

**SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX  
TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING  
AND THE CONVENTION BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE  
STATE OF ISRAEL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON  
CAPITAL**

**General disclaimer on the synthesised text document**

This document presents the synthesised text for the application of the Convention between the Grand Duchy of Luxembourg and the State of Israel for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on 13 December 2004 (“the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Luxembourg on 7 June 2017 and by Israel on 7 June 2017 (“the MLI”).

The document was prepared on the basis of the MLI position of Luxembourg submitted to the Depository upon ratification on 9 April 2019 and of the MLI position of Israel submitted to the Depository upon ratification on 13 September 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 the 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 2017 OECD Model Tax Convention.

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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

#### References

The authentic legal text of the Convention can be found at the following link:

[impotsdirects.public.lu](http://impotsdirects.public.lu)

The text of the MLI and the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of Israel submitted to the Depositary upon ratification on 13 September 2018 can be found on the [MLI Depositary \(OECD\) webpage](#).

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

### **Entry into Effect of the MLI Provisions**

The provisions of the MLI applicable to 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 Luxembourg and Israel in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 9 April 2019 for Luxembourg and 13 September 2018 for Israel.

Entry into force of the MLI: 1 August 2019 for Luxembourg and 1 January 2019 for Israel.

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

#### **In Luxembourg:**

- with respect of taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 February 2020.

#### **In Israel:**

- with respect of 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 taxable period that begins on or after 1 August 2019;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2021.

## CONVENTION

### BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE STATE OF ISRAEL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Grand Duchy of Luxembourg and the Government of the State of Israel

[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 and on capital,]

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this 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 [*the Convention*] for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

#### Article 1

##### Persons covered

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

*The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Convention:*

#### ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of the [*Convention*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*]. In no case shall the provisions of this paragraph be construed to affect a [*Contracting State's*] right to tax the residents of that [*Contracting State*].

## **Article 2**

### **Taxes covered**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
  - a) in Luxembourg:
    - (i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
    - (ii) the corporation tax (l'impôt sur le revenu des collectivités);
    - (iii) the capital tax (l'impôt sur la fortune); and
    - (iv) the communal trade tax (l'impôt commercial communal);(Hereinafter referred to as "Luxembourg tax");
  - b) In Israel:
    - (i) the income tax and company tax (including tax on capital gains);
    - (ii) the tax imposed upon gains from the alienation of real property according to the real estate Taxation Law;(Hereinafter referred to as "Israeli tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

## **Article 3**

### **General definitions**

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

- a) (i) the term "Luxembourg" means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;
- (ii) the term "Israel" means the State of Israel and when used in a geographical sense comprises the territory in which the Government of the State of Israel has taxation rights, including its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, including seabed and subsoil thereof, over which the State of Israel, in accordance with international law and the laws of the State of Israel, exercises its sovereign or other rights and jurisdiction.
- b) the term "person" includes an individual, a company and any other body of persons;
- c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) the term "enterprise" applies to the carrying on of any business;
- e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- g) the term "competent authority" means:
- (i) in the case of Luxembourg, the Minister of Finance or his authorised representative;
- (ii) in the case of Israel, the Minister of Finance or his authorised representative;
- h) the term "national" means:
- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.
- i) the term "business" includes the performance of professional services and of other activities of an independent character.

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 that it has at that time under the law 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, and also includes that State or any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) He shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
  - c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
  - d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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 and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6**

### **Income from immovable property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. 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.

## **Article 7**

### **Business profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. 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**

### **Shipping, inland waterways transport and air transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9**

### **Associated enterprises**

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

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

2. **[Replaced by paragraph 1 of Article 17 of the MLI]** [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 therein 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 if the beneficial owner of the dividends is a resident of the other Contracting state, the tax so charged shall not exceed:
  - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

- b) 10 per cent of the gross amount of the dividends, notwithstanding the provisions of sub-paragraph a), if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits which are subject to tax in Israel at a rate which is lower than the normal rate of Israeli company tax;
- c) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 laws of the State of which the company making the distribution is a resident, and in the case of Luxembourg the investor's share of the profit in the commercial, industrial, mining or craft undertaking, paid proportionally to the profits and by virtue of this his capital outlay, as well as interest and payments on bonds, where, over and above the fixed rates of interest, a right of assignment is granted for supplementary interest varying according to the unretained earnings.
- 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) 5 per cent of the gross amount of the interest in the case of interest arising in a Contracting State and paid on any loan of whatever kind granted by a bank of the other Contracting State; and
  - b) 10 per cent of the gross amount of the interest in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provision of paragraph 2 interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest is paid to the seller of any industrial, commercial or scientific equipment, or of any merchandise sold by him on credit.
4. Notwithstanding the provisions of paragraphs 2 and 3 interest arising in a Contracting State shall be exempt from tax in that State if it is paid in relation to any loan granted by the Government of the other Contracting State, including its local authorities, the Central Bank of the other Contracting State or any financial instrumentality of that Government as may be agreed upon by the competent authorities of the Contracting States. This paragraph applies also to the interest paid in relation to a loan guaranteed by the Government of the Grand Duchy of Luxembourg through the statutory body "Office du Ducroire".
5. 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. However, the term "interest" shall not include income referred to in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1, 2 and 3 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
7. Interest shall be deemed to arise in a Contracting State when the payer is the State itself or is 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 State in which the permanent establishment 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 interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the Other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 software, cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself 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 State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13**

#### **Capital gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in the 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 in which the place of the effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company, the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State, may be taxed in that State.
5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident, if that resident is the beneficial owner of the property on which the capital gains derived.

