

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN THE ISLAMIC REPUBLIC OF PAKISTAN AND THE PORTUGUESE REPUBLIC 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 Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on June 23, 2020 (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 Portuguese Republic on June 07, 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Islamic Republic of Pakistan submitted to the Depository upon ratification on December 18, 2020 and of the MLI position of the Portuguese Republic submitted to the Depository upon ratification on February 28, 2020. 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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 dedicated Directorate General of International Taxes Operations webpage of the Federal Board of Revenue (FBR)'official website at <https://fbr.gov.pk/dtaa/132245/132249>

The MLI position of the Islamic Republic of Pakistan submitted to the Depository upon ratification on December 18, 2020 and of the MLI position of the Portuguese Republic submitted to the Depository upon ratification on February 28, 2020 can be found on the MLI Depository (OECD) webpage <http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>

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 Portuguese Republic in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: December 18, 2020 for the Islamic Republic of Pakistan and February 28, 2020 for the Portuguese Republic.

Entry into force of the MLI: April 1, 2021 for the Islamic Republic of Pakistan and June 1, 2020 for the Portuguese Republic.

Pursuant to Article 35(2) of the MLI, solely for the purpose of its own application of Article 35(1)(a) and 5(a), Pakistan chose to substitute “taxable period” for “calendar year”.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI shall have effect in accordance with paragraph 1 and 2 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 Portugal:

(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 Portugal, for taxes levied with respect to taxable periods beginning on or after October 1, 2021.

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 PORTUGUESE REPUBLIC 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 Portuguese Republic,

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

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

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

have agreed as follows:

Article 1

Personal Scope

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

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Convention:

**ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO
RESTRICT A PARTY’S RIGHT TO TAX ITS OWN RESIDENTS**

[*The Convention*] shall not affect the taxation by a [*Contracting State*] of its residents, except with respect to the benefits granted under {*paragraph 3 of Article 7, paragraph 2 of Article 9 or Article 20, Article 21, Article 22, Article 24, Article 25, Article 26 or Article 28 of [the Convention]*}.

Article 2

Taxes Covered

1. The existing taxes to which the Convention shall apply are in particular:

a) in the case of Pakistan:

- (i) the Income Tax;
 - (ii) the Super Tax; and
 - (iii) the Surcharge;
- (hereinafter referred to as "Pakistan tax");

b) in the case of Portugal:

- (i) the Personal Income Tax (Imposto sobre o Rendimento das Pessoas Singulares -IRS);
 - (ii) the Corporate Income Tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC); and
 - (iii) the Local Surtax on Corporate Income Tax (Derrama);
- (hereinafter referred to as "Portuguese tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1. 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 purposes of this Convention, unless the context otherwise requires:

- a) the term "Pakistan" used in the geographical sense means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan, and includes the territorial sea and any other zone in which, in accordance with the laws of Pakistan and international law, the Islamic Republic of Pakistan has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;
- b) the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;
- c) the terms "a Contracting State" and "the other Contracting State" mean Pakistan or Portugal as the context requires;

- d) the term "tax" means Pakistan tax or Portuguese tax, as the context requires;
- e) the term "person" includes an individual, a company and any other entity or other body of persons which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- f) the term "company" means anybody corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting State;
- 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:
 - (i) in Pakistan, the Central Board of Revenue or its authorized representative;
 - (ii) in Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral das Contribuições e Impostos) or their authorized representative;
- i) the term "national" means any individual, possessing the nationality or citizenship of a Contracting State and 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 of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall unless the context otherwise requires, have the meaning which it has at that time under the laws of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

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 or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a 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 warehouse;
 - g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - h) farm or plantation;
 - i) a building site or construction or assembly project, but only where such site or project continues for a period or periods of more than six months in any twelve-month period.

[MODIFIED by paragraph 4 of Article 13 of the MLI]

3. [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 or display of goods or merchandise belonging to the enterprise;

- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

The following paragraph 4 of Article 13 of the MLI applies with respect to paragraph 3 of Article 5 of this Convention:

[*Paragraph 3 of Article 5 of this 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 this 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.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activity which that person undertakes for the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise.

