

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

## General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of Ireland and the Government of the Republic of Poland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 13 November 1995 (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 Poland on 7 June 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of Poland 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 Depository upon ratification on 29 January 2019 and of the MLI position of Poland submitted to the Depository upon ratification on 23 January 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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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/made/en/print>

<http://www.irishstatutebook.ie/eli/1995/si/322/made/en/print>

In Poland at the following links:

<http://www.dziennikustaw.gov.pl/du/2018/1369/1>.

<http://www.dziennikustaw.gov.pl/du/2018/1370/1>.

<http://dziennikustaw.gov.pl/DU/2019/1006/1>.

The MLI position of Ireland submitted to the Depository upon ratification on 29 January 2019 and the MLI position of Poland submitted to the Depository upon ratification on 23 January 2018 can be found on the MLI Depository (OECD) webpage (<http://www.oecd.org/tax/treaties/beps-ml-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 Poland in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 January 2019 for Ireland and 23 January 2018 for Poland.

Entry into force of the MLI: 1 May 2019 for Ireland and 1 July 2018 for Poland.

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

- In Ireland and Poland with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- In Ireland and Poland with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 November 2019.

The second sentence of paragraph 3 of Article 16 (Mutual Agreement Procedure) of the MLI has effect with respect to the 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.

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

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

**[REPLACED by paragraph 1 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,]~~

*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 Agreement:*

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

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in 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. This Agreement shall apply to taxes on income imposed by each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in the case of Ireland:
    - (i) the income tax;
    - (ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as "Irish tax");

(b) in Poland:

(i) the personal income tax (podatek dochodowy od osob fizycznych); and

(ii) the corporate income tax (podatek dochodowy od osob prawnych);

(hereinafter referred to as "Polish tax").

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

### **ARTICLE 3 GENERAL DEFINITIONS**

1. For the purpose of this Agreement, unless the context otherwise requires:

(a) 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;

(b) the term "Poland" when used in a geographical sense means the territory of the Republic of Poland, including any area beyond its territorial waters, within which under the laws of Poland and in accordance with international law, Poland may exercise its sovereign rights over the sea bed, its subsoil and their natural resources;

(c) the terms "a Contracting State", "one of the Contracting States" and "the other Contracting State" mean Ireland or Poland, as the context otherwise requires; and the term "Contracting States" means Ireland and Poland;

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

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

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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

(h) the term "a national" means any citizen of a Contracting State and any legal person, association or other entity deriving its status as such from the laws in force in a Contracting State;

(i) the term "competent authority" means:

- (i) in the case of Ireland, the Revenue Commissioners or their authorised representatives;
- (ii) in the case of Poland, the Minister of Finance or his authorised representative.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

#### **ARTICLE 4 RESIDENTS**

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

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

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

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

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

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

3. ~~[REPLACED by paragraph 1 of Article 4 of the MLI.] [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.]~~

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

#### ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

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

**ARTICLE 5**  
**PERMANENT ESTABLISHMENT**

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

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it 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 subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from the combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

## **ARTICLE 6 INCOME FROM IMMOVABLE PROPERTY**

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

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

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

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

## **ARTICLE 7 BUSINESS PROFITS**

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **INTERNATIONAL TRANSPORT**

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or road transport vehicles in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits derived from the operation of ships, aircraft or road transport vehicles in international traffic include profits derived from the rental of ships, aircraft or road transport vehicles if such ships, aircraft or road transport vehicles are operated in international traffic or if such rental profits are incidental to other profits described in paragraph 1 of this Article.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9**

### **ASSOCIATED ENTERPRISES**

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

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

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



## **ARTICLE 10 DIVIDENDS**

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

2. Subject to paragraph 3, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

*3. Dividends paid by a company which is a resident of a Contracting State shall be exempt from any tax on dividends in that State if the beneficial owner of the dividends is a company which is a resident of the other Contracting State and holds directly at least 25 per cent of the voting power of the company paying the dividends.*

*The following paragraph 1 of Article 8 of the MLI applies to paragraph 3 of Article 10 of this Agreement:*

### ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

*Paragraph 3 of Article 10 of the Agreement shall apply only if the ownership conditions described in that provision are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).*

4. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, and includes any income or distribution assimilated to income from shares under the taxation laws of the Contracting State of which the company paying the dividends or income or making the distribution is a resident.

