may be taxed in the Contracting State in which the real property is situated.
(2) In this Article, the term "real property"—

(a) in the case of Australia, has the meaning which it has under the laws of Australia, and shall also include—

(i) a lease of land and any other interest in or over land, whether improved or not;
(ii) a right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

(b) in the case of Ireland, means immovable property according to the laws of Ireland, and shall also include—

(i) property accessory to immovable property;

(ii) rights to which the provisions of the general law respecting landed property apply;

(iii) usufruct of immovable property; and

(iv) a right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

Ships, boats and aircraft shall not be regarded as real 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 real property.

(4) A lease of land, any other interest in or over land and any right referred to in any of the subparagraphs of paragraph (2) of this Article shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources as the case may be, are situated.

(5) The provisions of paragraphs (1), (3) and (4) of this Article shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

ARTICLE 8
BUSINESS PROFITS

(1) The profits of an enterprise of one of the Contracting States 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 one of the Contracting States 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 or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(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) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

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

(7) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provision of its law relating specifically to the taxation of any person who carries on a business of any form of insurance.

ARTICLE 9
SHIPPING AND AIR TRANSPORT

(1) Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

(4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE 10
ASSOCIATED ENTERPRISES

(1) Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that Contracting State as if this Article had not entered into force and had not had effect but, so far as it is practicable to do so, in accordance with the principles of this Article.

(4) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraphs (1), (2) or (3) of this Article, in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(5) The provisions of paragraph (4) of this Article relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of assessment or financial year, as the case may be, in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

ARTICLE 11
DIVIDENDS

(1) Dividends paid by a company which is a resident of Australia for the purposes of Australian tax, being dividends to which a resident of Ireland is beneficially entitled, may be taxed in Ireland. Such

dividends may also be taxed in Australia, according to the law of Australia, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) (a) Dividends paid by a company which is a resident of Ireland for the purposes of Irish tax, being dividends to which a resident of Australia is beneficially entitled, may be taxed in Australia.

(b) Where a resident of Australia is entitled to a tax credit in respect of a dividend under paragraph (3) of this Article, tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid, dividends paid by a company which is a resident of Ireland for the purposes of Irish tax, being dividends to which a resident of Australia is beneficially entitled, shall be exempt from any tax in Ireland which is chargeable on dividends.

(3) A resident of Australia who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph (4) of this Article and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to Irish tax. Any such credit shall be treated for the purposes of Australian tax as assessable income from sources in Ireland.

(4) The provisions of paragraph (3) of this Article shall not apply where the beneficial owner of the dividends (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividends. For the purposes of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(5) The term "dividends" in this Article means income from shares and includes any income or distribution assimilated to income from shares under the taxation law of the Contracting State of which the company paying the dividends or income or making the distribution is a resident.

(6) Where the company paying a dividend is a resident of one of the Contracting States and the beneficial owner of the dividend, being a resident of the other Contracting State, owns 10 per cent or more of the class of shares in respect of which the dividend is paid, paragraphs (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question: **[REPLACED by paragraph 1 and paragraph 4 of Article 7 of the MLI – refer to the box immediately following Article 28 of this Agreement] [**~~provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.~~**]**

(7) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

(8) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State: provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Ireland for the purposes of Irish tax.

ARTICLE 12
INTEREST

(1) Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises but does not include any income which is treated as a dividend under Article 11.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, 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 indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the interest or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected

to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

(7) **[REPLACED by paragraph 1 and paragraph 4 of Article 7 of the MLI – refer to the box immediately following Article 28 of this Agreement.]** ~~**[**The provisions of this article shall not apply if the indebtedness in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.~~**]**

ARTICLE 13
ROYALTIES

(1) Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for—

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);

(e) the use of, or the right to use—
(i) motion picture films;
(ii) films or video tapes for use in connection with television; or
(iii) tapes for use in connection with radio broadcasting; or

(f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 or credited is effectively connected with such permanent establishment or fixed base. In such a 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 or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

(7) **[REPLACED by paragraph 1 and paragraph 4 of Article 7 of the MLI – refer to the box immediately following Article 28 of this Agreement.]** ~~[The provisions of this Article shall not apply if the right or property in respect of which the royalties were paid or credited was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons].~~

ARTICLE 14
ALIENATION OF PROPERTY

(1) *Income or gains from the alienation of real property may be taxed in the Contracting State in which that property is situated.*

(2) For the purposes of this Article—

(a) the term "gains" means, in the case of Ireland, chargeable gains as defined in the taxation law of Ireland;

(b) the term "real property" shall include—

(i) a lease of land or any other interest in or over land;

(ii) rights to exploit, or to explore for, natural resources;

(iii) shares or comparable interests in a company the assets of which consist wholly or principally of interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States;

