

SYNTHESISED TEXT OF THE MLI AND CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF HUNGARY AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Government of the Republic of Hungary and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on April 15, 1992 and amended by Protocol signed on May 3, 1994 (hereinafter referred to as “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Hungary and Canada on June 7, 2017 (hereinafter referred to as “the MLI”).

The document was prepared on the basis of the position of Hungary submitted to the Depository upon ratification on 25 March 2021 and of the MLI position of Canada submitted to the Depository upon ratification on 29 August 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as “Covered Tax Agreement” and “Convention”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The MLI position of Hungary submitted to the Depository upon ratification on 25 March 2021 and the MLI position of Canada submitted to the Depository upon acceptance on 29 August 2019 can be found on the MLI Depository (OECD) webpage (<http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made Hungary and Canada in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 25 March 2021 for Hungary and 29 August 2019 for Canada.

Entry into force of the MLI: 1 July 2021 for Hungary and 1 December 2019 for Canada.

This document provides specific information on the dates on or after which each of the provisions of the MLI has effect with respect to the Convention throughout this document.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- 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 1 January 2022;
- ii. with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Convention:

- i. with respect to cases presented to the competent authority of a Contracting State (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI), after the competent authorities of the Contracting States reach an agreement on the type of arbitration process; and

In accordance with paragraph 2 of Article 36 of the MLI, Part VI (Arbitration) of the MLI will apply to a case presented to the competent authority of a Contracting State prior to 1 July 2021 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF HUNGARY AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Hungary and the Government Canada, desiring conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

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

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

have agreed as follows:

I. SCOPE OF THE CONVENTION

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

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

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

(3) The existing taxes to which the Convention shall apply are, in particular:

(a) in the case of Canada:

the income and capital taxes imposed by the Government of Canada,
(hereinafter referred to as "Canadian tax");

(b) in the case of the Republic of Hungary:

(i) the income tax on individuals;

(ii) the profit taxes;

(hereinafter referred to as "Hungarian tax").

(4) The Convention shall apply also to any identical or substantially similar taxes and to taxes on capital which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

II. DEFINITIONS

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "Canada", used in a geographical sense, means the territory of Canada, including:

(i) any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(ii) the seas and airspace above every area referred to in sub-paragraph (i) in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;

(b) the term "Republic of Hungary", used in a geographical sense, means the territory of the Republic of Hungary;

(c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or the Republic of Hungary;

(d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian law;

(f) 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;

(g) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorized representative,

(ii) in the case of the Republic of Hungary, the Minister of Finance or his authorized representative;

- (h) the term "tax" means Canadian tax or Hungarian tax, as the context requires;
 - (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
 - (j) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State.
- (2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

RESIDENT

- (1) For the purposes of this Convention, the term "resident of a Contracting State" means:
- (a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;
 - (b) the Government of that Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government or authority.
- (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 State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3) Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then its status shall be determined as follows:
- (a) it shall be deemed to be a resident of the State of which it is a national;
 - (b) if it is a national of neither of the States, it shall be deemed to be a resident of the State in which its place of effective management is situated.
- (4) Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

ARTICLE 5

PERMANENT ESTABLISHMENT

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.
- (2) For the purposes of paragraph 1, the term "place of business" includes also a place of production.
- (3) 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 building site, a construction, installation or assembly project which exists for more than 12 months.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" in respect of a resident of a Contracting State shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;

(b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another person;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the resident;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident, 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.

(5) Notwithstanding the provisions of paragraphs 1 and 3, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of a resident of a Contracting State and has, and habitually exercises in the other Contracting State an authority to conclude contracts in the name of the resident, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which that person undertakes for the resident unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) A resident 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 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.

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

III. TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) For the purposes of this Convention, the term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to income, such as the recovery of prior depreciation granted in respect of such property, arising on the alienation of such property.

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property used in carrying on a business or in the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

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

(2) Subject to the provisions of paragraph 3, where a resident 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 business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with all other persons.

(3) In the determination of the business profits of a permanent establishment, there shall be allowed those expenses that are deductible under the laws of the Contracting State in which the permanent establishment is situated and that are incurred for the purposes of that permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) No business profits shall be attributed to a permanent establishment of a person by reason of the mere purchase by that permanent establishment of goods or merchandise for the person.

(5) For the purposes of the preceding paragraphs, the business 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 business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

(1) Profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1 and Article 7, profits derived from the operation of ships or aircraft between places in a Contracting State may be taxed in that State.

