

SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN MALTA AND THE REPUBLIC OF FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

General disclaimer on the Synthesised text document

This document was prepared in consultation with the competent authority of Finland and presents the shared understanding of the modifications made to the Agreement by the MLI.

This document presents the synthesised text for the application of the Agreement between Malta and the Republic of Finland for the Avoidance of Double Taxation with respect to Taxes on Income on signed on 30 October 2000 (the “Agreement”), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* signed by the Republic of Finland and Malta on 7 June 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of Malta submitted to the Depositary upon ratification on 18 December 25 October 2017 and of the MLI position of Finland submitted to the Depositary upon acceptance on 25 February 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 the Agreement.

The authentic legal texts of the Agreement 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 Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. 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 Agreement (such as “Covered Tax Agreement” and “Agreement”, “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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI can be found on the MLI Depository (OECD) webpage:

- In English: <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf> and
- In French: <http://www.oecd.org/fr/fiscalite/conventions/convention-multilaterale-pour-la-mise-en-oeuvre-des-mesures-relatives-aux-conventions-fiscales-pour-prevenir-le-BEPS.pdf>

The MLI position of Republic of Finland submitted to the Depository upon acceptance on 25 February 2019 and the MLI position of Malta submitted to the Depository upon ratification on 18 December 2018 can be found on the MLI Depository (OECD) webpage: <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>

The MLI Matching Database is publicly available on the OECD webpage: <http://www.oecd.org/tax/treaties/mli-matching-database.htm>

The legal texts of the MLI and the Agreement can be found at the following links:

➤ For Malta:

<http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=123>

➤ For Finland:

- The Act on Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting is published in Statute Book of Finland 231/2019 <https://www.finlex.fi/fi/laki/alkup/2019/20190231>
- The Government's Statute on the entry into force of the MLI, the Act and the Finnish text (translation) of the MLI is published in the Treaty Series of the Statute Book of Finland SopS 21-22/2019
<https://www.finlex.fi/fi/sopimukset/sopsteksti/2019/20190021>
<https://www.finlex.fi/fi/sopimukset/sopsteksti/2019/20190022>
- The Announcement of the Ministry of Finance on the entry into force of the MLI in Malta is published in the Treaty Series of the Statute Book of Finland 40/2019
https://www.finlex.fi/fi/sopimukset/sopsteksti/2019/20190040/20190040_1
- Agreement between the Government of the Republic of Finland and the Government of Malta for the avoidance of double taxation with respect to taxes on income signed at Rome 30 October 2000 date is published in the Treaty Series of the Statute Book

of Finland SopS 82/2001. Link to Finnish language version
https://www.finlex.fi/fi/sopimukset/sopsteksti/2001/20010082/20010082_2

The MLI position of Malta submitted to the Depositary upon ratification on 18 December 2018 and of the position of Finland submitted to the Depositary upon acceptance on 25 February 2019 can be found on [the MLI Depositary \(OECD\) webpage](#).

Disclaimer on the entry into effect of the provisions of the MLI

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of 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 by Malta and the Republic of Finland in their MLI positions.

Dates of the deposit of instruments of ratification or acceptance: 18 December 2018 for Malta and 25 February 2019 for Finland.

Entry into force of the MLI: 1 April 2019 for Malta and 1 June 2019 for Finland.

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 Agreement throughout this document.

AGREEMENT BETWEEN
MALTA AND THE REPUBLIC OF FINLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME

The Government of Malta and the Government of the Republic of Finland,
[REPLACED by paragraph 1 of Article 6 of the MLI] [desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income,]

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

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

Intending to eliminate double taxation with respect to the taxes covered by [*this 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 [*this Agreement*] for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

Article 1

Persons covered

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

Article 2

Taxes covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
 - (a) in Finland:

¹ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect with respect to the application of this Agreement:

- a) 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 2020; and
- b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

- (i) the state income taxes (valtion tuloverot; de statliga inkomstskatterna);
 - (ii) the corporate income tax (yhteisöjen tulovero; inkomstskatten för samfund);
 - (iii) the communal tax (kunnallisvero; kommunalskatten);
 - (iv) the church tax (kirkollisvero; kyrkoskatten);
 - (v) the tax withheld at source from interest (korkotulon lähdevero; källskatten på ränteinkomst); and
 - (vi) the tax withheld at source from non-residents' income (rajoitetusti verovelvollisen lähdevero; källskatten för begränsat skattskyldig);
- (hereinafter referred to as "Finnish tax");
- (b) in Malta:
- the income tax;
- (hereinafter referred to as "Malta tax").

