

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING) ORDER

INTRODUCTION

At the meeting of the Executive Council on 20 September 2022, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order (“Order”), at A **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (“IRO”) to give effect to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument”) in the Hong Kong Special Administrative Region (“Hong Kong”).

JUSTIFICATIONS

Multilateral Instrument

2. The Organisation for Economic Co-operation and Development (“OECD”) released a package of 15 actions in October 2015 to counter base erosion and profit shifting (“BEPS”) by multinational enterprises. BEPS refers to tax avoidance strategies of multinational enterprises in exploiting the gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. Hong Kong indicated to the OECD in June 2016 its commitment to implementing the minimum standards of the BEPS package. Amongst these minimum standards are measures to prevent the abuse of Comprehensive Avoidance of Double Taxation Agreements/Arrangements

(“CDTAs”)¹ through preventing the granting of tax treaty benefits in inappropriate circumstances and improve the dispute resolution mechanism provided for in CDTAs.

3. The Multilateral Instrument enables the application of our CDTAs to be modified so as to effectively implement the tax treaty-related minimum standards of the BEPS package. The Multilateral Instrument was developed by the OECD as part of the BEPS package to ensure swift, co-ordinated and consistent implementation of treaty-related BEPS measures in a multilateral context. As at 16 September 2022, 99 jurisdictions have joined the Multilateral Instrument. The wide participation in the Multilateral Instrument obviates the need for cumbersome bilateral tax treaty negotiations amongst jurisdictions for modifying the relevant tax treaty provisions in a piecemeal manner.

4. China became a signatory to the Multilateral Instrument in June 2017. Having sought the views of the Government of the Hong Kong Special Administrative Region (“HKSARG”), the Central People’s Government (“CPG”) decided to extend the application of the Multilateral Instrument to Hong Kong. On 25 May 2022, the CPG deposited the instrument of approval of the Multilateral Instrument with the OECD. The Multilateral Instrument will enter into force for China (including Hong Kong) on 1 September 2022². When depositing the instrument of approval, the CPG also, in consultation with the HKSARG, made a list of reservations and notifications applicable to Hong Kong under the Multilateral Instrument³. The provisions of the Multilateral Instrument will take effect in Hong Kong only after completion of the domestic legislative procedures.

¹ A CDTA sets out the allocation of taxing rights between two tax jurisdictions, thereby facilitating assessment of potential tax liabilities arising from cross-border economic activities and hence providing enhanced certainty to business people and investors. It facilitates the flow of investment, technology, talents and expertise.

² According to Article 34 of the Multilateral Instrument, the Multilateral Instrument will enter into force on the first day of the month following the expiration of a period of three calendar months after the deposit of the instrument of approval.

³ Pursuant to the Multilateral Instrument, a jurisdiction may reserve the right for certain articles not to apply to its CDTAs and make notifications regarding its stance on certain matters raised in individual articles. Details of the reservations and notifications applicable to Hong Kong are set out in Schedule 2 to the Order.

Scope of Application of the Multilateral Instrument in Hong Kong

5. The Multilateral Instrument contains both mandatory⁴ and optional⁵ provisions. When a public consultation exercise regarding the proposed implementation strategy for the BEPS package was conducted in end-2016, we received feedback in support of the use of the Multilateral Instrument for obviating the need to individually amend bilateral tax treaties and providing greater tax certainty. In the light of this, we will implement only the mandatory provisions of the Multilateral Instrument (save for an optional provision under Article 6) and opt out of the remaining optional provisions. This minimalist approach will serve to minimise any additional compliance burden on taxpayers.

6. The effects of the provisions of the Multilateral Instrument to be implemented in Hong Kong and their impact on taxpayers in respect of a CDTA intended by both Hong Kong and the CDTA partner to be covered by the Multilateral Instrument (hereinafter referred to as a “Covered CDTA”) are set out below –

- (a) the mandatory provision under Article 6 (Purpose of a Covered Tax Agreement) modifies the preamble of the Covered CDTAs to include an express statement that the common intention of the contracting parties is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements. Adopting the provision can give the contracting parties to the Covered CDTAs protection against treaty abuse without imposing any substantive impact on taxpayers;
- (b) Article 7 (Prevention of Treaty Abuse) modifies the Covered CDTAs to provide for a general anti-abuse rule based on the

⁴ The mandatory provisions implement the treaty-related minimum standards, which are provided for under Article 6 (Purpose of a Covered Tax Agreement), Article 7 (Prevention of Treaty Abuse) and Article 16 (Mutual Agreement Procedure).