(3) The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by a resident of a Contracting State from its participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

(1) Where

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

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

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

(2) Where a Contracting State includes in the income of a resident of that State and taxes accordingly income on which a resident of the other Contracting State has been charged to tax in that other State and the income so included is income which would have accrued to the first mentioned person if the conditions made between the two persons had been those which would have been made between independent persons, then that other State shall make an appropriate adjustment to the amount of tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

(3) A Contracting State shall not change the income of a person in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in

which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that person.

(4) Subject to the provisions of the tax laws of each Contracting State, the provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 10

DIVIDENDS

(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 State.

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

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(b) notwithstanding sub-paragraph (a), 10 per cent of the gross amount of the dividends if the dividends are paid by a company that is resident of Canada and a non-resident owned-investment corporation to a company that is a resident of the Republic of Hungary that controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends and the beneficial owner of such dividends; and

(c) 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 on the profits out of which the dividends are paid.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

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

(6) Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits, including any gains, attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

ARTICLE 11

1 Amended by Protocol signed on May 3, 1994

2 Amended by Protocol signed on May 3, 1994

INTEREST

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

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State and paid in respect of a bond, debenture or other similar obligation of the government of that Contracting State or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other State;

(b) interest arising in the Republic of Hungary and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation;

(c) interest arising in Canada and paid to a resident of the Republic of Hungary shall be taxable only in the Republic of Hungary if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Hungarian National Bank or any other entity as may be specified and mutually agreed in letters exchanged between the competent authorities of the Contracting States; and

(d) interest arising in a Contracting State and paid to a resident of the other Contracting State who was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans shall not be taxable in the first mentioned State provided that:

(i) the resident is the beneficial owner of the interest and is generally exempt from tax in the other State, and

(ii) the interest is not derived from carrying on a trade or a business or from a related person.

(4) The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

(5) The provisions of paragraph 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 State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply

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

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other 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 Convention.

ARTICLE 12

ROYALTIES

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

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television) arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax thereon shall be taxable only in that other State.

(4) 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, patent, trade mark, design or model, plan, secret formula or process or other similar intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film, videotape or other means of reproduction for use in connection with television.

(5) The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

CAPITAL GAINS

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

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

(3) Gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of Article 22.

(4) Gains from the alienation of:

(a) shares (other than shares quoted on an approved stock exchange in the other State) forming part of a substantial interest in the capital stock of a company which is a resident of that other State the value of which shares is derived principally from immovable property situated in that other State; or

(b) a substantial interest in a partnership, trust or estate, established under the law in the other State, the value of which is derived principally from immovable property situated in that other State,

may be taxed in that State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in sub-paragraph (a) or an interest in a partnership, trust or estate referred to in sub-paragraph (b) but does not include any property, other than rental property, in which the business of the company, partnership, trust or estate is carried on.

(5) Where a resident of one of the Contracting States alienates property in the course of a corporate organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation

is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other State may agree, subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

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

(7) The provisions of paragraph 6 shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first mentioned State at any time during the six years immediately preceding the alienation of the property unless the property was never owned by the individual while he was a resident of the first mentioned State.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has or had such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

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

(2) Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State if the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned, and either:

(a) the remuneration earned in the other Contracting State in the calendar year concerned does not exceed five thousand Canadian dollars (\$5,000) or its equivalent in Hungarian currency; or

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State, may be taxed in that State.

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

(3) The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the athlete nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

(4) The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a non-profit organization or by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds and the activities are not performed for the purpose of profit.

ARTICLE 18

PENSIONS AND ANNUITIES

(1) Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) Pensions, including alimony and other similar payments, arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of:

(a) 15 per cent of the gross amount of the payment, and

(b) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by him in the year, if he were resident in the Contracting State in which the payment arises.

(3) Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 10 per cent of the portion thereof that is subject to tax in that State. However, this limitation does not apply to lump sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

(4) Notwithstanding anything in this Convention:

(a) war veterans pensions and allowances arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in that other State to the extent that they would be exempt from tax if received by a resident of the first mentioned State;

(b) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State; and

(c) pensions and allowances, received from a Contracting and paid under the social security legislation of that Contracting State shall not be taxable in the other Contracting State so long as they are not subject to tax in the first mentioned State.

ARTICLE 19

GOVERNMENT SERVICE

(1) Salaries, wages and other similar 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 in any other State to that State or subdivision or authority shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

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

(b) did not become a resident of that other State solely for the purpose of rendering the services.

(2) The provisions of paragraph 1 shall not apply to remuneration 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. The provisions of Articles 15 and 16, as the case may be, shall apply to such remuneration.

ARTICLE 20

STUDENTS

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

ARTICLE 21

OTHER INCOME

(1) Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State. However, in the case of income from an estate or trust, the tax so charged shall, provided that the income is taxable in the Contracting State in which the beneficial owner is a resident, not exceed 15 per cent of the gross amount of the income.