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

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;
 - (b) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein the Republic of Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;
 - (c) the term "person" includes an individual, a company and any other body of persons;
 - (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (f) the term "national" means:

- (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
- (i) in Finland, the Ministry of Finance, its authorised representative or the authority which, by the Ministry of Finance, is designated as competent authority;
 - (ii) in Malta, the Minister responsible for finance or his authorised representative.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Residence

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation (registration) or any other criterion of a similar nature, and also includes that State and any statutory body or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident only 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 only 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 only 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 only 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 person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States

shall settle the question by mutual agreement and determine the mode of application of the Agreement to such person. In so settling and determining the status of that person other than an individual, consideration shall be given to the rules contained in paragraph 3 of Article 4 of the OECD Model Tax Convention, adopted in 1992 (as amended from time to time), especially to the reference concerning the place of effective management.

Article 5

Permanent establishment

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; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including an offshore drilling site.
3. The term "permanent establishment" likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than twelve months within any eighteen-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" 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 enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a 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.

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. (a) The term "immovable property" shall, subject to the provisions of sub-paragraphs b) and c), have the meaning which it has under the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" shall in any case include buildings, 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, or to explore for, mineral deposits, sources and other natural resources.

(c) 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable

property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

5. 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

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except where such containers are used for the transport of goods or merchandise solely between places within the other Contracting State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where -

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

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

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

Article 10

Dividends

1. Dividends paid by a company which is a resident of Finland to a resident of Malta may be taxed in Malta. However, such dividends may also be taxed in Finland and according to Finnish law, but

- (a) if the beneficial owner of the dividends is a resident of Malta, the tax so charged shall not exceed -
 - (i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls directly at least 10 per cent of the voting power in the company paying the dividends;
 - (ii) 15 per cent of the gross amount of the dividends in all other cases;
- (b) notwithstanding the provisions of sub-paragraph a), as long as an individual resident in Finland is under Finnish tax law entitled to a tax credit in respect of dividends paid by a company resident in Finland, dividends paid by a company which is a resident of Finland to a resident of Malta shall be taxable only in Malta if the beneficial owner of the dividends is a resident of Malta.

2. Dividends paid by a company which is a resident of Malta to a resident of Finland

may be taxed in Finland. However, such dividends may also be taxed in Malta and according to Maltese law, but -

- (a) if the beneficial owner of the dividends is a resident of Finland, no Malta tax shall be charged on the gross amount of the dividends in excess of the tax chargeable on the profits out of which the dividends are paid;
- (b) notwithstanding the provisions of sub-paragraph (a), Malta tax shall not exceed 15 per cent of the dividends if such dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. 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 State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. 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 the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State shall be taxable only in the other Contracting State if the beneficial owner of the interest is a resident of that other State.

2. 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. Penalty charges for late payment shall not be regarded as interest for the purpose

of this Article.

3. The provisions of paragraph 1 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.

4. 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

Royalties

1. Royalties arising in a Contracting State shall be taxable only in the other Contracting State if the beneficial owner of the royalties is a resident of that other State.

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

3. The provisions of paragraph 1 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.

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

Article 13

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights in a company deriving their value or the greater part of their value directly or indirectly from immovable property which forms part of the assets of the company and which is situated in the other Contracting State may be taxed in that other State. In this paragraph the term "shares" does not include shares quoted or listed on a recognised stock exchange.

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

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

5. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except where such containers are used for the transport of goods or merchandise solely between places within the other Contracting State.

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

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in that other State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in that other State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the calendar year concerned; in that case, only so much of the income as is

derived from his activities performed in that other State during such period or periods may be taxed in that other State.

