

**SYNTHESISED TEXT
OF THE MLI AND THE CONVENTION BETWEEN
THE ISLAMIC REPUBLIC OF PAKISTAN AND THE REPUBLIC
OF MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Islamic Republic of Pakistan and the Republic of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on 8 October 1975 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Islamic Republic of Pakistan and the Republic of Malta on 7 June 2017 (the “MLI”).

This document was prepared by the competent authorities of the Islamic Republic of Pakistan and the Republic of Malta through mutual consultation and represents their shared understanding of the modifications made to the Convention by the MLI. The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law.

The document was prepared on the basis of the MLI position of the Islamic Republic of Pakistan submitted to the Depositary upon ratification on 18 December 2020 and of the MLI position of the Republic of Malta submitted to the Depositary upon ratification on 18 December 2018. 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 texts of the MLI and the Convention can be found on the webpages of the Federal Board of Revenue (FBR) <https://fbr.gov.pk/dtaa/132245/132249>

The MLI position of the Islamic Republic of Pakistan submitted to the Depository upon ratification on 18 December 2020 and of the MLI position of the Republic 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-mli-signatories-and-parties.pdf>

In case of Malta, the synthesised text can be found at: <http://cfr.gov.mt/en/inlandrevenue/itu/Pages/Double-Taxation-Conventions.aspx>

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 this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Islamic Republic of Pakistan and the Republic of Malta in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 18 December 2020 for the Islamic Republic of Pakistan and 18 December 2018 for the Republic of Malta.

Entry into force of the MLI: 1 April 2021 for the Islamic Republic of Pakistan and 1 April 2019 for the Republic of Malta.

Pursuant to Article 35(2) of the Convention, solely for purposes of its own application of Article 35(1)(a) and (5)(a), Pakistan chose to substitute “taxable period” for “calendar year”. Pursuant to Article 35(3) of the MLI, solely for the purpose of its own application of Article 35(1)(b) and 5(b), Malta chose to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI shall have effect in accordance with paragraph 1, 2 and 3 of Article 35 of the MLI, in each

Contracting State with respect to the Convention:

- (i) in Pakistan:
 - (aa) 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 the first day of the next taxable period that begins on or after April 1, 2021; and

(bb) with respect to all other taxes levied by Pakistan, for taxes levied with respect to taxable periods beginning on or after October 1, 2021; and

(ii) in Malta:

(aa) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2022; and

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

Article 16 (Mutual Agreement Procedure) of the MLI has effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after 1 April 2021 except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

**CONVENTION BETWEEN THE ISLAMIC REPUBLIC OF
PAKISTAN AND THE REPUBLIC OF MALTA FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the Islamic Republic of Pakistan and the Government of the Republic of Malta,

The following paragraph 3 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

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

[REPLACED by paragraph 1 of Article 6 of the MLI]

[Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income:]

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

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

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

Have agreed as follows:

Chapter I. Scope of the Convention

Article 1

Personal Scope

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

Article 2

Taxes Covered

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

(2) There shall be regarded as taxes on income 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 the total amounts of wages and salaries paid by enterprises.

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

(a) In the case of Pakistan:

the income tax, supertax and the surcharge (hereinafter referred to as "Pakistan tax.").

(b) In the case of Malta:

the income tax and surtax, including prepayments of tax whether made by deduction at source or otherwise (hereinafter referred to as "Malta tax").

(4) This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes by either Contracting State or by the Government of any territory to which the present Convention is extended under Article 27 of this Convention. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

Chapter II. Definitions

Article 3

General Definitions

(1) In this Convention, unless the context otherwise requires:

(a) the term "Pakistan" used in a geographical sense means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and also includes any area outside the territorial waters of Pakistan which, in accordance with international law, has been or may hereafter be designated, under the laws of Pakistan, as an area within which the rights of Pakistan with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(b) the term "Malta," when used in a geographical sense, means the Republic of Malta including the Island of Malta, the Island of Gozo, the other islands of the Maltese archipelago, together with the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the laws of Malta concerning the Continental

Shelf, as an area within which the rights of Malta with respect to the sea-bed and sub-soil and their natural resources may be exercised;

- (c) the terms "a Contracting State" and "the other Contracting State" mean Pakistan or Malta as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "national" means:
 - (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of Pakistan, the Central Board of Revenue;
 - (ii) in the case of Malta, the Minister responsible for finance or his authorised representative.

(2) In the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

Article 4

Fiscal Domicile

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in

both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (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 no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode.

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national.

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State from whose law it derives its status as such.

(4) Where by reason of the provisions of paragraph (1) a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such persons.

Article 5

Permanent Establishment

(1) For the purposes of this Convention the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources including an off-shore drilling site;
- (g) a building site or construction or assembly project which exists for more than 12 months.

(3) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than 12 months in connection with a construction or assembly project.