IV. TAXATION OF CAPITAL

ARTICLE 22

CAPITAL

(1) Capital represented by immovable property owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by movable property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

V. METHODS FOR PREVENTION OF DOUBLE TAXATION

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

(1) In the case of Canada, double taxation shall be avoided as follows:

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general principle hereof - and unless a greater deduction or relief is provided under the laws of Canada, tax payable

in the Republic of Hungary on profits, income or gains arising in the Republic of Hungary shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the Republic of Hungary.

(2) In the case of the Republic of Hungary, double taxation shall be avoided as follows:

(a) Where a resident of the Republic of Hungary derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Canada, the Republic of Hungary shall, subject to the provisions of subparagraphs (b) and (c), exempt such income or capital from tax.

(b) Where a resident of the Republic of Hungary derives items of income which, in accordance with the provisions of Article 10, may be taxed in Canada, the Republic of Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Canada. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Canada.

(c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of the Republic of Hungary is exempt from tax in the Republic of Hungary, the Republic of Hungary may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

(3) For the purposes of this Article, profits, income or gains of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

VI. SPECIAL PROVISIONS

ARTICLE 24

NON-DISCRIMINATION

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on residents of that other State carrying on the same activities.

(3) Nothing in this Article shall 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.

(4) Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

(5) In this Article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which he is a resident,

an application in writing stating the grounds for claiming the revision of such taxation. **[REPLACED by the second sentence of paragraph 1 of Article 16 of the MLI]** [To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 25 of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

(2) The competent authority referred to in paragraph 1 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 not in accordance with the Convention.

(3) A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. Subject to the provisions of the tax laws of each Contracting State, this paragraph shall not apply in the case of fraud, wilful default or neglect.

(4) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

(5) The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention and may communicate with each other directly for the purpose of applying the Convention.

The following part VI of the MLI applies to this Convention:

PART VI OF THE MLI (ARBITRATION)

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under paragraph 1 of Article 25 of this Convention, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 25 of the Convention, within a period of two years beginning on the start date referred to in paragraph 8 or 9 of Article 19 of the MLI, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

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

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

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI, the period provided in subparagraph b) of

paragraph 1 of Article 19 of the MLI shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

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

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

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

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

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

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

a) send a notification to the person who presented the case that it has received the request; and

b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

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

a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or

b) request additional information from that person for that purpose.

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

a) that it has received the requested information; or

b) that some of the requested information is still missing.

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

a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 of Article 19 of the MLI; and

b) the date that is three calendar months after the notification to the competent authority of the other Contracting State pursuant to subparagraph b) of paragraph 5 of Article 19 of the MLI.

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

a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 of Article 19 of the MLI; and

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

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

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 25 of this Convention settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

12. Notwithstanding the other provisions of this Article of the MLI:

a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by the MLI shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting State;

b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

Article 20 (Appointment of Arbitrators) of the MLI

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 of Article 20 of the MLI shall apply for the purposes of this Part.

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

a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.

b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 of the MLI. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.

c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

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

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

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this Convention and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of this Convention related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the

arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of this Convention related to exchange of information and administrative assistance and under the applicable laws of the Contracting States.

Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI

For the purposes of this Part and the provisions of this Convention that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 (Type of Arbitration Process) of the MLI

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

Article 25 (Costs of Arbitration Proceedings) of the MLI

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

Article 26 (Compatibility) of the MLI

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

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

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

Pursuant to Article 28(2)(a) of the Convention, Hungary formulates the following reservation(s) with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI.

1. Hungary reserves the right to exclude from the scope of Part VI any case that falls within the scope of application of the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC) as amended or any subsequent regulation replacing, amending or updating these rules.
2. Hungary reserves the right to exclude from the scope of Part VI any case that falls within the scope of application of the COUNCIL DIRECTIVE (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union or any subsequent regulation replacing, amending or updating these rules.
3. Hungary reserves the right to exclude from the scope of Part VI – on a case-by-case basis – any case where penalties were imposed in relation to the adjusted income or capital for tax fraud, wilful default and gross negligence in accordance with Hungary's domestic rules included in Section 41/J, paragraph (12) of the Act XXXVII of 2013 on Certain Rules of International Administrative Cooperation in Relation to Taxes and Other Public Duties. Any subsequent provision replacing, amending or updating these rules would also be included in this reservation. Hungary shall notify the Depositary of any such subsequent provision.

4. Hungary reserves the right to exclude from the scope of Part VI any case which the competent authorities of both Contracting Jurisdictions agree are not suitable for arbitration. Such agreement shall be reached before the date on which arbitration proceedings would otherwise have begun and shall be notified to the person who presented the case.
5. Hungary reserves the right to exclude from the scope of Part VI any case which relates to questions of dispute relating to income or capital earned in a tax year commencing before 1 January 2018.