5. 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

other 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, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

The following paragraph 1 of Article 15 of the MLI applies to 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], 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 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.

5. The foregoing provisions shall also apply to income from movable property, or income derived from services connected with the use or the right to use the immovable property, which, under the taxation law of the Contracting State in which the property is situated, is assimilated to income from immovable property.

Article 7

Business Profits

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deduction all expenses of the enterprise (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonable allocated to the permanent establishment whether such expenses were incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

5. 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

Air and Shipping Transport

1. Profits derived by a resident of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.
2. Profits derived by a resident of a Contracting State from the operation of ships in international traffic from sources in the other Contracting State shall be taxable only in that other State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium, the provisions of paragraph 1 shall apply to such part of the profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

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.

[REPLACED by paragraph 1 of Article 17 of the MLI]

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

to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.]

The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Convention:

ARTICLE 17 OF THE MLI – 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 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: Where the dividends are paid by a company which is a resident of a Contracting State to a resident of the other Contracting State who is the beneficial owner thereof, the tax so charged shall not exceed:
 - (i) 15 per cent of the gross amount of the dividends; or
 - (ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that, for an uninterrupted period of two years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock (capital social) of the company paying the dividends.

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, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of 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 insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempted from tax in that State:

- a) if the debtor of such interest is that State, a political or administrative subdivision or a local authority thereof, or
- b) if interest is paid to the other Contracting State, a political or administrative subdivision or a local authority thereof; or
- c) in respect of loans or credit made by:
 - (i) in the case of Pakistan, the State Bank of Pakistan and the National Bank of Pakistan;
 - (ii) in the case of Portugal, the Bank of Portugal, the Caixa Geral de Depósitos (CGD), the Banco Nacional Ultramarino (BNU) and the ICEP-Investment, Trade and Tourism of Portugal.

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 such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political or administrative subdivision, 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 Contracting State in which the permanent establishment or fixed base is situated.

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

Article 12

Royalties 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 for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties and fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount.

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 and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, computer software, 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. For the purposes of this Article "fees for technical services" means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any technical, managerial or consultancy services (including through the provisions of services of technical or other personnel) if such services:

- a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received, or
- b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.

5. Notwithstanding paragraph 4, "fees for technical services" does not include payments:

- a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, including those referred to in subparagraphs (g) and (i) of paragraph 2 of Article 5, and the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- b) for teaching in or by educational institutions;
- c) for services for the personal use of the individual or individuals making the payment;
- d) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties and fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties and 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 or property in respect of which the royalties and 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.

7. Royalties and fees for technical services shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative subdivision thereof, a local authority or a resident of that State. Where, however, the person paying the royalties and fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties and fees for technical services was incurred, and such royalties and fees for technical services are borne by that permanent establishment or fixed base, then such royalties and fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 13

Capital Gains

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

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]*.

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 together 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 or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

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

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other 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 Contracting State; or
- b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, 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, dentists, lawyers, engineers, architects and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 by an enterprise of a Contracting State may be taxed in the Contracting State of which the enterprise is a resident.

Article 16

Directors' Fees

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any similar body of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity in a top level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsman who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or mainly from the public funds of the first--mentioned Contracting State, including any of its political or administrative subdivisions or local authorities.

Article 18

Government Service

1.
 - a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision 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 other 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.

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

3. The provisions of Articles 15, 16, 17 and 19 shall apply to remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 19

Non-Government Pensions and Annuities

1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall 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 performances of services.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money' worth.

Article 20

Students and Apprentices

A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other 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\$ 4,000 per annum during a period not exceeding three years from the day of his first arrival in that other Contracting State, provided that such employment is directly related to his studies.

Article 21

Professors and Teachers

1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purposes 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 purpose of paragraph 1, "approved institution" means an institution not for profit making 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, not 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 or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply,
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

Article 23

Methods for Elimination of Double Taxation

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting State except where provisions to the contrary are made in this Convention.