(4) The term "permanent establishment" shall not be deemed 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 for 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.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State--other than an agent of an independent status to whom paragraph (6) applies--shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(6) 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 the other State through a broker, general commission agent or any other agent of an independent status, where 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 make either company a permanent establishment of the other.

Chapter III. Taxation of Income

Article 6

Income From Immovable Property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with 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, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to

work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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 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 the determination of 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) In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied 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 the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of Article 7, profits derived from the operation of ships or aircraft used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

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

(4) For the purposes of this article, profits derived from the operation of ships or aircraft in international traffic also include income derived from:

- (a) the rental, lease or maintenance of ships or aircraft;
- (b) the rental, lease, use or maintenance of containers, trailers for the inland transport of containers and other related equipment;
- (c) training schemes, management and other services; provided that such income—
 - (i) accrues to a resident of a Contracting State whose income is wholly or mainly derived from the operation of ships or aircraft in international traffic; and
 - (ii) is paid by a resident of the other Contracting State whose income is also wholly or mainly derived from the operation of ships or aircraft in international traffic.

(5) Notwithstanding the other provisions of this Article, profits from the operation of a ship in international traffic derived by a company which is a resident of Malta having more than 25 per cent of its capital owned, directly or indirectly, by persons not residents of Malta, may be taxed in Pakistan unless the company proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in section 86 of the Merchant Shipping Act, 1973, or in any identical or similar provision.

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.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 – CORRESPONDING ADJUSTMENTS

Where a [Contracting State] includes in the profits of an enterprise of that [Contracting State] - and taxes accordingly - profits on which an enterprise of the other [Contracting State] has been charged to tax in that other [Contracting State] and the profits so included are profits which would have accrued to the enterprise of the first-mentioned [Contracting State] if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other [Contracting State] shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of [the Convention] 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 a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, But:

- (a) where the dividends are paid by a company resident of Pakistan to a company resident of Malta which is the beneficial owner thereof, and which owns 20 per cent or more of the voting Power of the first mentioned company, the Pakistan tax so charged shall not exceed 15 per cent of the gross amount;
- (b) where the dividends are paid by a company resident of Malta to a resident of Pakistan who is the beneficial owner thereof, Malta tax shall not exceed that chargeable on the company paying the dividends in respect of the profits so distributed, and the shareholder shall be entitled to receive a credit in respect of the tax paid by the company on the profits so distributed.

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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law 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 recipient 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 professional 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 a 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividend 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 be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2):

- (a) Interest arising in Malta and paid to the Government of Pakistan or to the State Bank of Pakistan shall be exempt from Malta tax;
- (b) interest arising in Pakistan and paid to the Malta Government, the Central Bank of Malta or the Malta Development Corporation shall be exempt from Pakistan tax;
- (c) interest arising in a Contracting State to a financial institution of the other Contracting State, not less than 51 per cent of whose shares carrying voting rights are held by the Government of that other State, shall be exempt from tax in the first-mentioned State.

(4) 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 bonds or debentures.

(5) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional services from a fixed base situated therein and the debt-claim in respect of which the interest paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amounts of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, the due regard being had to the other provisions of this Convention.

Article 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties and the royalties consists of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting.

(2) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

(3) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(4) Royalties 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 royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply, only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(6) Any sum derived from sources within one of the Contracting States from the sale of patent rights by a resident of the other Contracting State who does not carry on a trade or business in the first-mentioned Contracting State through a permanent establishment situated therein with which the patent rights are effectively connected, shall be exempt from tax in the first-mentioned Contracting State.

Article 13

Capital Gains

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

(3) Gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) shall be taxable only in the Contracting State of which the alienator is a resident.

The following paragraph 4 of Article 9 of the MLI applies and supersedes the provisions 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 [the 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].

Article 14

Independent Personal Services

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

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

Article 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 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 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 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 similar payment 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

Artists and Athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph (1) of this Article are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State.

(3) The provisions of paragraphs (1) and (2) shall not apply in the case of cultural and sports programmes sponsored by or on behalf of each of the Contracting States.

Article 18

Pensions

(1) Subject to the provisions of paragraph (1) of Article 19 pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

(2) As used in this Article the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment, or by way of compensation for injuries received in connection with past employment.

Article 19

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 any individual in respect of services rendered to that State or sub-division or local authority thereof 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 recipient is a resident of that other Contracting State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of performing the services.

(2)

- (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the recipient is a national of and a resident of that State.

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

(4) The provisions of paragraph (1)(a) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political sub-division or a local authority thereof, out of funds exclusively supplied by that State, those political sub-division or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

Article 20

Teachers, Students and Trainees

(1) A resident of a Contracting State who visits the other Contracting State for a period not exceeding two years, for the purpose of teaching or research at a university, research institute, college, school or other educational establishment in that other Contracting State shall be exempt from tax in that other Contracting State in respect of any payments which he receives for such activity.

