

**SYNTHESISED TEXT
OF THE MLI AND THE AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
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 the Government of Japan and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on October 24, 1995 (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 on June 7, 2017 and by Viet Nam on February 9, 2022 (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 June 20, 2023 and by Viet Nam on May 23, 2023 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 Viet Nam on September 1, 2023 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, 2024; and
- (ii) with respect to all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after March 1, 2024; and

(b) in Viet Nam:

- (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, 2024; and
- (ii) with respect to all other taxes levied by Viet Nam, for taxes levied with respect to taxable periods beginning on or after January 1, 2025.

AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
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
Socialist Republic of Viet Nam,

The following preamble text described in paragraph 3 of Article 6 of the MLI is included in the preamble of the Agreement:

Article 6 – Purpose of a Covered Tax Agreement

**Desiring to further develop their economic
relationship and to enhance their co-operation in tax
matters,**

~~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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of a local authority thereof, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of any property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

(a) in Viet Nam:

- (i) the personal income tax;
- (ii) the profit tax;
- (iii) the profit remittance tax;
- (iv) the foreign contractor tax
(to the extent which is considered as tax imposed on profit);
- (v) the foreign petroleum sub-contractor tax
(to the extent which is considered as tax imposed on profit); and
- (vi) the royalty tax

(hereinafter referred to as "Vietnamese tax");

(b) in Japan:

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

(hereinafter referred to as "Japanese tax").

4. This Agreement shall also apply to any identical or substantially similar taxes, whether national or local, which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any

substantial 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 "Viet Nam" means the Socialist Republic of Viet Nam; when used in a geographical sense, it means all its national territory, including its territorial sea, and any area beyond and adjacent to its territorial sea, within which Viet Nam by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the sea-bed and its subsoil and superjacent waters;
- (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 Viet Nam, as the context requires;
- (d) the term "tax" means Japanese tax or Vietnamese 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:

- (i) in the case of Viet Nam, all individuals possessing the nationality of Viet Nam and all legal persons, partnerships and associations deriving their status as such from the laws in force in Viet Nam;
- (ii) in the case of Japan, all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;
- (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; and
- (j) the term "competent authority" means:
 - (i) in the case of Viet Nam, the Minister of Finance or his authorized representative;
 - (ii) in the case of Japan, the Minister of Finance or his authorized representative.

2. As regards the application of this 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 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 or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and

economic relations are closer (centre of vital interests);

- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5

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

3. A building site, a construction, installation or assembly project or supervisory activities in connection

therewith, constitute a permanent establishment if such site, project or activities last more than six months.

4. 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, services including consultancy services through employees or other personnel provided that such activities last (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any twelve-month period.

~~5. Notwithstanding the provisions of the preceding paragraphs 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 of collecting information, for the enterprise;~~
- ~~(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;~~
- ~~(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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 5 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;
- 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 5 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.

6. Notwithstanding the provisions of paragraphs 1 and 2, 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 such a person:

- ~~(a) has and habitually exercises in the first-mentioned Contracting 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 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or~~
- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

The following paragraph 1 of Article 12 of the MLI 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. Notwithstanding the provisions of the preceding paragraphs of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 a person other than an agent of an independent status to whom the provisions of paragraph 8 apply.

~~8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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:

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 (including income from agriculture or forestry) 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 the 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 the 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 business 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. For the purposes of the provisions of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. 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. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Viet Nam, shall be exempt from the enterprise tax in Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in Viet Nam.

3. The provisions of the preceding paragraphs of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

1. Where

(a) an enterprise of a Contracting State participates

directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, 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 where the competent authorities of the Contracting States agree, upon consultation, that all or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

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 10 per cent of the gross amount of the dividends.

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 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, a local authority 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,

insured or indirectly financed by the Government of that other Contracting State, a local authority 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 that Government" mean:

(a) in the case of Viet Nam:

- (i) the State Bank of Viet Nam;
- (ii) the Bank for Foreign Trade of Viet Nam; and
- (iii) such other financial institution the capital of which is wholly owned by the Government of Viet Nam as may be agreed upon from time to time between the Governments of the two Contracting States;

(b) 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.

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, 2 and 3 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 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 software, 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. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, 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.

5. The provisions of paragraphs 1, 2 and 4 of this Article shall likewise apply to proceeds arising from the alienation of any copyright of literary, artistic or scientific work including software, cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, or secret formula or process, except when the provisions of paragraph 4 of Article 13 are applicable to the gains to be derived from such proceeds.