⁵ Optional provisions are provided for under Articles 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18-26, and part of Articles 6 and 7. A Party to the Multilateral Instrument can choose whether or not the optional provisions should be applied to its Covered CDTAs.

principal purpose test (“PPT”)⁶ to address situations of treaty abuse, including certain conduit financing arrangements. As the PPT is considered less restrictive than the limitation on benefits (“LOB”) rule⁷ and is the only approach that can satisfy the minimum standard on its own, there will be minimal impact on Hong Kong taxpayers;

- (c) Article 16 (Mutual Agreement Procedure) improves the dispute resolution mechanism by incorporating into Covered CDTAs certain provisions to ensure that access to mutual agreement procedure (“MAP”)⁸ is available, and that MAP cases are resolved within a reasonable timeframe and implemented quickly. In particular, taxpayers may present their cases to the competent authorities of either contracting parties to a Covered CDTA instead of their own residence jurisdiction or, where the CDTA partner has opted for an alternative rule, a bilateral notification or consultation process between the competent authorities of the contracting parties will be implemented. The enhanced mechanism will facilitate effective and efficient resolution of cross-border tax disputes and is to the benefit of Hong Kong taxpayers; and
- (d) the optional provision under Article 6 will include in the Covered CDTAs a preamble text which refers to a desire to further develop economic relationship and enhance co-operation in tax matters with the CDTA partners.

7. The OECD has been monitoring on an annual basis Hong Kong’s progress in implementing the minimum standards of the BEPS package, covering both the availability of the necessary legal framework and the effectiveness of implementation. It is therefore imperative for Hong Kong

⁶ PPT provides that a taxpayer shall not be granted a tax treaty benefit if obtaining that benefit is one of the principal purposes of any arrangement or transaction involved.

⁷ LOB provides that a taxpayer shall not be entitled to a tax treaty benefit unless it constitutes a "qualified person" by reference to various attributes, or the taxpayer falls within the exceptions based on the taxpayer’s active conduct of a business in its resident jurisdiction, the ownership of the taxpayer or the purposes for which the taxpayer is established, acquired or maintained or its operations are conducted.

⁸ MAP provides a dispute resolution mechanism, independent from the ordinary legal remedies available under the internal law, through which the competent authorities of the contracting parties to a CDTA may resolve differences or difficulties regarding the interpretation or application of the CDTA on a mutually-agreed basis.

to give effect to the Multilateral Instrument in a timely manner after the CPG has deposited the instrument of approval with the OECD so as to ensure that our CDTAs are BEPS-compliant, fulfil Hong Kong's international tax obligations and avoid the risk of Hong Kong being considered as an uncooperative tax jurisdiction.

8. A gist of the key provisions of the Multilateral Instrument and Hong Kong's position on such provisions is set out in **Annex B**.

B

9. Hong Kong has so far signed CDTAs with 45 jurisdictions⁹. 39 of our existing CDTAs (and any amending or accompanying instruments thereto)¹⁰ are listed as agreements that Hong Kong wishes to be covered by the Multilateral Instrument. The number of CDTAs eventually to be covered and modified by the Multilateral Instrument will depend on whether our CDTA partners also participate in the Multilateral Instrument and list their CDTAs with Hong Kong as agreements that they wish to be covered by the Multilateral Instrument such that they become Covered CDTAs. As regards CDTAs to be signed in future, we will incorporate the relevant provisions to implement the treaty-related minimum standards of the BEPS package in those CDTAs.

10. The extent to which the application of a Covered CDTA will be modified by the Multilateral Instrument depends on the matching of the reservations and notifications applicable to Hong Kong and the CDTA partner. Since Hong Kong has adopted only the mandatory provisions of the Multilateral Instrument (save for an optional provision under Article 6), other optional provisions will not apply to the Covered CDTAs.

11. After the completion of the necessary legislative and administrative procedures, the Multilateral Instrument will apply alongside the Covered CDTAs and modify their application. The timing of entry into effect of the modifications to a Covered CDTA will depend on the completion of

⁹ The CDTAs have been given effect in Hong Kong by subsidiary legislation made under section 49(1A) of the IRO.

