

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN IRELAND AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

General disclaimer on synthesised text

This document presents the synthesised text for the application of the Convention between the Government of Ireland and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed on 10 February 1994 (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 by Spain on 7 June 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of Spain and represents our shared understanding of the modifications made to the Convention 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 Spain submitted to the Depository upon ratification on 28 September 2021. 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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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/made/en/print>

<https://www.irishstatutebook.ie/eli/1994/si/308>

The MLI position of Ireland submitted to the Depository upon ratification on 29 January 2019 and the MLI position of Spain submitted to the Depository upon ratification on 28 September 2021 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 the choices made by Ireland and Spain in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 January 2019 for Ireland and 28 September 2021 for Spain.

Entry into force of the MLI: 01 May 2019 for Ireland and 01 January 2022 for Spain.

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

- in Ireland and Spain 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 2023; and
- in Ireland and Spain with respect to all other taxes levied by each Contracting State with respect to taxable periods beginning on or after 1 January 2023.

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 July 2022 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 July 2022. For cases presented to the competent authority of a Contracting State prior to 1 July 2022 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 THE KINGDOM OF SPAIN FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

Ireland and the Kingdom of Spain

~~[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 and capital gains]~~

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replace the text referring to an intent to eliminate double taxation in the preamble of this 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
Personal Scope**

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 the 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

Taxes Covered

1. This Convention shall apply to taxes on income and on capital gains imposed by each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and capital gains all taxes imposed on total income or on elements of income and on gains from the alienation of movable or immovable property.

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

a) in Spain (and hereinafter referred to as "Spanish tax"):

i) the income tax on individuals (el Impuesto sobre la Renta de las Personas Físicas); and

ii) the corporation tax (el Impuesto sobre Sociedades);

b) in Ireland (and hereinafter referred to as "Irish tax"):

i) the income tax;

ii) the corporation tax; and

iii) the capital gains tax.

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention 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 as soon as possible.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Spain" means the territory of the Spanish State including any area outside the territorial sea upon which, in accordance with international law and on application of its legislation, the Spanish State exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

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

c) the term "national" means:

i) in relation to Spain, any individual possessing the nationality of Spain and any legal person, association or other entity deriving its status as such from the law in force in Spain;

ii) in relation to Ireland, any citizen of Ireland, and any legal person, association or other entity deriving its status as such from the law in force in Ireland;

d) the term "tax" means Spanish tax or Irish tax, as the context requires;

e) the terms "a Contracting State" and "the other Contracting State" mean Spain or Ireland, as the context requires;

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

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

h) 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;

i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

j) the term "competent authority" means:

i) in the case of Spain, the Minister of Economy and Finance or his authorised representative;

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

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

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs 2 and 3 of this Article, 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. The terms "resident of Spain" and "resident of Ireland" shall be construed accordingly.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined 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. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) 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 this combination is of a preparatory or auxiliary character.

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

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

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

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person — other than an agent of an independent status to whom paragraph 7 of this Article applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. A person engaged in a Contracting State in exploration of the seabed and its subsoil or in exploitation of natural resources situated there, as well as in activities which are

complementary or auxiliary to such activities, shall be deemed to exercise such activities through a permanent establishment in that State. However, this provision shall not apply where these activities are carried on in the other Contracting State for a period not exceeding 30 days.

7. 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 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.

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

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

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

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

ARTICLE 6
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 and aircraft shall not be regarded as immovable property.

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

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

5. Where the ownership of shares or other rights in a company or other entity entitles the owner of such shares or rights to the enjoyment of real property held by the company or other entity, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the real property is situated.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the 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 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 contained in this Article.

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

6. For the purposes of the preceding paragraphs of this Article, 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 of this Article 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10
Dividends

1.
 - a) Dividends paid by a company which is a resident of Ireland to a resident of Spain may be taxed in Spain.
 - b) Where a resident of Spain is entitled to a tax credit in respect of a dividend under paragraph 2 of this Article, tax may also be charged in Ireland and according to the

laws of Ireland on the aggregate of the amount of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

c) Except as aforesaid dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Spain shall be exempt from any tax in Ireland which is chargeable on dividends.