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

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

## **ARTICLE 11 INTEREST**

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

2. However, interest referred to in paragraph 1 of this Article may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if such interest is paid:

(a) in connection with the sale on credit of any industrial, commercial or scientific equipment,

(b) in connection with the sale on credit of any merchandise by one enterprise to another enterprise, or

(c) on any loan of whatever kind granted by a bank.

4. The term "interest", as used in this Article, means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as all other income assimilated to income from money lent by the laws of the State in which the income arises but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the

debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **ROYALTIES AND FEES FOR TECHNICAL SERVICES**

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

2. However:

(a) the royalties referred to in paragraph 1 of this Article may also be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties;

(b) fees for technical services referred to in paragraph 1 of this Article arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the fees for technical services.

3. (a) 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 motion pictures or films, recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(b) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 14 (Independent Personal Services), in consideration for services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services 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 or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### ARTICLE 13 CAPITAL GAINS

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

2. ~~[REPLACED by paragraph 4 of Article 9 of the MLI.] [Gains from the alienation of shares, rights or an interest in a company, in any other legal person or in a partnership, the assets of which consist principally of, or of rights in, immovable property situated in a State or of shares in a company the assets of which consist principally of, or of rights in, such immovable property situated in a State may be taxed in the State in which the immovable property is situated where, under the laws of that State, such gains are subject to the same taxation rules as gains from the alienation of immovable property.]~~

*The following paragraph 4 of Article 9 of the MLI replaces paragraph 2 of Article 13 of this Agreement:*

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

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

3. Gains, other than those dealt with in paragraph 2 of this Article, from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or road transport vehicles operated in international traffic, or movable property pertaining to the operation of such ships, aircraft or road transport vehicles, shall be taxable only in that State.

5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

**ARTICLE 14**  
**INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

**ARTICLE 15**  
**DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that other State, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

**ARTICLE 16**  
**DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

**ARTICLE 17**  
**ARTISTES AND SPORTSMEN**

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or sportsman is exercised provided that this activity is supported in a considerable part out of public funds of that State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

## **ARTICLE 18 PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident 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.

## **ARTICLE 19 GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in the discharge of functions of a governmental nature shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

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

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

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

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

## **ARTICLE 20 STUDENTS**

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-

mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes as are available to residents of the State which he is visiting.

## **ARTICLE 21 PROFESSORS AND TEACHERS**

1. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other recognised research institute or other establishment for higher education in that Contracting State and who was immediately before that visit a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that Contracting State for such purpose. An individual shall be entitled to the benefits of this Article only once.

2. The preceding provisions of 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 OTHER INCOME**

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

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

## **ARTICLE 23 MISCELLANEOUS RULES APPLICABLE TO CERTAIN OFFSHORE ACTIVITIES**

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

2. An enterprise of a Contracting State which carries on relevant activities in the other Contracting State shall, subject to paragraph 3 of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

3. Relevant activities which are carried on by an enterprise of a Contracting State in the other Contracting State for a period or periods not exceeding in the aggregate 30 days within any period of twelve months shall not constitute the carrying on of business through a permanent establishment situated therein. For the purposes of this paragraph:

(a) where an enterprise of a Contracting State carrying on relevant activities in the other Contracting State is associated with another enterprise carrying on substantially similar relevant activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;

(b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

4. A resident of a Contracting State who carries on relevant 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 in that other State. However, income derived by a resident of a Contracting State in respect of such activities performed in the other Contracting State shall not be taxable in that other State if the activities are performed in that other State for a period or periods not exceeding in the aggregate 30 days within any period of twelve months.

5. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with relevant activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State.

## **ARTICLE 24 ELIMINATION OF DOUBLE TAXATION**

1. Subject to the provisions of the laws 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) Polish tax payable under the laws of Poland and in accordance with this Agreement, whether directly or by deduction, on profits, income or gains from sources within Poland (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 gains by reference to which Polish tax is computed.

(b) In the case of a dividend paid by a company which is a resident of Poland to a company which is a resident of Ireland and which controls directly or indirectly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Polish tax creditable under the provisions of subparagraph ( a ) of this paragraph) Polish tax payable by the company in respect of the profits out of which such dividend is paid.

2. In Poland, double taxation shall be avoided as follows:

(a) ~~[REPLACED by paragraph 6 of Article 5 of the MLI] [Where a resident of Poland derives income which, in accordance with the provisions of this Agreement may be taxed in Ireland, or receives dividends to which the provisions of paragraph 3 of Article 10 apply, Poland shall, subject to the provisions of sub paragraph (b) of this paragraph, exempt such income or such dividends from tax.]~~



*The following paragraph 6 of Article 5 of the MLI replaces subparagraph (a) of paragraph 2 of Article 24 of this Agreement::*

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

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

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

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

(b) Where a resident of Poland derives income which, in accordance with the provisions of paragraph 2 of Article 10, Article 11 or Article 12 of this Agreement may be taxed in Ireland, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Ireland. Such deduction shall not, however, exceed that part of the Polish tax, as computed before the deduction is given, which is appropriate to such income as derived in Ireland.

3. Where in accordance with any provisions of this Agreement, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

4. Where, under any provision of this Agreement, income or gains is or are wholly or partly relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of the said income or gains, 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 only to so much of the income or gains as is remitted to or received in that other State.

**ARTICLE 25  
NON-DISCRIMINATION**

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

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

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to a non-resident of that Contracting State any exemptions, allowances, reliefs and reductions for tax purposes which it grants to its own residents.

4. Subject to the provisions of Articles 9, 10, 11 and 12, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

6. The provisions of this Article shall apply to the taxes which are the subject of this Agreement.

## **ARTICLE 26 MUTUAL AGREEMENT PROCEDURE**

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

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

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

### **ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE**

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

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

## **ARTICLE 27 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained

under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

(a) to carry out administrative measures at variance with the laws and the 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, official, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

## **ARTICLE 28 DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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 agreements.

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions 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 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.

## **ARTICLE 29 ENTRY INTO FORCE**

1. The Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in Ireland:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the date on which this Agreement enters into force;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Agreement enters into force;

(b) in Poland:

(i) in respect of taxes withheld at source, to amounts of income derived on or after 1st January in the calendar year next following the year in which the Agreement enters into force;

(ii) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the Agreement enters into force.

### **ARTICLE 30 TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement at any time after five years from the date on which the Agreement enters into force provided that at least six months prior notice of termination has been given through diplomatic channels.

In such event, this Agreement shall cease to have effect:

(a) in Ireland:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the date on which the period specified in the said notice of termination expires;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires;

(b) in Poland:

(i) in respect of taxes withheld at source, to amounts of income derived on or after 1st January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Madrid on 13th November 1995, in duplicate in the English and Polish languages, both texts being equally authentic.

For the Government of Ireland

For the Government of the Republic of Poland

Dick Spring

Wladyslaw Bartoszewski

## PROTOCOL

THE GOVERNMENT OF IRELAND  
AND  
THE GOVERNMENT OF THE REPUBLIC OF POLAND

Have agreed at the signing at Madrid on the 13th November 1995 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement:

With reference to paragraph 3 of Article 10, it is understood that if at any time after the signing of this Agreement Ireland should levy a tax at source on the dividends to which that paragraph applies, the paragraph shall cease to apply to such dividends and the dividends may 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 the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

For the Government of Ireland

For the Government of the Republic of Poland

Dick Spring

Wladyslaw Bartoszewski