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

1. Canada reserves the right to limit the scope of issues eligible for arbitration to the following:

- (a) Issues arising under provisions akin to Article 4 (Resident) of the OECD Model Tax Convention, but only insofar as the issue relates to the residence of an individual;
- (b) Issues arising under provisions akin to Article 5 (Permanent Establishment) of the OECD Model Tax Convention;
- (c) Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention;
- (d) Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention;
- (e) Issues arising under provisions akin to Article 12 (Royalties) of the OECD Model Tax Convention, but only insofar as such a provision might apply in transactions involving related persons to which provisions akin to Article 9 of the OECD Model Tax Convention might apply; and
- (f) Any other provisions subsequently agreed by the Contracting [States] through an exchange of diplomatic notes.

2. Canada reserves the right to exclude from the scope of the arbitration provisions issues pertaining to the application of anti-abuse provisions whether contained in the MLI, the Convention, or the domestic law of a Contracting State.

ARTICLE 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any secret information received by a Contracting State shall be treated in the same manner as secret information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if:

(a) in accordance with the general rules of international law he is entitled to the fiscal privileges applicable to such members in the receiving State, and

(b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that sending State.

(3) The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

ARTICLE 28

MISCELLANEOUS RULES

(1) The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded

(a) by the laws of a Contracting State in the determination of the tax imposed by that State; or

(b) by any other agreement entered into by a Contracting State.

(2) Nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act or as preventing the Republic of Hungary from imposing a similar tax on amounts included in the income of a resident of the Republic of Hungary.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

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

VII. FINAL PROVISIONS

ARTICLE 29

ENTRY INTO FORCE

(1) The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

(2) This Convention shall enter into force sixty days after the date on which the latter of the notifications referred to in paragraph 1 is received and its provisions shall apply:

(a) in respect of tax withheld at the source on amounts paid or credited on or after the first day of January in the calendar year next following that in which the Convention enters into force; and

(b) in respect of other tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

ARTICLE 30

TERMINATION

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 of any calendar year, beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State a notice of termination in writing through diplomatic channels; in such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source on amounts paid or credited on or after the first day of January of the next following calendar year; and

(b) in respect of other tax for taxation years beginning on or after the first day of January of the next following calendar year.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Budapest, this 15th day of April 1992 in the English, French and Hungarian languages, each version being equally authentic.

PROTOCOL

At the signing today of the Convention between the Government of Finland and the Government of the Hungarian People's Republic for the avoidance of double taxation with respect to taxes on income and on capital the undersigned have agreed upon the following provisions which shall form an integral part of the Convention:

1. Ad Article 2, paragraph 3

The existing Hungarian income taxes (a jövedelemadók) covered by sub-paragraph (b)(i) of paragraph 3 of Article 2 of the Convention are:

- (a) the general income tax (az általános jövedelemadó);
- (b) the income tax of those practising intellectual activity (a szellemi tevékenységet folytatók jövedelemadója); and
- (c) the income tax on household and auxiliary farms (a háztáji és kisegítő gazdaságok jövedelemadója).

The existing Hungarian profit taxes (a nyereségadók) covered by sub-paragraph (b)(ii) of paragraph 3 of Article 2 of the Convention are:

- (a) the profit tax (a nyereségadó);
- (b) the profit tax of economic associations with foreign participation (a külföldi részvétellel működő gazdasági társulások nyereségadója);
- (c) the profit tax of state enterprises (az állami vállalatok nyereségadója); and
- (d) the taxes of foreigners' commercial and other business agencies (a külföldiek kereskedelmi és egyéb, üzleti jellegű képviselőiténak adója).

2. Ad Article 5, paragraph 3

Notwithstanding the provisions of paragraph 3 of Article 5 of the Convention, the competent authorities of the Contracting State may, by mutual agreement, decide in each case that a project on erecting a substantial complete project for production, e.g. a power plant or paper mill, shall not constitute a permanent establishment even when it lasts more than 12 months. The period of time referred to in the preceding sentence shall in no case, however, exceed 24 months.

3. Ad Article 8, paragraph 1

Profits from the operation of ships or aircraft in international traffic shall be deemed to include, i.a., the sale of passage tickets.

4. Ad Article 10, paragraph 2, sub-paragraph (a)

Economic associations with foreign participation can be established in the Hungarian People's Republic also in the form of unlimited liability partnerships. Where such an association is established in that form, the provisions of Article 10 shall be applied correspondingly to the dividends paid by the association.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Budapest this 25th day of October 1978, in the English language.