CONVENTION

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Indonesia and the Government of the Kingdom of Denmark,

[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,]

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:

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

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 the 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.

ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

The Convention shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under paragraph (5) of Article 21 (as modified by paragraph 1 of Article 17 of the MLI), Article 19, Article 20, Article 21, Article 23, Article 24, and Article 26 of the Convention.

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or imovable property and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular;
   a) In the case of Indonesia :

      The income tax imposed under the Undang-undang Pajak Penghasilan 1984 (Law No. 7 of 1983) and to the extent provided in such income tax law, the company tax imposed under the Ordonansi Pajak Perseroan 1925 (State Gazette No. 319 of 1925 as lastly amended by Law No. 8 of 1970) and the tax imposed under the Undang-undang Pajak atas Bunga, Dividen dan Royalti 1970 (Law No. 10 of 1970);

      (hereinafter referred to as "Indonesian tax").

   b) In Denmark :
      (i) the income tax to the state (indkomstskatten til staten);
      (ii) the municipal income tax (den kommunale ind- komstskat);
      (iii) the income tax to the county municipalities (den amtskommunale indkomstskat);
      (iv) the old age pension contribution (folkepensionsbidraget);
      (v) the seamen's tax (sømandsskatten);
      (vi) the special income tax (den saerlige indkomstskat);
      (vii) the church tax (kirkeskatten);
      (viii) the tax on dividends (udbytteskatten);
      (ix) the contribution to the sickness "per diem" fund (bidrag til dagpengefonden);
      (x) taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinteskatteloven);

      (hereinafter referred to as "Danish tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed 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 substantial changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires :
   a) the terms "a Contracting State" and "the other Contracting State" mean Denmark or Indonesia as the context requires;
   b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to exploration and exploitation of the natural resources of the sea-bed or its subsoil; the term does not comprise the Faroe Islands and Greenland;

c) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and such parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law;
d) the term "person" comprises an individual, a company and any other body of persons;
e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
f) the term "tax" means Danish tax or Indonesian tax as the context requires;
g) the terms "enterprises of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
h) the term "nationals" means :
   (1) all individuals possessing the nationality of a Contracting State;
   (2) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;
i) 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;
j) the term "competent authority" means :
   (1) in the case of Denmark, the Minister for Inland Revenue, Customs and Excise or his authorized representative;
   (2) in the case of Indonesia, the Minister of Finance or his authorized representative.

2. As regards the application of the 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 the Convention.

Article 4

FISCAL DOMICILE

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation 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 Contracting State in respect only of income from sources therein or capital situated in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
   a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
   b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
   c) if he has an habitual abode in both Contracting States or in neither of them, the competent authorities of the two Contracting States shall settle the question by mutual agreement.

3. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. If a place of effective management is considered as situated in both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.]

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph (3) of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

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

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 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, an oil gas well, a quarry or any other place of extraction of natural resources;
3. The term "permanent establishment" likewise encompasses;
   a) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** [A building site or construction project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than six months;]
   b) An assembly or installation project which exists for more than three months;
   c) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continues (for the same or a connected project) within the country for a period or periods aggregating more than three months within any 12-month period.

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 14 OF THE MLI — SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the six-month period referred to in subparagraph 1) paragraph 3 of Article 5 of the Convention has been exceeded:

a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site, a construction, assembly or installation project or supervisory activities in connection therewith, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period or periods referred to in subparagraph 1) paragraph 3 of Article 5 of the Convention; and
b) where connected activities are carried on in that other Contracting State at (or, in connection with) the same building site or construction, assembly or installation project or supervisory activities in connection therewith during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

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

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]**[The term "permanent establishment" shall be deemed not to include :
   a) the use of facilities solely for the purpose of storage or display 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 or display;
   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 2 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

(Option A)

Notwithstanding Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:

a) the activities specifically listed in paragraph 4 of Article 5 of the Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed

place of business, 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 (as modified by paragraph 2 of Article 13 of the MLI):

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

Article 5 of the Convention (as modified by paragraph 2 of Article 13 of the MLI) 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 the 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, sub-paragraphs a-f, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
   a) **[MODIFIED by paragraph 1 of Article 12 of the MLI]** [Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph]; or
   b) Has not such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

The following paragraph 1 of Article 12 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 12 OF THE MLI — ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding Article 5 of the Convention, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

a) in the name of the enterprise; or
b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless hese activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Convention.