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

Article 15

Dependent personal services

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration 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 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 any other 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 sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

Article 18

Pensions, annuities and similar payments

1. 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 State.

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 19, pensions paid and other benefits, whether periodic or lump-sum compensation, awarded under the social security legislation of a Contracting State or under any public scheme organised by a Contracting State for social welfare purposes, or any annuity arising in a Contracting State, shall be taxable only in that State.

3. The term "annuity" as used in this Article means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth (other than services rendered).

Article 19

Government service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual -
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.
(b) However, such pension shall be taxable only in the Contracting State of which the individual is a resident if he is a national of that State.

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

Article 20

Students and trainees

A student, trainee or apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purpose of his maintenance, education or training.

Article 21

Other income

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 State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22

Elimination of double taxation

1. Subject to the provisions of Finnish law regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Finland as follows:

- (a) Where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in Malta, Finland shall, subject to the provisions of sub-paragraph b), allow as a deduction from the Finnish tax of that person, an amount equal to the Malta tax paid under Maltese law and in accordance with the Agreement, as computed by reference to the same income by reference to which the Finnish tax is computed.
- (b) Dividends paid by a company being a resident of Malta to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.
- (c) Where in accordance with any provision of the Agreement income derived by a

resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on the remaining income of such person, take into account the exempted income.

2. In Malta double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within Finland, the Finnish tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

Article 23

Limitation of relief

The provisions of Articles 6 to 21 shall not apply to persons entitled to any special tax benefit under:

- (a) a law of a Contracting State which has been identified in an Exchange of Notes between the Governments of the Contracting States; or
- (b) any substantially similar law subsequently enacted.

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, 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 State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 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 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 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 State are or may be subjected.

Article 25

Mutual agreement procedure

1. **[The first sentence of paragraph 1 of Article 25 of this Agreement is REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI]** [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 law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.] 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 Agreement.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 25 of this Agreement:²

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*this Agreement*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

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

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

² In accordance with paragraphs 1 and 3 of Article 35 of the MLI, first sentence of paragraph 1 of Article 16 of the MLI has effect with respect to the application of this Agreement:

a) 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 2020; and

b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

*The following Part VI of the MLI applies to this Convention:*³

PART VI OF THE MLI (ARBITRATION)

Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under [*paragraph (1) of Article 25 of this Agreement*], 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 [*the Agreement*]; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to [*paragraph (2) of Article 25 of the Agreement*], 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 [*Part VI of the MLI*], 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

³ In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI has effect with respect to this Agreement with respect to cases presented to the competent authority of a Contracting State on or after 1 June 2019.

In accordance with paragraph 2 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI apply to a case presented to the competent authority of a Contracting State prior to 1 June 2019 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

However, the scope of cases eligible for arbitration under the provisions of Part VI of the MLI is limited due to reservations formulated in accordance with subparagraph a) of paragraph 2 of Article 28 of the MLI by the Contracting States. See these reservations at the end of this box.

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.

- 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 the Agreement] settle the mode of application of the provisions contained in [Part VI of the MLI], 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 [Article 19 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 [Part VI of the MLI].

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 [*Part VI of the MLI*] and of the provisions of [*the Agreement*] 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 [*the Agreement*] 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 [*the Agreement*] 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 [*Part VI of the MLI*] and the provisions of [*this Agreement*] 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.

Paragraphs 2 and 5 of Article 23 (Type of Arbitration Process) of the MLI

(Alternative 2- Independent opinion)

2. Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding:

- a) After a case is submitted to arbitration, the competent authority of each [*Contracting State*] shall provide any information that may be necessary for the arbitration decision to all panel members without undue delay. Unless the competent authorities of the [*Contracting States*] agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.
- b) The arbitration panel shall decide the issues submitted to arbitration in accordance with the applicable provisions of [*the Agreement*] and, subject to these provisions, of those of the domestic laws of the [*Contracting States*]. The panel members shall also consider any other sources which the competent authorities of the [*Contracting States*] may by mutual agreement expressly identify.
- c) The arbitration decision shall be delivered to the competent authorities of the [*Contracting States*] in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision shall be adopted by a simple majority of the panel members. The arbitration decision shall have no precedential value.