2. In the case of Pakistan, double taxation shall be eliminated as follows:

Subject to the provisions of the laws of Pakistan regarding the allowance as a credit against Pakistan tax, the amount of the Portuguese tax payable under the laws of Portugal and in accordance with the provisions of this Convention whether directly or by deduction by a resident of Pakistan in respect of income from sources within Portugal which has been subjected to tax both in Pakistan and Portugal shall be allowed as a credit against the Pakistan tax payable in respect of such income but in an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.

3. In the case of a resident of Portugal, double taxation shall be eliminated as follows: Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Pakistan, the Portuguese Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Pakistan; such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Pakistan.

4. Where in accordance with any provision of this Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. 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.

4. Nothing contained in the preceding paragraphs of this Article shall be construed 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.

5. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 8 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.

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

Article 25

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 Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with 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. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (including copies of documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that 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 consultations, 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. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

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 or administrative practice of that or of the other Contracting State;
- b) to supply information or copies of 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 copies of 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 27

Members of Diplomatic Missions and Consular Posts

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

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

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 28

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. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- a) in Pakistan:
 - (i) in respect of taxes withheld at source on amounts paid on or after the 1st day of January in the calendar year next following that in which the Convention enters into force; and
 - (ii) in respect of other taxes for the year of assessment beginning on or after the 1st day of January in the calendar year next following that in which the Convention enters into force and subsequent year;
- b) in Portugal:
 - (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the 1st day of January in the year next following the year in which this Convention enters into force; and
 - (ii) in respect of other taxes as to income arising in the fiscal year beginning on or

after the 1st day of January in the year next following the year in which this Convention enters into force.

Article 29

Termination

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

- a) in Pakistan, in respect of income arising in any year of assessment beginning on or after the 1st day of January next following the date on which the period specified in the said notice of termination expires;
- b) in Portugal:
 - (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the 1st day of January next following the date on which the period specified in the said notice of termination expires; and
 - (ii) in respect of other taxes, as to income arising in the fiscal year beginning on or after the 1st day of January next following the date on which the period specified in the said notice of termination expires.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done in duplicate at this twenty-third day of June two thousand in two originals, in the English and Portuguese languages, each text being equally authentic, the English text prevailing in case of doubt.

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN
FOR THE GOVERNMENT OF THE PORTUGUESE REUBLIC

PROTOCOL

At the moment of signing the Convention between the Islamic Republic of Pakistan and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following, which shall be an integral part of the Convention:

Ad Article 7

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

Ad Article 10

The expression "jouissance shares or jouissance rights" used in paragraph 3 means any title incorporating a debt claim on a company, which consists of a given portion of operating profits and closing balance.

Ad Article 11

The State Bank of Pakistan is included in paragraph 6 as payer.

Ad Article 12

The words "sale of property" in paragraph 5 a) of Article 12 include the awarding of a contract, in the context of sub-paragraphs (g) and (i) of paragraph 2 of Article 5.

Ad Article 19

In paragraph 19 the term "pension" used also includes lumpsum payments in lieu thereof.

Ad Article 23

The expression "tax on the income" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

Ad Article 24

The provisions of Article 24:

- a) do not preclude the application of any provision of the tax law of the Contracting States dealing with thin capitalization problems;
- b) shall be construed in the sense that insofar as the deductibility of the incurred disbursements is concerned, each Contracting State may apply its own procedures regarding the burden of proof;

- c) shall not be construed as affecting any provision of the law of the Contracting States regarding the imposition of tax on a non-resident person; or
- d) shall not be construed as affecting any provision of the law of the Contracting States regarding the grant of rebate of tax to companies fulfilling specific requirements regarding the declaration and payment of dividends.

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

Done in duplicate, at _____ this twenty-third day of June 2000, in the English and Portuguese languages, each text being equally authentic, the English text prevailing in case of doubt.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN
