SYNTHESISED TEXT
OF THE MLI AND THE AGREEMENT BETWEEN
JAPAN AND THE REPUBLIC OF INDONESIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

This document presents the synthesised text for the application of the Agreement between Japan and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on March 3, 1982 (hereinafter referred to as "the Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan and Indonesia on June 7, 2017 (hereinafter referred to as "the MLI").

This document was prepared on the basis of the reservations and notifications submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and by Indonesia on April 28, 2020 and November 26, 2020 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and the document does not constitute a source of law. The authentic texts of the Agreement and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout this document in the context of the relevant provisions of the Agreement.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as changes from "Covered Tax Agreement" to "Agreement" and changes from "Contracting Jurisdiction" to "Contracting State"). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Agreement will be understood as referring to the provisions of the Agreement as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for Indonesia on August 1, 2020 and has effect as follows:

The provisions of the MLI shall have effect in each Contracting State with respect to the Agreement:

(a) in Japan:

(i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2021; and

(ii) with respect to all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after June 26, 2021; and

(b) in Indonesia:

(i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2021; and

(ii) with respect to all other taxes levied by Indonesia, for taxes levied with respect to taxable periods beginning on or after January 1, 2022.

AGREEMENT
BETWEEN JAPAN AND THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the Republic of Indonesia,

~~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 preamble text described in paragraph 1 of Article 6 of the MLI replaces the preamble language of the Agreement referring to "Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,":

Article 6 – 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 indirect benefit of residents of third jurisdictions),

Have agreed as follows:

Article 1

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

Article 2

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

(a) in Japan:

(i) the income tax; and

(ii) the corporation tax

(hereinafter referred to as "Japanese tax");

(b) in Indonesia:

(i) the income tax (Pajak Pendapatan), and

(ii) the company tax (Pajak Perseroan) including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes; and

(iii) the tax on interest, dividend and royalty (Pajak Atas Bunga, Dividen dan Royalty)

(hereinafter referred to as “Indonesian tax”).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

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

(a) the term “Indonesia” comprises the territory of the Republic of Indonesia as defined in its laws and 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;

(b) the term “Japan”, when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;

(c) the terms “a Contracting State” and “the other Contracting State” mean Japan or Indonesia, as the context requires;

(d) the term “tax” means Japanese tax or Indonesian tax, as the context requires;

(e) the term “person” includes an individual, a company and any other body of persons;

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

(g) 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;

(h) the term “nationals” means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that Contracting State and all organizations without juridical personality treated for the purposes of tax of that Contracting State as juridical persons created or organized under the laws of that 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”, in relation to a Contracting State, means the Minister of Finance of that Contracting State or his authorized representative.

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

Article 4

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

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

purposes of this Agreement.

The following paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI replaces paragraph 2 of Article 4 of the Agreement (only to the extent that the provisions of that paragraph relate to a person other than an individual):

Article 4 – Dual Resident Entities

1. **Where by reason of the provisions of paragraph 1 of Article 4 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

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a farm or plantation;

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

~~4. Notwithstanding the provisions of the preceding paragraphs, 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 of 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 sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.~~

The following paragraph 2 of Article 13 of the MLI replaces paragraph 4 of Article 5 of the Agreement:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

2. **Notwithstanding the provisions of Article 5 of the Agreement, the term "permanent establishment" shall be deemed not to include:**

a) i) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

ii) the maintenance of a stock of goods or merchandise belonging to the enterprise

solely for the purpose of storage or display;

iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

v) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, or for scientific research, for the enterprise;

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 the Agreement:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

4. **Paragraph 4 of Article 5 of the Agreement 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 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. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State consultancy services, or supervisory services in connection with a building, construction or installation project through employees or other personnel—other than an agent of an independent status to whom the provisions of paragraph 8 apply—, provided that such activities continue (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any taxable year. However, if the furnishing of such services is effected under an agreement between the Governments of the two Contracting States regarding economic or technical cooperation, that enterprise shall, notwithstanding any provisions of this Article, not be deemed to have a permanent establishment in that other Contracting State.

