

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN IRELAND AND JAPAN 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 Convention between Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 18 January 1974 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Ireland and Japan on 7 June 2017 (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 Japan submitted to the Depository upon acceptance 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 Convention.

The authentic legal texts of the Convention 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 Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

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

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/1974/si/259>

In Japan at the following link:

https://www.mof.go.jp/english/tax_policy/tax_conventions/mli.htm

The MLI position of Ireland submitted to the Depository upon ratification on 29 January 2019 and the MLI position of Japan submitted to the Depository upon acceptance on 26 September 2018 can be found on the MLI Depository (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 this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Ireland and Japan 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 Japan.

Entry into force of the MLI: 1 May 2019 for Ireland and 1 January 2019 for Japan.

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

- In Ireland and Japan 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;
- In Ireland and Japan 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 Convention 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 Convention 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 Convention 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.

**CONVENTION
BETWEEN IRELAND AND JAPAN
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 Japan,

[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI] ~~[Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,]~~

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 Convention:

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 Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

ARTICLE 1

This Convention 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 Convention:

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

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

1. The taxes which are the subject of this Convention are:

(a) in Ireland:

- (i) the income tax (including sur-tax) and
- (ii) the corporation profits tax;

(b) in Japan:

- (i) the income tax,
- (ii) the corporation tax, and
- (iii) the local inhabitant taxes.

2. This Convention shall also apply to any identical or substantially similar taxes, whether national or local, which are imposed in either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

3. With respect to enterprises operating ships or aircraft this Convention shall also apply to the taxes referred to in paragraph 2 of Article 9.

ARTICLE 3

1. In this Convention, unless the context otherwise requires:

(a) the term "Japan", when used in a geographical sense, means the territory in which the laws relating to Japanese tax are in force;

(b) the terms "a Contracting State" and "the other Contracting State" mean Ireland or Japan, as the context requires;

(c) the term "nationals" means:

(i) in relation to Ireland, all citizens of Ireland and all legal persons, partnerships and associations deriving their status as such from the laws in force in Ireland;

(ii) in relation to Japan, all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan;

(d) the term "person" includes 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 "Irish tax" means tax imposed in Ireland being tax to which this Convention applies by virtue of paragraph 1 or paragraph 2 of Article 2; the term "Japanese tax" means tax imposed in Japan being tax to which this Convention applies by virtue of paragraph 1 or paragraph 2 of Article 2;

(h) the term "tax" means Irish tax or Japanese tax, as the context requires;

(i) the term "competent authority" means, in the case of Ireland, the Revenue Commissioners or their authorised representative and, in the case of Japan, the Minister of Finance or his authorised representative;

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

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

ARTICLE 4

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

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Convention.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its head or main office is situated.

ARTICLE 5

Where under any provision of this Convention income is relieved from tax of a Contracting State and, under the laws in force in the other Contracting State, an individual, 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 Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

ARTICLE 6

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the 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, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than twelve months.

3. *The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

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

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 6 of this Convention:

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

Paragraph 3 of Article 6 of this Convention shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 6 of this Convention;
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 of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 18.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph 6 of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if:

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

(b) he maintains in that Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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

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

For the purposes of the provisions of *Article 6 of this Convention*, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

ARTICLE 7

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

2. The term "immovable property" shall be defined in accordance with the laws 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 8

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting State but only so much of them as is attributable to that permanent establishment.

2. 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 at arm's length 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 Contracting State in which the permanent establishment is situated or elsewhere.

4. In so far 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 of this Article 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 laid down in this Article.

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

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

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

ARTICLE 9

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be exempt from tax in the other Contracting State.
2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Ireland, shall be exempt from the enterprise tax in Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in Ireland.
3. The provisions of paragraphs 1 and 2 of this Article shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

ARTICLE 10

Where

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

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

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

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

ARTICLE 11

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 Contracting State.