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 [*this Agreement*], as well as the arbitration proceeding under [*Part VI of the MLI*], 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.

Paragraph 2 of Article 24 (Agreement on a Different Resolution) of the MLI

2. Notwithstanding paragraph 4 of Article 19 [*of the MLI*], an arbitration decision pursuant to [*Part VI of the MLI*] shall not be binding on the [*Contracting States*] and shall not be implemented if the competent authorities of the [*Contracting States*] agree on a different resolution of all unresolved issues within three calendar months after the arbitration decision has been delivered to them.

Article 25 (Costs of Arbitration Proceedings of the MLI)

In an arbitration proceeding under [*Part VI of the MLI*], 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.

Paragraphs 2 and 3 of 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 [*Part VI of the MLI*] 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 [*Part VI of the MLI*] 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 subparagraph a) of paragraph 2 of Article 28 of the MLI, Malta 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:

Where a reservation made by the other [*Contracting State*] to a Covered Tax Agreement pursuant to Article 28(2)(a) refers exclusively to its domestic law (including legislative provisions, case law, judicial doctrines and penalties), Malta reserves the right to exclude from the scope of [*Part VI of the MLI*] those cases that would be excluded from the scope of [*Part VI of the MLI*] if the other [*Contracting State's*] reservation were formulated with

reference to any analogous provisions of Malta's domestic law or any subsequent provisions which replace, amend or update those provisions. The competent authority of Malta will consult with the competent authority of the other [*Contracting State*] in order to specify any such analogous provisions which exist in Malta's domestic law in the agreement concluded pursuant to Article 19(10).

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, Finland 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. Finland reserves the right to exclude from the scope of [*Part VI of the MLI*] cases involving the application of domestic anti-avoidance rules of either [*Contracting State*]. For this purpose, Finland's domestic anti-avoidance rules shall include Act on Assessment Procedure (verotusmenettelystä annettu laki (1558/1995)) sections 27 - 30, Act on the Taxation of Business Profits and Income from Professional Activities (elinkeinotulon verottamisesta annettu laki (360/1968)) section 6 a, subsection 9 and section 52 h and Act on the Taxation of Shareholders in Controlled Foreign Companies (ulkomaisten väliytteisöjen osakkaiden verotuksesta annetun laki (1217/1994)). Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be included in this reservation. Finland shall notify the Depository of any such subsequent provisions.

2. Finland reserves the right to exclude from the scope of [*Part VI of the MLI*] cases involving conduct for which the taxpayer or a person acting on the taxpayer's behalf has been found guilty by a court of tax fraud or other tax related criminal offence in either [*Contracting State*]. For this purpose, Finland's domestic rules shall include the Criminal Code (rikoslaki (39/1889)) chapter 29 sections 1-4. Any subsequent provisions replacing, amending or updating these rules would also be included in this reservation. Finland shall notify the Depository of any such subsequent provisions.

3. Finland reserves the right to exclude from the scope of [*Part VI of the MLI*] cases concerning items of income or capital where there is no double taxation. Double taxation means that both [*Contracting States*] have imposed taxes in respect of the same taxable income or capital giving rise to either additional tax charge, increase in tax liabilities or cancellation or reduction of losses, which could be used to offset taxable profits.

4. Finland reserves the right to exclude from the scope of [*Part VI of the MLI*]:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, cases which concern taxable events giving rise to such taxes that occur before the reference date;

b) with respect to all other taxes, cases which concern taxes levied with respect to taxable periods that begin before the reference date.

For the purposes of this reservation, “the reference date” is the latest of:

- i) the date of entry into effect of *[the MLI]* in both *[Contracting States]* with respect to such taxes;
- ii) the first day of January of the calendar year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depository of the latest definitive reservation withdrawal or notification which results in the application of *[Part VI of the MLI]* between both *[Contracting States]*; and
- iii) where the case is a type of case that would be potentially eligible for arbitration as a result of the withdrawal, subsequent to the entry into effect of *[Part VI of the MLI]* as between both *[Contracting States]*, of *[Contracting State’s]* reservation made pursuant to Article 28(2) or Article 19(12) *[of the MLI]*, the first day of January of the calendar year next following the expiration of a period of six calendar months beginning on the date of the communication of the Depository of the withdrawal of the reservation.