(2) A resident of one of the Contracting States who is temporarily present in the other Contracting State solely--

- (a) as a student at a recognized university, college, or school in the other Contracting State,
- (b) as an apprentice to acquire technical, professional or business experience from a person other than his employer or an organisation referred to in (c) below,
- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from religious, charitable, scientific or educational organisation of the former State, or
- (d) as a trainee under arrangements with the Government of the other Contracting State or any agency or instrumentality thereof for the purpose of training, study or orientation,

shall not be taxed in the other Contracting State in respect of remittances from abroad for the purpose of his maintenance, education or training or in respect of a scholarship grant.

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 Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply if the recipient of the 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV. Elimination of Double Taxation

Article 22

Elimination of Double Taxation

(1) Subject to the provisions of Pakistan tax law regarding the allowance of credit against Pakistan tax in respect of foreign tax, Malta tax payable, whether directly or by deduction by a person resident in Pakistan, in respect of income from sources within Malta (including income accruing or arising in Malta but deemed, under the provisions of the law of Pakistan, to accrue or arise in Pakistan) shall be allowed as a credit against any Pakistan tax payable in respect of that income.

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

(3) For the purpose of allowing credit in accordance with the provisions of this Article, the tax referred to in paragraph (2) of Article 11 and paragraph (2) of Article 12 of this Convention, shall be deemed to have been effectively borne at the rate actually charged plus 15 per cent of the net income from the sources referred to in the aid provisions, so however that the rate of tax shall in no case be deemed to be less than 15 per cent of the net income.

Chapter V. Special Provisions

Article 23

Non-Discrimination

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

(2) The taxation on a permanent establishment which 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.

(3) Except where the provisions of paragraph (1) of Article 9, paragraph 7 of Article 11, or paragraph (5) 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: provided that the provisions of this paragraph shall be without prejudice to the requirements of the law of either Contracting State regulating the deduction of the said disbursements.

(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.

(5) Nothing contained in the other paragraphs of this Article shall be construed--

- (i) as obliging either of the Contracting States to grant to persons not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to persons who are so resident;

- (ii) as affecting any provisions of the law of Pakistan regarding the grant of rebate of tax to companies fulfilling specified requirements regarding the declaration and payment of dividends.

Article 24

Mutual Agreement Procedure

[REPLACED by first sentence of paragraph 1 of Article 16 of the MLI]

(1) [Where a resident of a Contracting State considers that the actions of one or both of the Contracting State 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 Contracting State of which he is a resident.]

The following first sentence of paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 24 of the Convention:

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 Convention*], 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*].

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes provisions of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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.

The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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 the Convention. They may also consult with respect to the allocation of profits to a resident of a Contracting State and its permanent establishment in the other Contracting State, or to the allocation of profits between a resident of a Contracting State and any associated person provided for in Article 9.

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [*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 25

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention, and for the prevention or evasion of such taxes. The competent authorities shall, through consultations, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange shall be made, as well as exchange of information regarding avoidance of tax where appropriate. Any information so exchanged shall be treated as secret, but may be disclosed to any person (including a court or administrative body) concerned with the assessment, enforcement or prosecution in respect of the taxes which are the subject of the Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars 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 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 26

Diplomatic and Consular Officials

(1) 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.

(2) Insofar as, due to privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

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

ARTICLE 7 OF THE MLI - PREVENTION OF TREATY ABUSE (Principal purposes test provision)

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

Article 27

Territorial Extension

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either State is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed to between the Contracting State in notes to be exchanged for this purpose.

(2) The termination in respect of Pakistan or Malta of the present Convention under Article 29 shall, unless otherwise expressly agreed to by both Contracting States, terminate the application of the present Contracting to any territory to which the Convention has been extended under this Article.

Article 28

Entry Into Force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Malta as soon as possible.

(2) The Convention shall enter into force 30 days after the exchange of instruments of ratification, and its provisions shall have effect:

- (a) in Pakistan, in respect of Pakistan tax for the "Previous years" (as defined by the tax law of Pakistan) beginning on or after the first day of January 1973; and
- (b) In Malta, in respect of Malta tax for any year of assessment beginning on or after the first day of January 1974.

Article 29

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 three years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to be effective:

- (a) in Pakistan, in respect of Pakistan tax for the "previous years" (as defined by the tax laws of Pakistan) beginning on or after the first day of January in the calendar year next following that in which notice of termination is given; and
- (b) in Malta, in respect of Malta tax for the years of assessment beginning with the second year of assessment following the calendar year during which notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at Valletta this 8th day of October, 1975 in duplicate in the English language.

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN:

Aftab Ahmad Khan

Ambassador of Pakistan, Belgrade

FOR THE GOVERNMENT OF THE REPUBLIC OF MALTA:

Honorable Dr. Joseph Abela

Minister for Finance, Government of the Republic of Malta