6. Where a person (other than an agent of an independent status to whom the provisions of paragraph 8 apply) 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:

~~(a) that person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to those mentioned in paragraph 4; or~~

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

The following paragraph 1 of Article 12 of the MLI replaces subparagraph (a) of

paragraph 6 of Article 5 of the Agreement:

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

1. Notwithstanding the provisions of Article 5 of the 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 the Agreement.

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 that other Contracting State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 8.

~~8. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.~~

The following paragraph 2 of Article 12 of the MLI replaces paragraph 8 of Article 5 of the Agreement and paragraph 1 of the Protocol to the Agreement:

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

2. **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.**

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

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

Article 15 – Definition of a Person Closely Related to an Enterprise

1. **For the purposes of the provisions 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

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term “immovable property” shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 paragraphs 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 independent personal services.

Article 7

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

2. 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 Contracting State in which the permanent establishment is situated or elsewhere.

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

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

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

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

Article 8

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 Contracting State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency but only to so much of them as is attributable to the participating enterprise in proportion to its share in such joint operation.

Article 9

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

The following paragraph 1 of Article 17 of the MLI applies to the Agreement:

Article 17 – Corresponding Adjustments

1. **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 the Agreement and the competent authorities of the Contracting States shall if necessary consult each other.**

Article 10

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

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

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of

twelve months immediately before the end of the accounting period for which the distribution of profits takes place;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of 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 laws 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 Contracting 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 Contracting 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 Contracting 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 Contracting State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

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

2. However, such interest may also be taxed in the

Contracting State in which it arises, and according to the laws of that Contracting 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.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms “the Central Bank” and “financial institution wholly owned by the Government” mean:

(a) in the case of Japan:

(i) the Bank of Japan;

(ii) the Export-Import Bank of Japan;

(iii) the Overseas Economic Cooperation Fund;

(iv) the Japan International Cooperation Agency; and

(v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States;

(b) in the case of Indonesia:

(i) the Bank of Indonesia; and

(ii) such other financial institution the capital of which is wholly owned by the Government of the Republic of Indonesia as may be agreed upon from time to time between the Governments of the two Contracting States.

5. 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.

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

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

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

Article 12

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

2. However, such royalties may 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 10 per cent of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 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 Contracting 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 or a local authority thereof, or a resident of that Contracting 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 or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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

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

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

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains from the alienation of any property other than that referred to in the preceding paragraphs 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 to the Agreement:

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

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

Article 14

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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid 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

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 Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

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

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

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration 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 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 Contracting State.

Article 17

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

Such income shall, however, be exempt from tax in that Contracting State if such activities are exercised by an individual, being a resident of the other Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

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.

Such income shall, however, be exempt from tax in that Contracting State if such income is derived from the activities exercised by an individual, being a resident of the other Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States and accrues to another person who is a resident of that other Contracting State.

Article 18

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19

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 Contracting State, or political subdivision or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

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

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

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

2. (a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State, or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or political subdivision or local authority thereof, shall be taxable only in that Contracting State.

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

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision or a local authority thereof.

Article 20

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

Article 21

1. An individual who was a resident of a Contracting

State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely:

(a) as a student at a university, college, school or other accredited educational institution in that other Contracting State; or

(b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization; or

(c) as a business apprentice;

shall be exempt from tax in that other Contracting State, for a period not exceeding five taxable years from the date of his first arrival in that other Contracting State, in respect of:

(i) remittances from abroad for the purpose of his maintenance, education, study, research or training;

(ii) the grant, allowance or award;

(iii) remuneration for personal services in that other Contracting State paid by his employer who is a resident of the first-mentioned Contracting State; and

(iv) remuneration for personal services in that other Contracting State other than the remuneration referred to in sub-paragraph (iii) not exceeding the sum of 600,000 Yen if that other Contracting State is Japan, or 900,000 Indonesian Rupiahs if that other Contracting State is Indonesia, during any calendar year.

