

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF NEW ZEALAND**

**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 New Zealand
[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude an
Agreement for the avoidance of double taxation and the prevention of fiscal evasion
with respect to taxes on income,]

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

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

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

Have agreed as follows:

**Article 1
PERSONAL SCOPE**

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

The following paragraph 1 of Article 11 of the MLI applies and supersedes the
provisions of this Agreement:

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

The Agreement shall not affect the taxation by a Contracting State of its residents,
except with respect to the benefits granted under provisions of paragraph 9 (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 Agreement.

Article 2

TAXES COVERED

1. The existing taxes to which the Agreement shall apply are :
 - (a) in New Zealand :
 - (i) the income tax; and
 - (ii) the excess retention tax,
(hereinafter referred to as "New Zealand tax");
 - (b) In Indonesia :
the income tax (pajak-penghasilan),
(hereinafter referred to as "Indonesian tax").
2. The Agreement shall apply also to any identical or substantially similar taxes, which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes, which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing State of the Cook Island and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
 - (ii) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of

Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

- (b) the term "a Contracting State" and "the other Contracting State" mean New Zealand or Indonesia as the context requires;
 - (c) the term "person" includes an individual, a company and any other body of persons;
 - (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (e) 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;
 - (f) the term "national" means:
 - (i) in respect of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the law in force in New Zealand;
 - (ii) in respect of Indonesia, any individual possessing the nationality of Indonesia and any legal person, partnership or association deriving its status as such from the law in force in Indonesia;
 - (g) 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;
 - (h) the term "competent authority" means :
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or his authorized representative;
 - (ii) in the case of Indonesia, the Minister of Finance or his authorized representative.
2. In the Agreement, the term "New Zealand tax" and "Indonesian tax" do not include any charge imposed as a penalty or interest under the law of either Contracting State relating to the taxes to which the Agreement applies.
3. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

Article 4 RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that Contracting State, is liable to tax herein by reason of this domicile, residence, place of management or any other criterion of similar nature.
2. Whereby reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this 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 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 resident of the State in which he has an habitual abode;
 - (c) if he has a habitual abode in both States or in neither of them, the competent authorities of the Contracting State shall endeavour to 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, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement having regard to its day to day management, the place where it is incorporated or otherwise constituted and any other relevant factors.]

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 Agreement:

ARTICLE 4 OF THE MLI — DUAL RESIDENT ENTITIES

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

Article 5
PERMANENT ESTABLISHMENT

1. For the purpose of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" 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. The term "permanent establishment" likewise encompasses:
 - (a) **MODIFIED by paragraph 1 of Article 14 of the MLI** [a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months].

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

**ARTICLE 14 OF THE ML1 — SPLITTING-UP OF
CONTRACTS**

For the sole purpose of determining whether the six-month period referred to in subparagraph (a) of paragraph 3 of Article 5 of this Agreement 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 (a) of paragraph 3 of Article 5 of this Agreement; and*
- b) where connected activities are carried on in that other Contracting State at or, in connection with, the same building site, a construction, assembly or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,*

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

- (b) 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 continue (for the same or a connected project) within the country for a period or periods aggregating more than three months within any twelve-month period.

4. **(MODIFIED by paragraph 2 of Article 13 of the MLI)** [Notwithstanding the preceding provision of this Article, 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;
- (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 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 Agreement (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 this Agreement (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 this Agreement; or*
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,*

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraph 1 and 2, 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 State in respect of any activities which that person undertakes for the enterprise, if such a person:
- a) **(REPLACED 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

The following paragraph 1 of Article 12 of the MLI replaces subparagraph (a) of paragraph 5 of Article 5 of this Agreement:

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

Notwithstanding Article 5 of this Agreement, 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 these 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 this Agreement.

- (b) has no 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.
6. **(REPLACED by paragraph 2 of Article 12 of the MLI** [An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the

other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, where the activities of such a broker or agent are devoted wholly or almost wholly on behalf of the enterprise, he shall be considered an agent of dependent status and that enterprise shall be deemed to have a permanent establishment in that State.]

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

**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. 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 Agreement:

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

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

**Article 6
INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a country 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 considerations for the working of, or the rights to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall also 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 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

**Article 7
BUSINESS PROFITS**

1. The profits of an enterprise of one 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; or
 - (b) sales within that other Contracting State of goods or merchandise of the same or similar kind as those being sold, or other business activities of the same or similar kind as those being carried on through that permanent establishment if the sale or the business activities had been made or carried on in that way with a view to avoiding taxes in that other State.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of a certain percentage of the gross receipts of the enterprise or on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Nothing in this Article shall affect any provisions of the law of either Contracting State at any time in force regarding the taxation of any income or profits from the business of any form of insurance.

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

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic 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 an international operating agency but only to so much of the profits so derived as is attributable to the participant in proportion to its share in that joint operation.

Article 9

ASSOCIATED ENTERPRISE

[MODIFIED by paragraph 1 of Article 17 of the MLI [Where:

- a. an enterprise of a Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting States and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.]

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

ARTICLE 17 OF THE MLI — CORRESPONDING ADJUSTMENTS

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

**Article 10
DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting States to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of 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 and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent

establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be shall apply.

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.