(iv) any partnership interest, or any interest in settled property deriving its value or the greater part of its value directly or indirectly from interests in or over land in one of the Contracting States or rights to exploit, or to explore for, natural resources in one of the Contracting States; and

(v) any option, consent or embargo affecting the disposition of interests in or over land in one of the Contracting States or rights to exploit, or to explore for, natural resources in one of the Contracting States; and

(c) real property shall be deemed to be situated—

(i) where it consists of interests in or over land — in the Contracting State in which the land is situated;

(ii) where it consists of rights to exploit, or to explore for, natural resources — in the Contracting State in which the natural resources are situated or the exploration may take place; and

(iii) where it consists of shares or comparable interests in a company referred to in clause (iii) of subparagraph (b) of this paragraph, a partnership interest or an interest in settled property referred to in clause (iv) of the said subparagraph, or an option, consent or embargo referred to in clause (v) of the said subparagraph — in the Contracting State in which the land or natural resources are wholly or principally situated or the exploration may take place.

The following subparagraph (a) of paragraph 1 of Article 9 of the MLI applies to paragraph 1 and subparagraphs b(iii), b(iv), and c(iii) of paragraph 2 of Article 14 of this Agreement:

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

Paragraph 1 and subparagraphs b(iii), b(iv), and c(iii) of paragraph 2 of Article 14 of the Agreement shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation.

(3) Subject to the provisions of paragraph (1) of this Article, income or gains from the alienation of capital assets of an enterprise of one of the Contracting States or of capital assets available to a resident of one of the Contracting States for the purpose of performing professional services or other independent activities shall be taxable only in that State, but, where those assets form the whole or part of the business property of a permanent establishment or fixed base situated in the other Contracting State, such income or gains may be taxed in that other State.

(4) Income or gains derived by an enterprise of one of the Contracting States from the alienation of ships or aircraft operated in international traffic while owned by that enterprise shall be taxable only in that State.

ARTICLE 15
INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to activities exercised from that fixed base.

(2) The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16
DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or year of assessment, as the case may be, of that other State; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

ARTICLE 17
DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of one of the Contracting States 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
ENTERTAINERS

(1) Notwithstanding the provisions of Articles 15 and 16, income derived by entertainers (such as theatrical, motion picture, radio or television artistes, musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

ARTICLE 19
PENSIONS AND ANNUITIES

(1) Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States 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 payments in return for adequate and full consideration in money or money's worth.

(3) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

ARTICLE 20
GOVERNMENT SERVICE

(1) Remuneration (other than a pension or annuity) paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a citizen of that State; or

(b) did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of paragraph (1) of this Article shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of Article 16 or Article 17, as the case may be, shall apply.

ARTICLE 21
PROFESSORS AND TEACHERS

(1) Remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the first-mentioned State.

(2) This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 22
STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of his education, receives payments from sources outside that other State

for the purpose of his maintenance or education, those payments shall be exempt from tax in that other State.

ARTICLE 23
INCOME NOT EXPRESSLY MENTIONED

(1) Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

(2) However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.

(3) The provisions of paragraph (1) of this Article shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

ARTICLE 24
SOURCE OF INCOME

(1) Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 7 to 9, 11 to 19 and Article 23 may be taxed in the other Contracting State, shall for the purposes of the taxation law of the other Contracting State be deemed to be income or gains from sources in the other Contracting State.

(2) Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 7 to 9, 11 to 19 and Article 23 may be taxed in the other Contracting State, shall for the purposes of Article 25 and of the taxation law of the first-mentioned Contracting State be deemed to be income or gains from sources in the other Contracting State.

ARTICLE 25
METHODS OF ELIMINATION OF DOUBLE TAXATION

(1) (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Irish tax paid under the law of Ireland and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Ireland (not including, 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 Australian tax payable in respect of that income;

(b) in the event that Australia should cease to allow a company which is a resident of Australia a rebate in its assessment at the average rate of tax payable by the company in respect of dividends derived from sources in Ireland and included in the taxable income of the company, the Governments of the Contracting States will enter into negotiations in order to

establish new provisions concerning the credit to be allowed by Australia against its tax on the dividends.

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

(a) Australian tax payable under the law of Australia and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Australia (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 Irish tax computed by reference to the same profits, income or chargeable gains by reference to which Australian tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Australia to a company which is a resident of Ireland and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Australian tax creditable under the provisions of subparagraph (a) of this paragraph) the Australian tax payable by the company in respect of the profits out of which such dividend is paid.