2. An individual who was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State, or an organization referred to in sub-paragraph (b) of paragraph 1, solely to acquire technical, professional or business experience, shall be exempt from tax in that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount of such remuneration received from abroad by such individual and of remuneration paid in that other

Contracting State does not exceed the sum of 1,800,000 Yen if that other Contracting State is Japan, or 2,700,000 Indonesian Rupiahs if that other Contracting State is Indonesia, during any calendar year.

3. An individual who was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months under arrangements with the Government of that other Contracting State, solely for the purpose of study, research or training, shall be exempt from tax in that other Contracting State on remuneration for his services directly related to such study, research or training.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, as respects a period throughout which an individual qualifies for exemption under two or all of these paragraphs, he shall only be entitled to exemption under such one of the paragraphs under which he so qualifies as he may select.

5. For the purposes of this Article, the term “Government” shall be deemed to include any political subdivision or local authority of a Contracting State.

Article 22

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting 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 Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

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

(a) Where a resident of Japan derives income from

Indonesia and that income may be taxed in Indonesia in accordance with the provisions of this Agreement, the amount of Indonesian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

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

2. (a) For the purposes of sub-paragraph (a) of paragraph 1, Indonesian tax shall always be deemed to have been paid at the rate of 10 per cent in the case of dividends to which the provisions of sub-paragraph (a) of paragraph 2 of Article 10 apply, of interest to which the provisions of paragraph 2 of Article 11 apply, and of royalties to which the provisions of paragraph 2 of Article 12 apply, and at the rate of 15 per cent in the case of dividends to which the provisions of sub-paragraph (b) of paragraph 2 of Article 10 apply, if:

(i) such dividends, interest or royalties are paid by a company which is a resident of Indonesia and which, at the time of the payment, is engaged in the preferred areas of investment under Law No. 1 of 1967 regarding Foreign Capital Investment as amended by Article 1 of Law No. 11 of 1970 regarding Amendment and Supplement to Law No. 1 of 1967 regarding Foreign Capital Investment, so far as it has not been modified since the date of signature of this Agreement, or has been modified only in minor respects so as not to affect its general character;

(ii) such dividends, interest or royalties are those in respect of which Indonesian tax is exempted or reduced in accordance with the provisions of paragraph 3 of Article 16 of Law No. 1 of 1967 as amended, as referred to in (i) above; or

(iii) such dividends, interest or royalties are those in respect of which Indonesian tax is exempted or reduced in accordance with any other special incentive measures designed to promote economic development in Indonesia which may be introduced in the Indonesian laws after the date of signature of this Agreement, and which may be agreed upon by the Governments of the two Contracting States.

(b) For the purposes of sub-paragraph (b) of paragraph 1, the term “Indonesian tax payable” shall be deemed to include the amount of Indonesian tax which would have been paid if the Indonesian tax had not been exempted or reduced in accordance with:

(i) the provisions of paragraphs 1, 2 and 3 of Article 16 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i);

(ii) the provisions of sub-paragraph d of paragraph 4 of Article 15 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i); or

(iii) any other special incentive measures designed to promote economic development in Indonesia which may be introduced in the Indonesian laws after the date of signature of this Agreement, and which may be agreed upon by the Governments of the two Contracting States.

3. In Indonesia, double taxation shall be eliminated 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 Japan in accordance with the provisions of this Agreement;

(b) Where a resident of Indonesia derives income from Japan and that income may be taxed in Japan in accordance with the provisions of this Agreement, the amount of Japanese 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.

Article 24

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

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

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

3. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

4. 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 the first-mentioned Contracting State are or may be subjected.

5. Notwithstanding the provisions of the preceding paragraphs, Indonesia may limit to its nationals the enjoyment of tax incentives granted under:

(a) Law No. 6 of 1968 regarding Domestic Capital Investment, so far as it has not been modified since the date of signature of this Agreement, or has been modified only in minor respects so as

not to affect its general character; or

(b) any other enactment which may be promulgated by Indonesia in pursuance of its programme of economic development and to which the Governments of the two Contracting States may agree that the provisions of the preceding paragraphs shall not apply.

