

**SYNTHESISED TEXT**  
**OF**  
**THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED**  
**MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI)**  
**AND**  
**THE CONVENTION**  
**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE**  
**GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE TAXATION AND**  
**THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**  
**AND ON CAPITAL**

This document was prepared jointly by the Competent Authorities of India and Ukraine and represents their shared understanding of the modifications made to the Convention by the MLI.

This document presents the synthesised text for the application of the Convention between the Government of the Republic of India and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on capital signed on 7<sup>th</sup> April, 1999 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the India on 7<sup>th</sup> June, 2017 and Ukraine on 23<sup>rd</sup> July, 2018 (the “MLI”).

The document was prepared on the basis of the MLI position of the India submitted to the Depository upon ratification on 25<sup>th</sup> June, 2019 and of the MLI position of the Ukraine submitted to the Depository upon ratification on 8<sup>th</sup> 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 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 authentic legal text of the MLI (in English) can be found on the MLI Depository (OECD) webpage at the following link:

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

In India: the authentic legal text of the Convention (in English) can be found at the following link:

<https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx>

In Ukraine: the authentic legal text of the Convention (in Ukrainian) can be found at the following link:

[https://zakon.rada.gov.ua/laws/show/356\\_010#Text](https://zakon.rada.gov.ua/laws/show/356_010#Text)

The MLI position of the India submitted to the Depository upon ratification on 25<sup>th</sup> June, 2019 and of the MLI position of the Ukraine submitted to the Depository upon ratification on 8<sup>th</sup> August, 2019 can be found [on the MLI Depository \(OECD\) webpage.](#)

Entry into Effect of the MLI Provisions:

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. 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 the India and the Ukraine in their MLI positions.

Dates of the deposit of instruments of ratification: 25<sup>th</sup> June, 2019 for India and 8<sup>th</sup> August, 2019 for the Ukraine.

Entry into force of the MLI: 1<sup>st</sup> October, 2019 for the India and 1<sup>st</sup> December, 2019 for the Ukraine.

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

- In India:
  - 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<sup>st</sup> April 2020; and
  - With respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1<sup>st</sup> April 2021.
  
- In Ukraine:
  - 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
  - with respect to all other taxes levied by Ukraine, for taxes levied with respect to taxable periods beginning on or after 1 June 2020.

**CONVENTION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF INDIA**  
**AND**  
**THE GOVERNMENT OF UKRAINE 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 India and the Government of Ukraine desiring to conclude a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital and confirming their aspiration for the development and strengthening of bilateral relations;

*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 <sup>1</sup>[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 :

**ARTICLE 1**  
**PERSONAL SCOPE**

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

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<sup>1</sup> The texts of the boxes in [Square brackets] and in *italics* indicate minor terminology changes made to the text of the MLI.

**ARTICLE 2**  
**TAXES COVERED**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, 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 and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular :
  - (a) In Ukraine :
    - (i) the profits tax of enterprise;
    - (ii) the individual income-tax;
    - (iii) tax on property of enterprises;
    - (iv) tax on immovable property of citizens  
(hereinafter referred to as "Ukrainian tax")
  - (b) In India :
    - (i) the income-tax, including any surcharge thereon;
    - (ii) the wealth-tax  
(hereinafter referred to as "Indian tax").
4. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

**ARTICLE 3**  
**GENERAL DEFINITIONS**

1. For the purpose of this Convention, unless the context otherwise requires :
  - (a) the term "Ukraine" means the territory of Ukraine, its continental shelf and its exclusive economic (maritime) zone, including any territory outside the territorial sea of Ukraine which, according to international law, is specified or may be specified, in line with the Ukrainian law, as the territory within which the rights of Ukraine relating to seabed and natural resources are effective;
  - (b) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law/U.N. Convention on the law of the sea;