5. Finland reserves the right to exclude from the scope of *[Part VI of the MLI]* all cases where an application has been filed under the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC) - as amended, or under other instruments agreed by the member states of the European Union or under domestic rules which implement such instruments.

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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of,

or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

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

Article 27

Members of diplomatic missions and consular posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts 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 and supersedes the provisions of this Convention:*⁴

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

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

Article 28

⁴ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect with respect to the application of this Agreement:

- a) 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 2020; and
- b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

Entry into force

1. The Governments of the Contracting States shall notify each other that the legal requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

(a) in Finland:

- (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
- (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force;

(b) in Malta:

in respect of taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after 1 January immediately following the date on which the Agreement enters into force.

3. The Agreement between Malta and Finland for the avoidance of double taxation with respect to taxes on income and on capital, signed at Helsinki on 24 March 1975, (hereinafter referred to as "the 1975 Agreement"), shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2. The 1975 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provision of this paragraph.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

(a) in Finland:

- (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given;
- (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

(b) in Malta:

in respect of taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after 1 January immediately following the date on which the notice is given.

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

Done in duplicate at Rome this 30th day of October 2000, in the English language.

For the Government of
Malta

Joseph Cassar Dieter Vitzthum
For the Government of
the Republic of Finland

Mr Joseph Cassar
Ambassador of the Republic of Malta
Rome

Your Excellency,

I have the honour to refer to the Agreement between the Republic of Finland and Malta for the avoidance of double taxation with respect to taxes on income (hereinafter referred to as "the Agreement") which has been signed today and to propose on behalf of the Government of the Republic of Finland the following:

With reference to Article 23

The provisions of Articles 6 to 21 of the Agreement shall not apply to persons who are entitled to:

- (a) a special tax benefit under the Malta Financial Services Centre Act (Cap. 330), except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123) and of the Income Tax Management Act, 1994; or
- (b) exemption or any other special tax benefit under the provisions of the Merchant Shipping Act, 1973, as amended; this does not, however, apply to income that is subject to the normal Malta income tax; or
- (c) any special tax benefit in respect of distributions by a trust subject to the provisions of the Trusts Act given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Agreement in its own right, or
- (d) any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of Article 23.

If the foregoing proposals are acceptable to the Government of Malta, I have the

honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Agreement.

I avail myself of this opportunity to extend to you, Your Excellency, the assurance of my highest consideration.

Rome, 30 October 2000

Dieter Vitzthum
Ambassador of Finland

Mr Dieter Vitzthum
Ambassador of Finland
Rome

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of today's date which reads as follows:

"I have the honour to refer to the Agreement between the Republic of Finland and Malta for the avoidance of double taxation with respect to taxes on income (hereinafter referred to as "the Agreement") which has been signed today and to propose on behalf of the Government of the Republic of Finland the following:

With reference to Article 23

The provisions of Articles 6 to 21 of the Agreement shall not apply to persons who are entitled to:

- (a) a special tax benefit under the Malta Financial Services Centre Act (Cap. 330), except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123) and of the Income Tax Management Act, 1994; or
- (b) exemption or any other special tax benefit under the provisions of the Merchant Shipping Act, 1973, as amended; this does not, however, apply to income that is subject to the normal Malta income tax; or
- (c) any special tax benefit in respect of distributions by a trust subject to the provisions of the Trusts Act given that a trust as laid down in that Act is not vested

with legal personality and therefore cannot benefit under the Agreement in its own right, or

- (d) any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of Article 23.

If the foregoing proposals are acceptable to the Government of Malta, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Agreement."

The foregoing proposals being also acceptable to the Government of Malta, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Agreement.

I take this opportunity to renew to you, Your Excellency, the assurance of my highest consideration.

Rome, 30 October 2000

Joseph Cassar

Ambassador of Malta