2. A resident of Spain who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph 3 of this Article and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled if he had received those dividends, and to the payment of any excess of that tax credit over his liability to Irish tax.

3. The provisions of paragraph 2 of this Article shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends. For the purposes of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

4. *a) Dividends paid by a company which is a resident of Spain to a resident of Ireland may be taxed in Ireland.*

b) Such dividends may also be taxed in Spain according to the laws of Spain but if the resident of Ireland is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

c) Notwithstanding the provisions of subparagraph b), if the beneficial owner is a company which controls directly at least 25 per cent of the voting power in the company paying the dividends, such dividends shall be exempt from tax in Spain under the conditions established by the relevant Spanish law which implements the EC Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC).

The following paragraph 1 of Article 8 of the MLI applies to paragraph 4 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

Paragraph 4 of Article 10 of this Convention 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).

5. The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

7. The provisions of paragraphs 1, 2 and 4 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

9. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. 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 taxation law of the State in which the income arises but does not include any income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

4. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting 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.

5. 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 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 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical or artistic work;

b) 8 per cent of the gross amount of royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, and for any copyright of scientific work; and

c) 10 per cent of the gross amount of all other royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or

performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment or fixed base, then the royalties 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 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 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 Convention.

ARTICLE 13 **Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property 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 Contracting State or of shares in a company the assets of which consist principally of, or of rights in, such immovable property situated in a Contracting State may be taxed in the Contracting State in which the immovable property is situated.]~~

The following paragraph 4 of Article 9 of the MLI replaces paragraph 2 of Article 13 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 the 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 (real property) situated in that other Contracting State.

3. Gains from the alienation of shares or other rights, other than those mentioned in paragraph 2 of this Article, in a company or other legal person which is a resident of a Contracting State may be taxed in that Contracting State if the recipient of the gain, during the 12-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company or other legal person.

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

5. Except as provided in paragraphs 2 and 3 of this Article and notwithstanding the provisions of paragraph 4 of this Article, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

6. Gains from the alienation of any property other than those referred to in paragraphs 1, 2, 3, 4 and 5 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

7. For the purposes of this Article the term "immovable property" means immovable property as defined in paragraph 2 of Article 6.

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 and 19, 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 within any twelve-month period falling wholly or partly within the fiscal year concerned of that other State, and

b) the remuneration is paid by, or on behalf of, a person 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 person has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 **Directors' Fees**

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

ARTICLE 17 **Artistes and Athletes**

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax in the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or of a political subdivision or local authority thereof.

ARTICLE 18 **Pensions and Annuities**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State 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 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 purposes of rendering the services.
2.
 - a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or 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

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 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 Convention shall be taxable only in that State.

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

ARTICLE 23

Elimination of Double Taxation

1. In Spain, double taxation will be avoided, in accordance with the relevant provisions of the law of Spain, as follows:

a) Where a resident of Spain derives income or gains which, in accordance with the provisions of this Convention, may be taxed in Ireland, Spain shall allow as a deduction from the tax on the income or gains of that resident, an amount equal to the tax effectively paid in Ireland (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid).

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

b) In the case of a dividend paid by a company which is a resident of Ireland to a company which is a resident of Spain and which controls directly 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 Irish tax creditable under the provisions of subparagraph a) of this paragraph) the Irish tax effectively paid by the company in respect of the part of the profits out of which such dividend is paid, provided that in such case the Spanish tax shall be charged on the aggregate of the amount of the dividend and the amount of the Irish tax so effectively paid by the company paying the dividend.

Such deduction, together with the deduction allowable in respect of the dividend under subparagraph a) of this paragraph, shall not exceed that part of the Spanish tax, as computed before the deduction is given, which is attributable to the income subject to tax in Ireland.

For the application of this subparagraph it shall be required that the participation in the company paying the dividend is held on a continuous basis during at least the two years prior to the day on which the dividend is paid.

2. 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) Spanish tax payable under the laws of Spain and in accordance with this Convention on profits, income or gains from sources within Spain (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 the Spanish tax is computed.

b) In the case of a dividend paid by a company which is a resident of Spain to a company which is a resident of Ireland and which controls directly 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 Spanish tax creditable under the provisions of subparagraph a) of this paragraph) the Spanish tax payable by the company in respect of the profits out of which such dividend is paid.