- (c) the terms "a Contracting State" and "the other Contracting State" mean Ukraine or India as the context requires;
- (d) the term "tax" means Ukrainian or Indian tax, as the context requires, but shall not include any amount which is payable in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the taxation laws in force in the respective Contracting States;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "competent authority" means in the case of Ukraine - The State Tax Administration of Ukraine or its authorised representative; and in the case of India - The Ministry of Finance (Department of Revenue) or its authorised representative;
- (i) the term "national" means :
  - (i) any individual possessing the citizenship 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;
- (j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (k) the term "fiscal year" means :
  - (i) in the case of Ukraine, calendar year from 1st of January to 31st of December of the year under review;
  - (ii) in the case of India, the "previous year" as defined under section 3 of the Income tax Act, 1961.

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 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 registration or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources or capital situated in the Contracting 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 of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in other Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

## **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 an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a premises or warehouse used as a sales outlet or for receiving or soliciting orders;
- (i) an installation or structure used for the exploration or exploitation of natural resources;

(j) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** [a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months.]

*The following paragraph 1 of Article 14 of the MLI applies and supersedes subparagraph (j) of paragraph 2 of Article 5 of this Convention:*

#### **ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS**

**For the sole purpose of determining whether the period (or periods) referred to [in subparagraph (j) of paragraph 2 of Article 5 of the Convention] has been exceeded:**

- a) where an enterprise of a [Contracting State] carries on activities in the other [Contracting State] at a place that constitutes a building site [, or] construction [~~project~~], installation [or assembly] project [~~or other specific project identified in the [subparagraph (j) of paragraph 2 of Article 5 of the Convention]~~], or carries on supervisory [~~or consultancy~~] activities in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding period or periods referred to in [ subparagraph (j) of paragraph 2 of Article 5 of the Convention]; and
- b) where connected activities are carried on in that other [Contracting State] at [~~or, where the relevant provisions of the covered tax agreement applies to supervisory or consultancy activities in case of supervisory activities, in connection with~~] the same building site [, or] construction [, or] installation [or assembly] project or [supervisory activities in connection therewith other place identified in the [subparagraph (j) of paragraph 2 of Article 5 of the Convention] during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site [~~or~~] construction [, or] installation [or assembly] project or [supervisory activities in connection therewith other place identified in the [subparagraph (j) of paragraph 2 of Article 5 of the Convention] .



3. An enterprise shall be deemed to have a permanent establishment in a State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, extraction or production of mineral oils or in connection with such extraction or production of mineral oils in the State.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [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 unloading of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

*The following paragraph 2 of Article 13 of the MLI applies with respect to the paragraph 4 of Article 5 of this Convention:*

**ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS**

**Notwithstanding [Article 5 of the Convention], the term “permanent establishment” shall be deemed not to include:**

- a) i) **the use of facilities solely for the purpose of storage, display or unloading of goods or merchandise belonging to the enterprise;**
- ii) **the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;**
- iii) **the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;**
- iv) **the maintenance of fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;**
- v) **the maintenance of a fixed place of business solely for the purpose of**

**advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;**

- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);**
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),**

**provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.**

*The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of the Convention as modified by paragraph 2 of Article 13 of the MLI:*

**[Paragraph 4 of Article 5 of the Convention] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [Contracting State] and:**

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [Article 5 of the Convention]; or**
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,**

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person being a resident of a Contracting State - other than, an agent of an independent status to whom paragraph 6 applies, is acting on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if

- (a) [MODIFIED by paragraph 1 of Article 12 of the MLI] [he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise;]**

*The following paragraph 1 of Article 12 of the MLI applies with respect to the subparagraph (a) of paragraph 5 of Article 5 of this Convention:*

**ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT**

**ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS  
AND SIMILAR STRATEGIES**

Notwithstanding [*Article 5 of the Convention*], but subject to [*paragraph 6 of Article 5 of the Convention as modified by paragraph 2 of Article 12 of the MLI*], where a person is acting in a [*Contracting State*] on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that [*Contracting State*] in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that [*Contracting State*], would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of [*Article 5 of the Convention*].