6. The provisions of paragraphs 1, 2 and 5 shall not apply if the beneficial owner of the royalties or proceeds, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or proceeds 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 or proceeds 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.

7. 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 or proceeds, 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 derived by a resident of a Contracting State from the alienation of shares issued by a company being a resident of the other Contracting State may be taxed in that other Contracting State, if:

- (a) shares held or owned by the alienator (together with such shares held or owned by any other related persons as may be aggregated therewith) amount to at least 25 per cent of the total shares issued by such company at any time during the taxable year; and
- (b) the total of the shares alienated by the alienator and such related persons during that taxable year amounts to at least 5 per cent of the total shares issued by such company.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of shares issued by a company which are not traded regularly at a recognized stock exchange of either Contracting State, or of an interest in a partnership, a trust or an estate may be taxed in a Contracting State where the property of such company, partnership, trust or estate consists principally of immovable property situated in that Contracting State.

4. Notwithstanding the provisions of paragraphs 2 and 3, 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.

5. Gains derived by an enterprise 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.

6. Gains from the alienation of any property other than that referred to in paragraph 5 of Article 12 and the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

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:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; or
- (b) he is present in that other Contracting State for a period or periods amounting to or 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 the preceding paragraphs 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 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 individual who is a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, and a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual, being a resident of the first-mentioned 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 exercised in a Contracting State by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person who is a resident of the other Contracting State, 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 sportsman 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 local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the 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 rendering the services.
2. (a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof shall be taxable only in that Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the 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 and pensions in respect of services rendered in connection with a business carried on by a

Contracting State or a local authority thereof.

ARTICLE 20

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 21

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 22

1. In Viet Nam, double taxation shall be eliminated as follows:

Where a resident of Viet Nam derives income, profits or gains which under the laws of Japan and in accordance with this Agreement may be taxed in Japan, Viet Nam shall allow as a credit against the Vietnamese tax imposed on that income, profits or gains an amount equal to the tax paid in Japan. The amount of credit, however, shall not exceed the amount of the Vietnamese tax on that income, profits or gains computed in accordance with the taxation laws and regulations of Viet Nam.

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

- (a) Where a resident of Japan derives income from Viet Nam which may be taxed in Viet Nam in accordance with the provisions of this Agreement, the amount of Vietnamese 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 Viet Nam is a dividend paid by a company which is a resident of Viet Nam to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares issued by the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Vietnamese tax payable by the company paying the dividend in respect of its income.

3. For the purposes of the credit referred to in paragraph 2, taking into account the stage of economic development of Viet Nam, there shall be deemed to have been paid by the taxpayer the amount which would have been paid as Vietnamese tax under the laws of Viet Nam and in accordance with this Agreement if the Vietnamese tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in Viet Nam, effective on the date of signature of this Agreement or which may be introduced in the future in the Vietnamese tax laws in modification of or in addition to the existing measures, provided that an agreement is made between the two Governments in respect of the scope of the benefit accorded to the taxpayer by the said measures.

4. For the purposes of the credit referred to in subparagraph (a) of paragraph 2, the Vietnamese tax shall always be considered as having been paid at the rate of 10 per cent of the gross amount in the case of dividends to which the provisions of paragraph 2 of Article 10 apply and of royalties or proceeds to which the provisions of paragraph 2 or 5 of Article 12 apply.

5. The provisions of paragraphs 3 and 4 of this Article shall not apply in respect of income derived by a resident of Japan in any taxable year beginning after 31 December of the fifteenth calendar year next following the calendar year in which this Agreement enters into force.

ARTICLE 23

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other 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 paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 7 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.

ARTICLE 24

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 23, 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 of this Article.

ARTICLE 25

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 States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the provisions of this Agreement, or for the prevention of fiscal evasion with respect to such taxes. 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 Contracting 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 this 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 (ordre public).

3. Notwithstanding the provisions of Article 2, the term "taxes covered by this Agreement" referred to in paragraph 1 shall include taxes of every kind and description imposed by the Contracting States.

ARTICLE 26

1. Each of the Contracting States shall endeavour to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Agreement by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

2. In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting States endeavouring to collect the taxes the obligation to carry out administrative measures at variance with the laws and administrative practice of that Contracting State or which would be contrary to the public policy (ordre public) of that Contracting State.