2. However, such 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 Contracting State, but the tax so charged shall be limited pursuant to the provisions of sub-paragraphs (a) and (b) :

(a) dividends paid by a company which is a resident of Ireland to a resident of Japan shall be exempt from Irish sur-tax;

(b) dividends paid by a company which is a resident of Japan to a resident of Ireland who is subject to Irish tax in respect thereof shall not be chargeable to tax in Japan at a rate exceeding 15 per cent:

Provided that where the resident of Ireland is a company which owns at least 25 per cent of the entire voting shares of the company paying such dividends during the period of 6 months immediately preceding the date of payment of the dividends, such dividends shall not be chargeable to tax in Japan at a rate exceeding 10 per cent.

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

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

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 8 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

ARTICLE 12

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

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

3. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate

in profits, and other debt-claims of every kind, and any excess of the amount repaid in respect of such debt-claims over the amount lent, as well as all other income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority or a resident of that Contracting 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

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

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

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

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

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

ARTICLE 14

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 7, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of any property (other than immovable 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 any property (other than immovable property) pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property (other than immovable property) pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.
3. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

The following paragraph 4 of Article 9 of the MLI applies and supersedes the provisions of this Convention:

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

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

ARTICLE 15

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting 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 that other Contracting 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 16

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, 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 Contracting 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 Contracting State.

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

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic the operation of which is carried on by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 17

Remuneration 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 Contracting State.

ARTICLE 18

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

ARTICLE 19

1. Subject to the provisions of paragraph 2 of Article 20, 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 Contracting 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.

ARTICLE 20

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

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

(i) is a national of that other Contracting State; or

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

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

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

3. The provisions of Articles 16, 17, 18 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a local authority thereof.

ARTICLE 21

Payments or income received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State or that such income is received in respect of his personal services performed in that first-mentioned Contracting State in an amount not in excess of 600,000 Japanese yen or its equivalent in Irish pounds during any taxable year.

ARTICLE 22

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of any remuneration for such teaching.

2. An individual from one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding two years as a recipient of a grant, allowance or award for the primary purpose of conducting research from a governmental, religious, charitable, scientific, literary or educational organisation shall be exempt from tax in that other Contracting State in respect of the amount of such grant, allowance or award.

ARTICLE 23

Items of income arising in a Contracting State to a resident of the other Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that other Contracting State.

ARTICLE 24

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 and to any subsequent modifications of these provisions—which, however, shall not affect the principle hereof—Japanese tax payable under the laws of Japan and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against any Irish tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Japan the credit shall take into account (in addition to any Japanese tax payable in respect of the dividend) the Japanese tax payable by the company in respect of its profits, and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Japanese tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

2. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

(a) Where a resident of Japan derives income (other than a dividend) from Ireland which may be taxed in Ireland in accordance with the provisions of this Convention, the amount of Irish tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from Ireland is a dividend paid by a company which is a resident of Ireland to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Irish tax payable by the company paying the dividend in respect of its profits.

(c) For the purposes of the credit referred to in sub-paragraph (b) of this paragraph, there shall be deemed to have been paid by a company the Irish tax which would have been payable if the Irish tax had not been wholly relieved or reduced for a limited period of time in accordance with the special incentive measures designed to promote economic development in Ireland effective on the date of signature of this Convention, or which may be introduced in future in the Irish tax laws in modification of, or in addition to, such measures:

Provided that the scope of the benefit accorded to the taxpayer by those measures shall be agreed to by the Governments of both Contracting States.

3. For the purposes of this Article, income derived from sources in the United Kingdom by an individual who is a resident of Ireland shall be deemed to be income from sources in Ireland if such income is not subject to United Kingdom income tax.

ARTICLE 25

1. Individuals who are residents of Ireland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Japanese income tax as Japanese nationals not resident in Japan may be entitled.

2. Individuals who are residents of Japan shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Irish income tax as Irish citizens who are not resident in Ireland.

ARTICLE 26

1. The 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 Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting 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 that first-mentioned Contracting State are or may be subjected.

4. The provisions of this Article shall not be construed as obliging Ireland to grant to any company other than a company created under the company laws of Ireland and resident therein for the purposes of the income tax, any relief or exemption allowed in accordance with the provisions of:

(i) the Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956 (No. 8 of 1956), as subsequently amended, or

(ii) Chapter II of Part XXV of the Income Tax Act, 1967 (No. 6 of 1967), as subsequently amended.