(b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;

(c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise; or

(d) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. **[MODIFIED by paragraph 2 of Article 12 of the MLI]** [An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that of the enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.]

*The following paragraph 2 of Article 12 of the MLI applies with respect to paragraph 6 of Article 5 of this Convention:*

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

*[Paragraph 5 of Article 5 of the Convention as modified by Paragraph 1 of Article 12 of the MLI]* shall not apply where the person acting in a *[Contracting State]* on behalf of an enterprise of the other *[Contracting State]* carries on business in the first-mentioned *[Contracting State]* as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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

*The following paragraph 1 of Article 15 of the MLI applies to this Convention:*

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

For the purposes of the provisions of *[Article 5 of the Convention as modified paragraph 2 of Article 12, paragraph 4 of Article 13 and paragraph 1 of Article 14 of the MLI]*, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

## ARTICLE 6

### INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## ARTICLE 7

### BUSINESS PROFITS

1. The profits of an enterprise of 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 directly or indirectly to that permanent establishment.

The words "directly or indirectly" mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere in accordance with the provisions of and subject to the limitations of the tax laws of that State.

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

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

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

7. Where profits include items of income which are dealt with separately in other Articles of this 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 an enterprise of a Contracting State from operation of aircraft or ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of aircraft or ships.

3. For the purposes of this Article, interest on amounts connected with the operation of aircraft or ships in international traffic shall be regarded as profits derived from the operation of such aircraft or ships; and the provisions of Article 11 (Interest) shall not apply in relations to such interest.

4. For the purposes of this Article, profits from the operation of aircraft or ships in international traffic shall mean profits derived by an enterprise from transportation by air or sea respectively of passengers, mail, livestock, goods or cargoes of every description carried on by the owners or lessees or charterers of aircraft or ships. This will also include profit from:

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) the rental on a bareboat ship or aircraft;
- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandises in international traffic.

## **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.

## **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) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the share capital of the company paying the dividends;

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or so far 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 and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. 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.

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

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

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

7. The provisions of this Article shall not apply if its main purpose or one of the main purposes of any persons concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

8. Notwithstanding the provisions of paragraph 2,—

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- the Government, a political sub-division or a local authority of the other Contracting State; or
- the Central Bank of the other Contracting State;



(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

## **ARTICLE 12**

### **ROYALTIES AND FEES FOR TECHNICAL SERVICES**

1. Royalties and fees for technical services 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 and fees 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 and fees for technical services the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

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

4. The term "fees for technical services" as used in this Article means payment of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultative nature including, the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical-services 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 and fees for technical services shall be deemed to arise in a Contracting State when the payer is the State itself, political sub-division, a local authority or a resident of that State. Where, however, the person paying royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services 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 royalties or fees for technical services

paid exceeds the amount which would have been paid 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.

8. The provisions of this Article shall not apply if it is the main purposes or one of the main purposes of person concerned with the creation or transfer of the rights or rendering of services in respect of which the royalties or fees are paid to take advantage of this Article by means of that creation or assignment.

### ARTICLE 13 CAPITAL GAINS

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

2. 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.

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

4. **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly of immovable property and of an interest in a partnership assets of which consist principally of immovable property situated in a Contracting State may be taxed in that State.]

***The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 13 of this Convention:***

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

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

5. Gains from the alienation of shares of a company and an interest in a partnership other than those mentioned in paragraph 4, may be taxed in the Contracting State of which the company or partnership is resident.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident provided that those gains are subject to tax in that Contracting State.

## **ARTICLE 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar 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 the other Contracting 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;

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year, only so much of the income as is derived from his activities performed in that other State 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, surgeons, lawyers, engineers, architects, dentists and accountants.