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 laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and received by the Government of the other Contracting State including a political subdivision or a local authority thereof or the central bank of that other Contracting State shall be taxable only in that other Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, this term does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where,

however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 12

ROYALTIES

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 Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the 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 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, films or videotapes for use in connection with television or tapes for use in connection with 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 liability to pay 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 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 persons, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

ALIENATION OF PROPERTY

1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Income or 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 independent personal services, including such income or 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 State.
3. Income or gains of an enterprise of a Contracting State 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 that State.
4. **[MODIFIED by paragraph 4 of Article 9 of the MLI]** [Income or gains from the alienation of any property other than that referred to 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 Agreement:

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

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

**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 such services are performed in the other Contracting State and :
 - (a) the individual is present in the other State for a period or periods exceeding in the aggregate 90 days in any consecutive twelve month period, or
 - (b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities.

In such case, the income may be taxed in that other State but only so much of it as is attributable to activities connected with that fixed base or performed during such period or periods.

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

**Article 15
DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive twelve month period, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16 **DIRECTORS' FEES**

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

Article 17 **ARTISTES AND 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 from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the government of the other Contracting State, a local authority or public institution thereof.

Article 18
PENSION AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of the other Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State may be taxed in that State.
3. (a) The term "pensions" as used in this Article means periodic payments made in consideration for past services rendered.

(b) The term "annuities" as used in this Article 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 pensions, paid by a Contracting State, or a statutory body 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. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision a local authority thereof to an individual in respect to 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 and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20
PROFESSORS AND TEACHERS

1. A professor or teacher who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school, or other similar educational institution, which is recognized by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research. However, to the extent the above-mentioned remuneration is not taxed in the State where the recipient is a resident, the remuneration may be taxed in the other state.
2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 21

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 22

OTHER INCOME

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

Article 23

METHODS OF ELIMINATION OF DOUBLE TAXATION

1. In the case of Indonesia, double taxation shall be avoided as follows:
 - (a) Indonesia, when imposing tax on resident of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in New Zealand in accordance with the provisions of this Agreement;
 - (b) Where a resident of Indonesia derives income from New Zealand and that income may be taxed in New Zealand in accordance with the provisions of this Agreement, the amount of New Zealand tax payable in respect of that 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 that income.

2. In the case of New Zealand, double taxation shall be avoided as follows: Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), Indonesian tax paid under the law of Indonesia and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Indonesia (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.
3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

Article 24

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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. **[REPLACED by second sentence of paragraph 1 of Article 16 of the MLI]** [This case must be presented within two years from the first notification of the action giving rise to taxation not in accordance with the provisions of the Agreement.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 24 of this Agreement:

ARTICLE 16 OF THE MLI — MUTUAL AGREEMENT PROCEDURE

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

2. **[MODIFIED by second sentence of paragraph 2 of Article 16 of the MLI]** [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 a competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with the Agreement.]

The following second sentence of paragraph 2 of Article 16 of the MLI applies to paragraph 2 of Article 24 of this Agreement:

**ARTICLE 16 OF THE MLI — MUTUAL AGREEMENT
PROCEDURE**

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation of application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Agreement.

**Article 25
EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information 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 Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and 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.

Article 26

DIPLOMATIC AND CONSULAR OFFICERS

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

The following paragraph 1 of Article 7 of the MLI 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 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 27

ENTRY INTO FORCE

1. This Agreement shall be ratified and the instrument of ratification shall be exchange at Wellington as soon as possible.
2. This Agreement shall enter into force after the expiration of thirty days from the date of the exchange of instruments of ratification and shall have effect:
 - (a) In Indonesia :
in respect of income derived during any taxable year beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;
 - (b) in New Zealand :
in respect of income derived during any income year beginning on or after 1

April in the calendar year next following that in which the notice of termination is given.

Article 28 TERMINATION

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the fourth year following the exchange of the instruments of ratification, give notice of termination to the other Contracting State and in such event the Agreement shall cease to have effect:

- (a) In Indonesia :
in respect of income derived during any taxable 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 New Zealand :
in respect of income derived during any income year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Wellington this 25th day of March 1987 in the English language.

For the Government of
the Republik of Indonesia

For the Government of
New Zealand

PROTOCOL

THE REPUBLIC OF INDONESIA and NEW ZEALAND have agreed at the signing of the Agreement between the two States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income upon the following provision which shall form an integral part of the said Agreement.

With reference to Article 5,

- (a) notwithstanding the provisions of paragraph 3 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on activities in that State in connection with the exploration or exploitation of natural resources situated in that State;
- (b) the provisions of paragraph (a) of this Protocol shall not apply if such activities are carried on for a period not exceeding three months in the aggregate in any consecutive twelve month period. However for the purposes of this paragraph activities carried on in that State by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if those activities are connected with activities carried on in that State by the last-mentioned enterprise. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

The following paragraph 1 of Article 14 of the MLI replaces Protocol (with reference to Article 5 paragraph (b) of this Agreement), second and third sentences:

ARTICLE 14 OF THE MLI — SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the six months period referred to in subparagraph (a) of paragraph 3 of Article 5 of this Agreement has been exceeded:

- c) 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 (a) of paragraph 3 of Article 5 of this Agreement; and*
- d) where connected activities are carried on in that other Contracting State at or, in connection with, the same building site, a construction, assembly or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,*

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

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

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

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

IN WITNESS WHEREOF the undersigned have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Agreement.

DONE in duplicate at Wellington this 25th day of March 1987 in the English Language.

For the Government of
the Republik of Indonesia

For the Government of
New Zealand