5. In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 27

1. ~~[REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI] [Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.]~~

The following first sentence of paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 27 of this Convention:

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 Convention, 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.

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with this Convention.

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

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

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

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

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 27 of this Convention, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention; and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 27 of this Convention, within a period of two years beginning on the start date referred to in paragraph 8 or 9, 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.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 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 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, the period provided in subparagraph b) of paragraph 1 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. 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 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 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, 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, the start date referred to in paragraph 1 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; 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.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 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; 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, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 27 of this Convention settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

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

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this Convention and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent

authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of this Convention related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of this Convention related to exchange of information and administrative assistance and under the applicable laws of the Contracting States.

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

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

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

*Paragraphs 2 and 5 of Article 23 (Type of Arbitration Process) of the MLI
(Alternative 2 – Independent opinion arbitration)*

2. 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:

- a) After a case is submitted to arbitration, the competent authority of each Contracting State shall provide any information that may be necessary for the arbitration decision to all panel members without undue delay. Unless the competent authorities of the Contracting States agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.
- b) The arbitration panel shall decide the issues submitted to arbitration in accordance with the applicable provisions of this Convention and, subject to these provisions, of those of the domestic laws of the Contracting States. The panel members shall also consider any other sources which the competent authorities of the Contracting States may by mutual agreement expressly identify.
- c) The arbitration decision shall be delivered to the competent authorities of the Contracting States in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision shall be adopted by a simple majority of the panel members. The arbitration decision shall have no precedential value.

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

made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a person that presented the case or one of that person's advisors materially breaches that agreement.

Article 25 (Costs 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:-

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

1. **Serious penalties.** Ireland reserves the right to exclude from the scope of Part VI of the MLI 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.

2. **Domestic anti-avoidance.** Ireland reserves the right to exclude from the scope of Part VI of the MLI 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, Japan 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:

1. Japan reserves the right to exclude from the scope of Part VI of the MLI with respect to this Convention cases falling within the provisions of paragraph 3 of Article 4 of this Convention.

2. Where a reservation made by Ireland pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI exclusively excludes, whether or not by referring to its domestic law, from the scope of Part VI of the MLI cases of taxation in Ireland, Japan reserves the right to exclude from the scope of Part VI of the MLI with respect to this Convention cases of taxation in Japan which are analogous to the cases referred to in Ireland's reservation.

ARTICLE 28

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for the carrying out of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a court or administrative body) concerned with the assessment or collection of, or the determination of appeals in relation to, the taxes which are the subject of this Convention.

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; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 29

Nothing in this Convention 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 Convention:

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

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

ARTICLE 30

1. This convention shall be ratified and the instruments of ratification shall be exchanged at Dublin as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) in Ireland:

(i) as respects income tax (including sur-tax) for any year of assessment beginning on or after the 6th April of the calendar year in which this Convention enters into force;

(ii) as respects corporation profits tax, for any accounting period beginning on or after the 1st April of the calendar year in which this Convention enters into force and for the unexpired portion of any accounting period current at that date;

(b) in Japan:

as respects income for any taxable year beginning on or after the 1st January of the calendar year in which this Convention enters into force.

ARTICLE 31

This Convention shall remain in force indefinitely, but either Contracting State may, on or before the 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, this Convention shall cease to have effect:

(a) in Ireland:

(i) as respects income tax (including sur-tax) for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

(ii) as respects corporation profits tax for any accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given and for the unexpired portion of any accounting period current at that date;

(b) in Japan:

as respects income for any taxable year beginning on or after the 1st January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Tokyo on the eighteenth day of January, 1974

For the Government of Ireland:

For the Government of Japan:

Christopher P. Fogarty

Masayoshi Ohira

EXCHANGE OF LETTERS

His Excellency,
Mr Masayoshi Ohira
Minister for Foreign Affairs of Japan.