## **ARTICLE 15**

### **DEPENDENT PERSONAL SERVICES**

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal 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, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

## **ARTICLE 16**

### **DIRECTORS' FEES**

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

## **ARTICLE 17**

### **ARTISTES AND SPORTSPERSONS**

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 sportsperson, from the 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 sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. Notwithstanding provisions of the paragraphs 1 and 2, income mentioned in this Article, will be exempt from taxation in the State in which the activity of actor or sportsperson is financed from the public funds of this and other State, or if such activity is carried out according to the agreement on cultural cooperation concluded between the Contracting States.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an actor or sportsperson in his capacity as such in a Contracting State accrues not to the actor or sportsperson himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

## **ARTICLE 18**

### **REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :—

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

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

## **ARTICLE 19**

### **NON-GOVERNMENT PENSIONS AND ANNUITIES**

1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first mentioned Contracting State.

2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term "annuity" means a stated sum payable periodically at stated time 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's worth.

## **ARTICLE 20**

### **PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES**

1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State in an amount not exceeding US \$ 500 or its equivalent amount in Ukrainian and Indian currency during any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

## **ARTICLE 21**

### **PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall not apply to income from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article and Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.
4. For the purposes of paragraph 1 "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

## **ARTICLE 22**

### **OTHER INCOME**

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt within the foregoing articles of this Convention, and arising in the other Contracting State may also be taxed in that other Contracting State.

## **ARTICLE 23**

### **CAPITAL**

1. Capital represented by immovable property referred to in Article 6, 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 an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to the 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, aircraft or motor vehicle operated in international traffic and by movable property pertaining to the operation of such ships, aircraft or motor vehicles, shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## ARTICLE 24

### AVOIDANCE OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States will continue to govern the taxation of income and capital in the respective Contracting States except where provisions to the contrary are made in this Convention.
2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Ukraine, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Ukraine, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Ukraine. Such deduction in either case shall not, however, exceed that part of incometax or tax on capital (as paid before the deduction is given), which is attributable to the income or the capital which may be taxed in Ukraine.
3. Taking into account the Ukrainian law on exemption from tax paid outside Ukraine (not being contrary to the provisions of this Article), the Indian tax paid pursuant to the Indian law and this Convention either directly or by deduction from profit, income, or capital, would be allowed as credit against Ukrainian tax in respect of profit, income, or capital imposed under Ukrainian law. In any such case, the credit shall not exceed that part of Ukrainian tax (as was determined before the deduction) which pertains to the profit, income, or capital which may be taxed in India.
4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.
5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

## ARTICLE 25

### 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 or that other State in the same circumstances 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 enterprise of that other State carrying on the same activities in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first mentioned Contracting State at rate higher than that imposed on the profits of a similar enterprise of the first mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.
3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first mentioned State are or may be subjected in the same circumstances.
5. In this Article, the term "taxation" means taxes which are the subject of this Convention.

## **ARTICLE 26**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the date of receipt of the first notice of the action resulting in taxation not in accordance with the provisions of the Convention.
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 not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.
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 the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **ARTICLE 27**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the 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, in particular for the prevention of fraud or evasion of such taxes. 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. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of



information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both.

3. 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 or documents which are 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 or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

## **ARTICLE 28**

### **ASSISTANCE IN COLLECTION**

1. The Contracting States undertake to lend assistance and support to each other, in the collection of taxes to which this Convention relates, in the cases where the taxes are definitely due according to the laws of the State making the request.

2. In the case of a request for enforcement of collection, tax claims of either of the Contracting States which have been finally determined will be accepted for enforcement by the other Contracting State to which the request is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue to the State Tax Administration of Ukraine and will be accompanied by such certificate as is required by the laws of India to establish that the taxes have been finally determined and are due from the taxpayer.

4. In the case of Ukrainian tax, the request will be sent by the State Tax Administration of Ukraine to the Central Board of Direct Taxes, Department of Revenue, in India and will be accompanied by such certificate as is required by the laws of Ukraine to establish that the taxes have been finally determined and are due from the taxpayer.