ARTICLE 27

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 28

1. This Agreement shall be approved in accordance with the legal procedures of each of the Contracting States, and shall enter into force on the thirtieth day after the date of exchange of notes indicating such approval.

2. This Agreement shall be applicable:

(a) in Viet Nam:

- (i) in respect of taxes withheld at source, in relation to taxable amount paid on or after the first day of January of the calendar year next following that in which this Agreement enters into force;
- (ii) in respect of other taxes, in relation to income, profits or gains arising in 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;

(b) in Japan:

- (i) with respect to taxes withheld at source, for amounts taxable on or after the first day of January of the calendar year next following that in which this Agreement enters into force;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for 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;
- (iii) with respect to other taxes, as regards taxes for 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 29

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

(a) in Viet Nam:

- (i) in respect of taxes withheld at source, in relation to taxable amount paid on or after the first day of January of the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other taxes, in relation to income, profits or gains arising in any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(b) in Japan:

- (i) with respect to taxes withheld at source, for amounts taxable on or after the first day of January of the calendar year next following that in which the notice of termination is given;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;
- (iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

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

DONE at Hanoi in duplicate on this 24th day of October, 1995 in the Japanese, Vietnamese and English languages, all the three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
Japan:

Katsunari Suzuki

For the Government of
the Socialist Republic of
Viet Nam:

Ho Te

PROTOCOL

At the signing of the Agreement between the Government of Japan and the Government of the Socialist Republic of Viet Nam 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 shall form an integral part of the Agreement.

1. With reference to sub-paragraph (f) of paragraph 2 of Article 5 of the Agreement, it is understood that a company who is a resident of a Contracting State and carries on activities offshore in the other Contracting State in connection with the exploration of natural resources situated in the sea-bed and subsoil of that other Contracting State shall also be deemed in relation to those activities to have a permanent establishment in that other Contracting State and to carry on business through that permanent establishment in that other Contracting State, provided that such activities are carried on for a period or periods aggregating more than thirty days within any consecutive twelve-month period.

2. With reference to Article 7 of the Agreement, it is understood that, when a Japanese enterprise carries on business in Viet Nam through a permanent establishment situated therein, the provisions of the said Article shall not be construed as preventing Viet Nam from imposing the foreign contractor tax or the foreign petroleum sub-contractor tax on the gross receipt of that permanent establishment, provided that, when that permanent establishment files a tax return which provides proper information showing that the final profit tax liability on its profit calculated from such receipt in accordance with the provisions of the said Article is less than the amount considered as tax imposed on profit, of the foreign contractor tax or the foreign petroleum sub-contractor tax withheld, that permanent establishment may claim a refund for the difference between the amount considered as tax imposed on profit, of the foreign contractor tax or the foreign petroleum sub-contractor tax withheld and the final profit tax liability filed.

3. With reference to paragraphs 2 and 4 of Article 23 of the Agreement, it is understood that the provisions of the said paragraphs shall not be construed as preventing Viet Nam from:

- (a) imposing the taxation in accordance with Article 26 of the Law on Foreign Investment in Viet Nam

1987, as amended in 1990 and 1992, with respect to the exploitation of oil , gas and a number of other rare and precious natural resources;

- (b) imposing the profit remittance tax in accordance with Article 33 of the Law on Foreign Investment in Viet Nam 1987, as amended in 1990 and 1992, on the disposal out of Viet Nam of profits made by a permanent establishment situated in Viet Nam;
- (c) imposing the taxation in accordance with the Law on Foreign Investment in Viet Nam 1987, as amended in 1990 and 1992, on the profits from the agriculture production activities made by a permanent establishment situated in Viet Nam or by an enterprise of Viet Nam, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more Japanese residents.

4. The exemption or reduction of tax provided for in the Agreement shall not apply to income arising in a Contracting State and derived by a person, other than an individual, who is a resident of the other Contracting State if such person is exempt from tax in that other Contracting State under its laws with respect to any income or profits arising in that other Contracting State, except when such person has a fixed facility, including an office or a factory, in that other Contracting State which is considered as necessary for conducting its principal business, and manages and controls such business by itself in that other Contracting State.

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

DONE at Hanoi in duplicate on this 24th day of October, 1995 in the Japanese, Vietnamese and English languages, all the three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
Japan:

Katsunari Suzuki

For the Government of
the Socialist Republic of
Viet Nam:

Ho Te