Tokyo, January 18, 1974

Excellency,

I have the honour to refer to the Convention between Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Ireland, the following understandings reached between the two Governments:

1. With reference to Article 17 of the said Convention, in relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 16 shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if reference to "employer" were references to the company.
2. With reference to paragraph 2 of Article 20 of the said Convention, the expression "out of funds created by" covers the situation where the pension is not paid directly by Contracting State, but out of separate funds which are created by that Contracting State or a local authority thereof or to which contributions are made by that Contracting State or a local authority thereof.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Christopher P Fogarty,
Ambassador Extraordinary and Plenipotentiary of Ireland to Japan

His Excellency,
Mr Christopher P. Fogarty,
Ambassador Extraordinary and Plenipotentiary of Ireland to Japan.

Toyko, January 18, 1974.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

I have the honour to refer to the Convention between Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed

today and to confirm, on behalf of the Government of Ireland, the following understandings reached between the two Governments:

1. With reference to Article 17 of the said Convention, in relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 16 shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if reference to "employer" were references to the company.

2. With reference to paragraph 2 of Article 20 of the said Convention, the expression "out of funds created by" covers the situation where the pension is not paid directly by Contracting State, but out of separate funds which are created by that Contracting State or a local authority thereof or to which contributions are made by that Contracting State or a local authority thereof.

I have further the honour to confirm, on behalf of the Government of Japan, the understandings contained in Your Excellency's Note.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Masayoshi Ohira,
Minister for Foreign Affairs.

His Excellency,
Mr Masayoshi Ohira,
Minister for Foreign Affairs of Japan.

Toyko, January 18, 1974.

Excellency,

I have the honour to refer to paragraph 2(c) of Article 24 of the Convention between Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today and to propose, on behalf of the Government of Ireland, that the two Governments shall agree that "the special incentive measures designed to promote economic development in Ireland effective on the date of signature of this Convention" referred to in the said paragraph are those set forth in the following provisions of Acts of Ireland:

1. The Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956 (No 8 of 1956), as amended, relating to relief from corporation profits tax on profits from certain mining operations;

2. (Part III of the Finance (Miscellaneous Provisions) Act, 1956 (No 47 of 1956), as amended, relating to relief from corporation profits tax on profits from export of certain goods;

3. Part II of the Finance (Miscellaneous Provisions) Act, 1958 (No 28 of 1958), as amended, relating to relief from corporation profits tax on profits from trading within Shannon Airport; and

4. Part XXV of the Income Tax Act, 1967 (No 6 of 1967), as amended, relating to relief from income tax on profits from certain mining operations, export of certain goods and trading within Shannon Airport.

I have further the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Japan of the above proposal shall be regarded as constituting an agreement between the two Governments under paragraph 2(c) of Article 24 of the said Convention.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Christopher P Fogarty,
Ambassador Extraordinary and Plenipotentiary of Ireland to Japan.

His Excellency,
Mr Christopher P Fogarty,
Ambassador Extraordinary and Plenipotentiary of Ireland to Japan.

Toyko, January 18, 1974.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

I have the honour to refer to paragraph 2(c) of Article 24 of the Convention between Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today and to propose, on behalf of the Government of Ireland, that the two Governments shall agree that "the special incentive measures designed to promote economic development in Ireland effective on the date of signature of this Convention" referred to in the said paragraph are those set forth in the following provisions of Acts of Ireland:

1. The Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956 (No 8 of 1956), as amended, relating to relief from corporation profits tax on profits from certain mining operations;
2. (Part III of the Finance (Miscellaneous Provisions) Act, 1956 (No 47 of 1956), as amended, relating to relief from corporation profits tax on profits from export of certain goods;
3. Part II of the Finance (Miscellaneous Provisions) Act, 1958 (No 28 of 1958), as amended, relating to relief from corporation profits tax on profits from trading within Shannon Airport; and
4. Part XXV of the Income Tax Act, 1967 (No 6 of 1967), as amended, relating to relief from income tax on profits from certain mining operations, export of certain goods and trading within Shannon Airport.

I have further the honour to confirm that the Government of Japan accepts the proposals contained in Your Excellency's Note and to agree that the same and the present reply shall be regarded as

constituting an agreement between the two Governments under paragraph 2(c) of Article 24 of the said Convention.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Masayoshi Ohira,
Minister for Foreign Affairs.