5. Where the tax claim has not become final by reason of its being subject to appeal or any other proceeding, a Contracting State may, in order to protect its revenues, request the other Contracting State to take such interim measures in this behalf as are lawful under the laws of that other Contracting State.

6. A request for assistance in collection of taxes due from a taxpayer shall be made only if adequate assets of that taxpayer are not available for recovering the taxes from him in the Contracting State making the request.

7. The Contracting State in which tax is recovered in pursuance of paragraphs 1, 2 and 5 of this Article shall immediately thereafter remit the amount so recovered to the Contracting State which made the request but it shall be entitled to reimbursement of costs, if any, incurred in the course of

rendering such assistance to the extent mutually agreed between the competent authorities of the two Contracting States.

## ARTICLE 29

### DIPLOMATIC AND CONSULAR OFFICIALS

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

*The following paragraphs 1 to 3 of Article 10 of the MLI applies and supersedes the provisions of this Convention:*

#### ARTICLE 10 OF THE MLI – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENT SITUATED IN THIRD JURISDICTIONS

*Paragraph 1 of Article 10 of the MLI*

**Where:**

- a. an enterprise of a [Contracting State] derives income from the other [Contracting State] and the first-mentioned [Contracting State] treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
- b. the profits attributable to that permanent establishment are exempt from tax in the first-mentioned [Contracting State],

the benefits of [the Convention] shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned [Contracting State] on that item of income if that permanent establishment were situated in the first-mentioned [Contracting State]. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other [Contracting State], notwithstanding any other provisions of [the Convention].

*Paragraph 2 of Article 10 of the MLI*

Paragraph 1 [of Article 10 of the MLI] shall not apply if the income derived from the other [Contracting State] described in paragraph 1 [of Article 10 of the MLI] is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

***Paragraph 3 of Article 10 of the MLI***

If benefits under [*the Convention*] are denied pursuant to paragraph 1 [*of Article 10 of the MLI*] with respect to an item of income derived by a resident of a [*Contracting State*], the competent authority of the other [*Contracting State*] may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 [*of Article 10 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under the preceding sentence by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before either granting or denying the request.

***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 [*the Convention*], a benefit under [*the 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 [*the Convention*].

**ARTICLE 30**  
**ENTRY INTO FORCE**

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the Convention enters into force and in respect of capital which is held at the expiry of the previous year following that in which the Convention enters into force or subsequent years.
- (b) in Ukraine:

- (i) in respect of taxes on dividends, interest or royalties for any payments effected on the 60th or after 60 days following the day of the Convention's coming into force;
- (ii) in respect of the taxes on profits of enterprises and tax on property of enterprises and tax on immovable property of citizens for any taxable period starting on January 1 of the calendar year following the year of the Convention's coming into force;
- (iii) in respect of the income-tax imposed on the citizens for any payments effected on the 60th or after 60 days following the day of the Convention's coming into force.

### **ARTICLE 31**

#### **TERMINATION**

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

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after 1st April next following the calendar year in which the notice of termination is given.
- (b) in Ukraine:
  - (i) in respect of the taxes on dividends, interest or royalties for any payments effected 60th day or after 60 days following the day on which notice of termination is given;
  - (ii) in respect of the taxes on profits of enterprises and tax on property of enterprises and tax on immovable property of citizens for any taxable period starting on 1st January of the calendar year following the year in which notice of termination is given;
  - (iii) in respect of the income-tax imposed on the citizens for any payments effected on the 60th or after the 60th day following the day on which notice of termination is given.

*IN WITNESS whereof the undersigned, being duly authorised thereto, have signed the present Convention.*

*DONE in duplicate at KYIV on this April 7th day of one thousand nine hundred and ninety-nine in the Hindi, Ukrainian and English languages, all the texts being equally authentic. In case of divergence between any of the two texts, the English text shall be the operative one.*