6. **[REPLACED by paragraph 2 of Article 12 of the MLI]** [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, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.]

The following paragraph 2 of Article 12 of the MLI replaces paragraph 6 of Article 5 of this Convention:

ARTICLE 12 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated there through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.
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 provisions of 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 from immovable property including income from agriculture, forestry, a farm or plantation 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 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 explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraph 1 and 3 shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS PROFITS

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

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
(c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied 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 solely for the enterprise.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.
3. With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), the provisions of paragraph 1 shall only apply to such part of the profits as corresponds to the shareholding in the consortium held by Det Danske Luftfartelskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

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

Article 10

DIVIDENDS

1. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Convention in relation to the nature of the income, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.
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 law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
   a) 10 percent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;
   b) in all other cases 20 percent of the gross amount of the dividends.

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

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the recipient 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 professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Where a company resident of a Contracting State has in the other Contracting State a permanent establishment, the profits of this permanent establishment shall, after having borne the corporation tax, be liable to a tax, the rate of which shall not exceed 15 percent, according to the laws of that other Contracting State.
7. The provision of paragraph 6 of this Article shall not affect the provisions contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to the oil and gas sector or other mining sector concluded by the Government of Indonesia, its instrumentality, its relevant State oil and gas company or any other entity thereof with a person who is a resident of Denmark on or before 31 December 1983.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax in the first-mentioned Contracting State. It is agreed that this paragraph applies to the following institutions of Denmark:

   1) The National Bank of Denmark

   2) The Industrialization Fund for Developing Countries

   3) The Danish Export Credit Council

   4) The Danish Export Finance Corporation

   5) The Ship Credit Fund of Denmark

   on loans or credits granted with the consent of the Minister in charge of financial affairs or of planning in Indonesia. The competent authorities of the Contracting States may

determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures.
5. The provisions of paragraphs 1 and 2 shall not apply if the recipient 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 professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7.
   In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State.
   Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, 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 for whatever reason 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 law 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 law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, 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 recipient 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 professional services from a fixed base situated therein, and the right or

property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 Article 7.
In such a 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 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties 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 royalties paid, having regard to the use, right or information for which they are paid, exceeds for whatever reason 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

1. Gains from the alienation of immovable property as defined in paragraph 2 of Article 6, may be taxed in the Contacting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. 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 enterprise operating the ships or aircraft is a resident.
4. **[MODIFIED by paragraph 4 of Article 9 of the MLI**] [Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, 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 the 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.

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 except in the following circumstances, when such income may also be taxed in the other Contracting State:
   a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
   b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 91 days within any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 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 period of 12 months, and
   b) the remuneration is paid by or on behalf of, an employer who is not a resident of the other State, and
   c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the enterprise operating the ship or aircraft is a resident.

Article 16

DIRECTORS' FEES

Directors' fees and 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 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.
2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that 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 paragraph 1, remunerations or profits, and wages, salaries and other similar income derived by entertainers and athletes from their personal activities as such in a Contracting State shall be taxable only in the other Contracting State if their visit to the first Contracting State is supported substantially from public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof.
4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of entertainers and athletes in a Contracting State accrues not to that entertainer or athlete himself but to another person, notwithstanding the provisions of Articles 7, 14 and 15, that income shall be taxable only in the other Contracting State if this person is supported substantially from public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof.

Article 18

PENSIONS, SOCIAL SECURITY PAYMENTS,

ANNUITIES AND ALIMONY

1. Pensions, annuities and social security payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.
2. Alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

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 purpose of rendering the services.