ARTICLE 26
MUTUAL AGREEMENT PROCEDURE

(1) **[The first sentence of paragraph 1 of Article 26 of this Agreement is REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI.]** ~~[Where a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.]~~ The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 26 of this Agreement:

ARTICLE 16 OF THE MLI – 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 this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

(2) The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. [**The second sentence of this paragraph is REPLACED by paragraph 2 of Article 16 of the MLI.]** ~~[Notwithstanding any time limits in the national laws of the Contracting States, the solution so reached may be implemented within a period of seven years from the date of presentation of the case by the resident to the relevant competent authority in accordance with paragraph (1) of this Article].~~

The following second sentence of paragraph 2 of Article 16 of the MLI replaces the second sentence of paragraph 2 of Article 26 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

The following paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

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

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

The following Part VI of the MLI applies to this Agreement:

PART VI OF THE MLI – ARBITRATION

Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

   a) under paragraph 1 of Article 26 of this Agreement, 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 States have resulted for that person in taxation not in accordance with the provisions of this Agreement; and

   b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 26 of this Agreement, 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 a 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 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 26 of this Agreement 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. Notwithstanding the other provisions of this Article of the MLI:

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 States 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 of the MLI (Mandatory Binding Arbitration). 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 Agreement 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 of this Agreement 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 Agreement 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 Agreement 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.

Paragraphs 1 and 5 of Article 23 (Type of Arbitration Process) of the MLI

(Alternative 1 - Final offer arbitration)

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 Agreement, 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 Agreement (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 Agreement 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 Agreement, 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.

Paragraphs 2 and 3 of 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 (Reservations) of the MLI

Pursuant to subparagraph (a) of paragraph 2 of Article 28 of the MLI, Ireland formulates the

following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI:

Notwithstanding paragraph 1 of Article 19 (Mandatory Binding Arbitration) a case may not be submitted to arbitration if case is connected with:

1. **Serious penalties**. Ireland reserves the right to exclude from the scope of Part VI cases connected with actions for which the taxpayer or a related person (or a person acting for either the taxpayer or a related person) is liable to a penalty as a result of deliberate behaviour in accordance with Section 1077E Taxes Consolidation Act 1997. For this purpose, 'deliberate behaviour' is to be interpreted in accordance with the guidance contained in the Code of Practice for Revenue Audits and other Compliance Interventions, which will be reviewed on an on-going basis and may be modified to reflect changes in legislation and emerging practices. Any subsequent provisions replacing, amending or updating Section 1077E Taxes Consolidation Act 1997 would also be comprehended. Ireland shall notify the Depositary of any such subsequent provisions.

Domestic anti-avoidance. Ireland reserves the right to exclude from the scope of Part VI cases involving the application of Ireland's domestic anti-avoidance rules contained in Section 811 and Section 811A Taxes Consolidation Act 1997. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. Ireland shall notify the Depositary of any such subsequent provisions.

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

Australia reserves the right to exclude from the scope of Part VI of the MLI any case to the extent that it involves the application of Australia's general anti-avoidance rules contained in Part IVA of the Income Tax Assessment Act 1936 and section 67 of the Fringe Benefits Tax Assessment Act 1986. Australia also reserves the right to extend the scope of the exclusion for Australia's general anti-avoidance rules to any provisions replacing, amending or updating those rules. Australia shall notify the Depositary of any such provisions that involve substantial changes.

ARTICLE 27
EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of 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, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

(2) In no case shall the provisions of paragraph (1) 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 or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are 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 to supply information the disclosure of which would be contrary to public policy.

ARTICLE 28
DIPLOMATIC AND CONSULAR OFFICIALS

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

The following paragraph 1 of Article 7 of the MLI replaces part of the second sentence of paragraph 6 of Article 11, paragraph 7 of Article 12 and paragraph 7 of Article 13 of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

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

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

Where a benefit under this Agreement is denied to a person under paragraph 1 of Article 7 of the MLI, the competent authority of the Contracting State 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 or capital, 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 29
Entry into Force

This Agreement shall enter into force on the date on which the Government of Australia and the Government of Ireland exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Ireland, as the case may be, and thereupon this Agreement shall have effect—

(a) in Australia—

(i) with respect to withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year immediately following that in which the Agreement enters into force;

(ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the Agreement enters into force;

(b) in Ireland—

(i) with respect to income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year immediately following that in which the Agreement enters into force;

(ii) with respect to corporation tax, for any financial year beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 30
Termination

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Ireland may, on or before 30 June in any calendar year beginning after the expiration of five years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective—

(a) in Australia—

(i) with respect to withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year immediately following that in which the notice of termination is given;

(ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given;

(b) in Ireland—

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

(ii) with respect to corporation tax, for any financial year beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement and affixed thereto their seals.

DONE in duplicate at Canberra this thirty-first day of May, one thousand nine hundred and eighty-three in the English language.

For the Government of Ireland:

Joseph Small

For the Government of Australia:

J S Dawkins