#### **Article 14**

##### **Income from employment**

1. Subject to the provisions of Articles 15, 17 and 18, 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 there from 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 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 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, aircraft or road vehicle operated in international traffic or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 15**

##### **Directors' fees**

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

## **Article 16**

### **Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 7 and 14, 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised. This paragraph shall not apply if it is established that neither the entertainer nor the sportsman himself, nor persons related thereto control, directly or indirectly, such person.
3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the sportsman is directly or indirectly supported substantially from the other Contracting State or local authority thereof or from public funds of the other Contracting State.

## **Article 17**

### **Pensions**

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.
3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only if the first-mentioned State, provided that such payments derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf, provided that tax was paid on these contributions, provisions or pensions or other similar remuneration in the first-mentioned State under the ordinary rules of its tax laws.

## **Article 18**

### **Government service**

1. a) Salaries, wages and other similar Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.  
  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State 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 State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to such salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

## **Article 19**

### **Students**

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

## **Article 20**

### **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 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## **Article 21**

### **Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 22**

### **Elimination of double taxation**

1. Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle thereof, double taxation shall be eliminated as follows:
  - a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Israel, Luxembourg shall, subject to the provisions of sub-paragraphs b) and c), exempt such income or capital from tax, but may, in order to calculate the amount of tax of the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.

- b) Where a resident of Luxembourg derives income which, in accordance with the provisions of articles 10, 11, 12 and 16 may be taxed in Israel, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Israel. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Israel.
  - c) The provisions of sub-paragraph a) shall not apply to income derived or capital owned by a resident of Luxembourg where Israel applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Articles 10, 11 or 12 to such income.
2. In the case of Israel double taxation shall be avoided as follows:

Where a resident of Israel derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Luxembourg, Israel shall (subject to the laws of Israel regarding the allowance of a credit of foreign taxes, which shall not affect the general principle contained in this paragraph) allow:

- a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Luxembourg;
- b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Luxembourg.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Luxembourg.

### **Article 23**

#### **Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any

personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall apply to taxes covered by this Convention.

#### **Article 24**

##### **Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. 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 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## **Article 25**

### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public courts proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting state;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

## Article 26

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

## Article 27

### Exclusion of certain companies

This Convention shall not apply to holding companies (société holding) within the meaning of special Luxembourg laws, currently the Act (loi) of 31 July 1929 and the Decree (arrêté grand-ducal) of 17 December 1938. neither shall it apply to income derived from such companies by a resident of Israel nor to shares or other rights in such companies owned by such a person.

## Article 28

### Entry into force

1. The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by its law for the entry into force of this Convention have been satisfied. The Convention shall enter into force on the date of the last of the notifications.
2. After the entry into force of the Convention, the provisions of the Convention shall have effect:
  - a) in respect of taxes withheld at source, to amounts of income derived on or after 1 January 2004;

- b) in respect of other taxes on income and taxes on capital, to such taxes chargeable for any taxable year beginning on or after 1 January 2004.

## **Article 29**

### **Termination**

1. This Convention shall remain in force until terminated by a Contracting State. 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 beginning after the expiration of a period of five years from the date of its entry into force.
2. The Convention shall cease to have effect:
  - a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January in the calendar year next following that in which such notice has been given;
  - b) in respect of other taxes, for taxable periods beginning on or after the first day of January in the calendar year next following that in which such notice has been given.

## **PROTOCOL**

**The Government of the Grand Duchy of Luxembourg and the Government of the State of Israel**

**Have agreed at the signing at Brussels on the 13<sup>th</sup> December 2004 of the Convention between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Convention.**

**1. Ad Article 3 paragraph 2**

**With respect to Israel, the term "law" in paragraph 2 of Article 3 includes rules, regulations, administrative directives and court decisions of the State of Israel.**

**2. Ad Article 17 paragraph 3**

**In the case of Luxembourg, it is understood that the pension scheme must be established under the law of 8 June 1999.**

**3. Tax relief**

**Relief provided in this Convention to a resident of a Contracting State by the tax authorities of the other Contracting State, shall be conditioned upon the presentation of a certificate of residence and declaration of the relevant income, signed by the tax authorities of the first Contracting State.**

**4. Entitlement to treaty benefits**

**The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax treaties) may be applied to the treatment of such abuses notwithstanding the provisions of any Treaty or Convention for the avoidance of double taxation.**

**5. Beneficial owner**

**It is understood that the benefits under this Convention, shall not be granted to a person which is not the beneficial owner of the item of income derived from the other Contracting State.**