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

Article 20

STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 are made to him from sources outside that State.
2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training derives from services rendered in that other State shall not be taxed in that other State provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 21

TEACHERS AND RESEARCHERS

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or educational institution in that Contracting State and who is, or was immediately before such 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 in respect of which he is subject to tax in the other Contracting State.
2. This article shall not apply to income from research if such research is undertaken not in the public interest but 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 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.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this Convention. Where income derived from a Contracting State is subject to tax in both Contracting States, relief from double taxation on such income shall be given in accordance with the following provisions of this Article.
2. In the case of Indonesia, double taxation shall be avoided as follows :
   a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in Denmark in accordance with the provisions of this Convention;
   b) Where a resident of Indonesia derives income from Denmark and that income may be taxed in Denmark in accordance with the provisions of this Convention, the amount of Danish tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to the income.
3. In the case of Denmark, double taxation shall be avoided as follows :
   a) Subject to the provisions of sub-paragraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention may be taxed in Indonesia, Denmark shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Indonesia.
   b) The deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Indonesia.
   c) Where a resident of Denmark derives income which, in accordance with the provisions of this Convention shall be taxable only in Indonesia, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is appropriate to the income derived from Indonesia.
   d) Where Indonesian tax levied on dividends is relieved below the rates provided for in Article 10, paragraph 2, for dividends by special incentive measures under Indonesian Law No. 1 of 1967 regarding Foreign Capital Investment, sofar as they were in force on, and have not been modified since the date of signature of this Convention or have been modified only in minor respects so as not to affect their general character there shall be allowed as a credit against Danish income tax on such dividends an amount corresponding to the rate of tax provided for in the foregoing mentioned provisions of

this Convention. The credit allowed under the foregoing sentence shall, however, not exceed the amount of Indonesian tax which would have been payable but for such relief.

This provision shall cease to have effect after December 31, 1992.

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.
   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 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 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 State are or may be subjected.
4. In this Article the term "taxation" means the taxes which are the subject of this Convention.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. 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 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. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with 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 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.
3. **[MODIFIED by second sentence of paragraph 3 of Article 16 of the MLI]** [The competent authorities of the Contracting States shall endeavour to resolve by mutual

agreement any difficulties or doubts arising as to the interpretation or application of the Convention.]

The following second sentence of paragraph 3 of Article 16 of the MLI applies to paragraph 3 of Article 25 of this Convention:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not providedfor 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this 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 which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordure 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.

Article 28

TERRITORIAL EXTENSION

This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the territory of Denmark which is specifically excluded from the application of the Convention and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels.

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

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

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

Article 29

ENTRY INTO FORCE

1. The Government of the Contracting State shall notify to each other that the constitutional requirements for the entry into force of this Convention have been complied with.
2. The Convention shall enter into force on the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes for the income year which coincides with or replaces the calendar year immediately following that in which the Convention enters into force and subsequent income years.

Article 30

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 written notification of termination on or before the thirtieth day of June of any calendar year following after a period of five years from the year in which the Convention enters into force. In such event, the Convention shall cease to have effect in respect of taxes for the income year which coincides with or replaces the calendar year immediately following that in which the notification of termination is given and subsequent income years.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Government, have signed this Convention.

Done in Duplicate at Jakarta on the twenty eighth day of December 1985 in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA	FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK
Signed	Signed
ATMONO SURYO	ANDERS BRANDSTRUP

PROTOCOL

At the signing of the Convention between the Republic of Indonesia and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the said Convention :

Ad Article 5, paragraph 1:

Notwithstanding paragraph 1 of Article 5, it is understood that activities consisting of preliminary surveys or exploration of hydrocarbons carried out with ships, drilling rigs, and installations constitute a permanent establishment.

Ad Article 5, paragraph 3:

It is understood that the time-limit of six months shall apply to an assembly or installation project performed by the main contractor in connection with a building site or construction project.

Ad Article 15, paragraph 3:

It is understood that where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this protocol.

DONE in duplicate at Jakarta on the twenty eight day of December 1985 in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA	FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK
Signed	Signed
ATMONO SURYO	ANDERS BRANDSTRUP