For the application of this subparagraph it shall be required that the participation in the company paying the dividend is held on a continuous basis during at least the two years prior to the day on which the dividend is paid.

3. Where in accordance with any provision of the Convention income or gains derived by a resident of a Contracting State are exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or gains of such resident, take into account the exempted income or gains.

ARTICLE 24

Non-Discrimination

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

2. The taxation 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. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

ARTICLE 25

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 Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the 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 25 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 25 of this Convention*, within a period of two years beginning on the start date referred to in paragraph 8 or 9 of Article 19 of the MLI, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

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

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

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 of Article 19 of the MLI. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both Contracting States except in the following cases:

i. if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

ii. if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under

paragraph 1 of Article 19 of the MLI shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) of the MLI). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

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

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

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

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

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

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

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

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

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

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

- a) the latest date on which the competent authorities that requested additional

information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 of Article 19 of the MLI; and

- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

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

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 25 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 of Article 20 of the MLI shall apply for the purposes of this Part.

2. The following rules shall govern the appointment of the members of an arbitration panel:

- a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
- b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 of the MLI (Mandatory Binding Arbitration). The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.
- c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a Contracting State fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this 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 1 and 5 of Article 23 (Type of Arbitration Process) of the MLI

(Alternative 1 - Final offer arbitration)

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

- a) After a case is submitted to arbitration, the competent authority of each Contracting State shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting States). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to this Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of this Convention (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting States. The arbitration decision shall have no precedential value.

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

Paragraph 2 of Article 24 (Agreement on a Different Resolution) of the MLI

2. Notwithstanding paragraph 4 of Article 19 of the MLI, an arbitration decision pursuant to this Part shall not be binding on the Contracting States and shall not be implemented if the competent authorities of the Contracting States agree on a different resolution of all unresolved issues within three calendar months after the arbitration decision has been delivered to them.

Article 25 (Cost of Arbitration Proceedings) of the MLI

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

Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Nothing in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting States are or will become parties.

Subparagraph (a) of paragraph 2 of Article 28 (Reservations) of the MLI

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

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

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

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

Pursuant to subparagraph (a) of paragraph 2 of Article 28 of the MLI, the kingdom of Spain 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. The Kingdom of Spain reserves the right to exclude from the scope of Part VI cases involving the application of anti-abuse rules in a Covered Tax Agreement as modified by the Convention or domestic law. For this purpose, anti-abuse rules contained in domestic law shall include the cases dealt with in Articles 15 and 16 of the General Tax Law (Law 58 of 17th December 2003). Any subsequent rules replacing, amending or updating these rules would also be comprehended. The Kingdom of Spain shall notify the Depository of any such subsequent rules.

2. The Kingdom of Spain reserves the right to exclude from the scope of Part VI cases involving conduct for which a person directly affected by the case has been subject, by a final ruling resulting from judicial or administrative proceedings, to a penalty for tax fraud, wilful default or gross negligence. For these purposes, penalties for tax fraud, wilful default or gross negligence shall be understood as those regulated under Articles:

i) 305 and 305 a of the Spanish Criminal Code. ii) 191, 192 and 193 of the General Tax Law (Law 58 of 17 December 2003), provided that a qualification criterion referred to in Article 184 of said General Tax Law applies; iii) 18.13.2º of the Corporate Income Tax Law (Law 27 of 27 November 2014), provided that a qualification criterion referred to in Article 184 of the General Tax Law (Law 58 of 17 December 2003) applies.

For these purposes, any reference to “tax return” in said Article 184 of the General Tax Law shall be understood as references made to transfer pricing documentation. Notwithstanding the provisions of subparagraph iii), penalties applied for incomplete provision of transfer pricing documentation, where the quantification or determination of market value is not seriously hampered, shall not be considered as penalty for tax fraud, wilful default or gross negligence. Any subsequent provisions replacing, amending or updating these provisions would also be comprehended. The Kingdom of Spain shall notify the Depository of any such subsequent provisions.

3. The Kingdom of Spain reserves the right to exclude from the scope of Part VI transfer pricing cases involving items of income or capital that are not taxed in a Contracting State either because they are not included in the taxable base in that Contracting Jurisdiction or because they are subject to an exemption or zero tax rate provided only under the domestic tax law of that Contracting State that is specific to that item of income or capital. Deposited on 28 September 2021 68

4. The Kingdom of Spain reserves the right to exclude from the scope of Part VI cases eligible for arbitration under the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), as amended, or any subsequent regulation.

5. The Kingdom of Spain reserves the right to exclude from the scope of Part VI cases which the competent authorities of both Contracting Jurisdictions agree are not suitable for resolution through arbitration. Such agreement shall be reached before the date on which arbitration proceedings would otherwise have begun and shall be notified to the person who presented the case

ARTICLE 26
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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 Convention. 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. Notwithstanding the provisions of paragraph 1 of this Article a Contracting State shall not be obliged:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 27
Diplomatic Agents and Consular Officers

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this 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 or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

ARTICLE 28
Entry into Force

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in Spain:

i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the Convention enters into force;

ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force;

b) 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 calendar year next following that in which this Convention enters into force;

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

ARTICLE 29
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of 5 years from the date of its entry into force. In such event the Convention shall cease to have effect:

a) in Spain:

i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the notice of termination is given;

ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given;

b) 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 calendar year next following that in which such notice is given;

ii) as respects corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which such notice is given.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed the present Convention and affixed thereto their seals.

Done in duplicate at Madrid this 10th day of February, 1994 in the English and Spanish languages, each text being equally authoritative.

For Ireland
RICHARD RYAN

For the Kingdom of Spain
JAVIER SOLANA MADARIAGA

Protocol

At the moment of signing the Convention between Ireland and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. Where under any provision of this Convention income or gains is, or are, relieved from tax in Spain and, under the law in force in Ireland, 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 Ireland, and not by reference to the full amount thereof, the relief to be allowed under this Convention in Spain shall apply only to so much of the income or gains as is, or are, remitted to or received in Ireland.

2. Notwithstanding the provisions of this Convention, income (imputed or otherwise) or capital gains derived from time-share rights not exceeding 4 annual weeks by a resident of a Contracting State, and capital represented thereby owned by a resident of a Contracting State, shall be taxable only in that State.

3. Notwithstanding the provisions of Articles 10, 11, 12 and 13, the tax reductions or exemptions which would, under those provisions, otherwise be applicable to dividends, interest, royalties and gains, shall not apply where such income or gains are derived from one Contracting State by a company which is a resident of the other Contracting State and in which persons who are not residents of that other Contracting State hold directly or indirectly a participation of more than 50 per cent of the share capital.

Provided that the provisions of this paragraph shall apply only to dividends, interest, royalties and gains arising in one of the Contracting States and derived by a company resident in the other Contracting State where that company is engaged merely in the holding of shares or other property.

4. a) Notwithstanding the provisions of paragraph 1 of Article 11, if under Spanish domestic legislation interest arising in Spain and paid to a resident of Ireland becomes subject to Spanish taxation, such interest, which may be taxed in Ireland, may also be taxed in Spain, but if the recipient of the interest is the beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

b) The provisions of subparagraph a) shall, in no case, apply to interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment.
5. Notwithstanding paragraph 2 of Article 12, but subject to paragraphs 4 and 6 of that Article, income derived by a resident of a Contracting State from the leasing on a bareboat basis of ships, aircraft or containers, used in international traffic, shall be taxable only in that State.
6. Nothing in Article 24 shall be construed as preventing a State from applying the provisions of its domestic laws regarding "thin-capitalisation".
7. The Agreement dated 25 February, 1975, between Spain and Ireland for the avoidance of double taxation on income derived from the business of sea or air transport shall not have effect as respects any tax for any period for which this Convention has effect in relation to that tax.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed the present Protocol and affixed thereto their seals.

Done in duplicate at Madrid this 10th day of February, 1994 in the English and Spanish languages, each text being equally authoritative.

For Ireland
RICHARD RYAN

For the Kingdom of Spain
JAVIER SOLANA MADARIAGA