6. In this Article the term “taxation” means the taxes which are the subject of this Agreement.

Article 25

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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

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

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

Article 26

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the

carrying out of the provisions of this Agreement or for the prevention of fiscal evasion or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of this Agreement.

Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto and the persons with respect to whom the information relates.

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; or

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

Article 27

Nothing in this Agreement shall be construed as preventing the Governments of the two Contracting States from making special arrangements on taxation such as those on tax exemption in connection with the economic or technical cooperation between the two Contracting States.

Article 28

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 agreements.

The following paragraph 1 of Article 7 of the MLI applies to the Agreement:

Article 7 – Prevention of Treaty Abuse

1. **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 29

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

2. This Agreement shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect, in both Contracting States, as respects income derived during any taxable year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 30

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of three years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination.

In such event this Agreement shall cease to have effect, in both Contracting States, as respects income derived during any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given.

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

DONE in duplicate at Tokyo on the 3rd day of March, 1982, in the English language.

For the Government of Japan:

Yoshio Sakurauchi

For the Government of the Republic of Indonesia:

Suryohadiprojo

PROTOCOL

At the signing of the Agreement between Japan and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which form an integral part of the Agreement.

~~1. With reference to paragraph 8 of Article 5 of the Agreement, where a broker, general commission agent or any other agent is acting in a Contracting State wholly or almost wholly for an enterprise of the other Contracting State, he shall not be considered as having an independent status within the meaning of the said paragraph.~~[1]

2. With reference to Article 8 of the Agreement, the profits from the operation of ships within the meaning of the said Article shall comprise only those derived by an enterprise of a Contracting State which carries on shipping business on its own account and responsibility.

3. With reference to Article 16 of the Agreement, the term "a member of the board of directors of a company" shall include managing directors (anggota pengurus) and supervisory directors (anggota dewan komisaris) of a company which is a resident of Indonesia.

4. For the purposes of sub-paragraph (b) of paragraph 2 of Article 23 of the Agreement, the term "Indonesian tax payable" shall not include the amount of the Indonesian tax which would have been paid if there had not been carried over or carried back the losses incurred by a company which is a resident of Indonesia by application of investment allowance in accordance with the provisions or measures referred to in the said sub-paragraph, except in the case of a company which is a resident of Indonesia for which Indonesian tax has been exempted or reduced in accordance with the provisions of paragraph 3 of Article 16 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i) of paragraph 2 of Article 23 of the Agreement.

5. (a) Nothing in the Agreement shall be construed as preventing Indonesia from imposing in accordance with the provisions of Article 7 thereof such part of the tax on interest, dividend and royalty (Pajak Atas Bunga, Dividen dan Royalty) as is relevant to sub-paragraph b of Article 3 b of

[1] Paragraph 1 of the Protocol to the Agreement is replaced by paragraph 2 of Article 12 of the MLI (see page 11).

Dividend Tax Regulations of 1959 as amended and supplemented by Law No. 10 of 1970, so far as it has not been modified since the date of signature of this Protocol, or has been modified only in minor respects so as not to affect its general character, on the earnings (other than those derived from the operation of ships or aircraft in international traffic) of a company being a resident of Japan which has a permanent establishment in Indonesia; but such tax shall not exceed 10 per cent of the amount of such earnings, except where such earnings are those derived by such company under its oil or natural gas production-sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia.

(b) The above-mentioned tax in respect of the earnings of a company being a resident of Japan which has a permanent establishment in Indonesia derived under its oil or natural gas production-sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia shall not be less favourably levied in Indonesia than the above-mentioned tax levied in respect of the earnings of a company being a resident of any third state which has a permanent establishment in Indonesia derived under its oil or natural gas production-sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia.

(c) For the purposes of this paragraph, the term “earnings” means the amount remaining after deducting from the profits attributable to a permanent establishment which a company not being a resident of Indonesia has in Indonesia the amount of the Indonesian tax other than that referred to in (a) above imposed on such profits.

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

DONE in duplicate at Tokyo on the 3rd day of March, 1982, in the English language.

For the Government of Japan:

Yoshio Sakurauchi

For the Government of the Republic of Indonesia:

Suryohadiprojo