¹⁰ Six of Hong Kong's CDTAs that are not listed as agreements that Hong Kong wishes to be covered by the Multilateral Instrument are the CDTAs with the Mainland, the Macao Special Administrative Region, Estonia, Finland, Georgia and Serbia. All of them have already contained BEPS-compliant provisions.

procedures for ratifying the Multilateral Instrument in the other relevant contracting jurisdictions. To facilitate stakeholders' understanding of the effect of the Multilateral Instrument on individual CDTAs of Hong Kong, the Inland Revenue Department ("IRD") will update its website from time to time to provide information as to when the relevant provisions of the Multilateral Instrument will come into effect in respect of the Covered CDTA and the extent to which the CDTA concerned will be modified.

OTHER OPTIONS

12. An order made by the CE-in-C under section 49(1A) of the IRO is the only way to give effect to the Multilateral Instrument. There is no other viable option.

THE ORDER

13. Under section 49(1A) of the IRO, if the CE-in-C by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong for certain purposes, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. The Order, at **Annex A**, sets out the full text of the Multilateral Instrument as well as the reservations and notifications applicable to Hong Kong made under the Multilateral Instrument by the CPG. The Order is subject to negative vetting by the Legislative Council ("LegCo"). The main provisions of the Order are as follows –

- (a) **Section 3** contains the declarations, for the purposes of section 49(1A) of the IRO, so that the arrangements specified in section 4 shall have effect;
- (b) **Section 4** specifies the arrangements for the purposes of section 3, namely, the arrangements in: (i) the Multilateral Instrument; and (ii) the reservations and notifications applicable to Hong Kong made under the Multilateral Instrument by the CPG;

- (c) **Schedule 1** sets out the text of the Multilateral Instrument¹¹; and
- (d) **Schedule 2** sets out the reservations and notifications applicable to Hong Kong made under the Multilateral Instrument by the CPG¹².

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows –

Publication in the Gazette	30 September 2022
Tabling at LegCo	19 October 2022
Commencement of the Order	9 December 2022

IMPLICATIONS OF THE PROPOSAL

15. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. It has no environmental, gender, family or productivity implications, and no sustainability implications other than those set out in the economic implications paragraph in **Annex C**. The economic, financial and civil service implications of the proposal are set out in **Annex C**.

C

PUBLIC CONSULTATION

16. The Government conducted a consultation exercise in 2016 on the proposed implementation strategy for the BEPS package in Hong Kong. Respondents generally expressed support for the proposal to modify the application of Hong Kong's CDTAs by way of the Multilateral Instrument (as opposed to bilateral negotiations). We also briefed the LegCo Panel on Financial Affairs at its meeting on 5 March 2018 on the proposed

¹¹ The Order contains a reproduction of the English text of the Multilateral Instrument and a Chinese translation thereof.

¹² The Order contains a reproduction of the English text of the list of reservations and notifications and a Chinese translation thereof.

application of the Multilateral Instrument to Hong Kong and Members raised no objection.

PUBLICITY

17. We will issue a press release before tabling the Order at the LegCo. A spokesperson will be available to answer enquiries. We will also inform the relevant professional and trade bodies of the extension of the application of the Multilateral Instrument to Hong Kong.

BACKGROUND

18. The OECD released a package of 15 actions in October 2015 to counter BEPS. Out of the 15 actions, four are minimum standards, namely imposing country-by-country reporting requirements, improving the cross-border dispute resolution mechanism, countering harmful tax practices and preventing treaty abuse.

19. In June 2016, Hong Kong indicated to the OECD its commitment to implementing the BEPS package. The Inland Revenue (Amendment) (No. 6) Ordinance 2018 was subsequently enacted in July 2018 to codify the transfer pricing principles into the IRO and implement the minimum standards under the BEPS package as mentioned in paragraph 18 except for those tax treaty-related requirements.

20. As at November 2021, 141 jurisdictions committed to implementing the BEPS package.

ENQUIRIES

21. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2317.

Financial Services and the Treasury Bureau
28 September 2022

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order

Contents

Section	Page
1. Commencement	1
2. Interpretation	1
3. Declaration under section 49(1A)	1
4. Arrangements specified.....	1
Schedule 1 Convention.....	3
Schedule 2 Reservations and Notifications Applicable to Hong Kong Made under Convention by Central People's Government	95

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order

(Made by the Chief Executive in Council under section 49(1A) of the
Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 9 December 2022.

2. Interpretation

In this Order—

Convention (《公約》)—see section 4(1)(a).

3. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

- (a) that the arrangements specified in section 4(1) have been made by the Central People's Government and applied to Hong Kong; and
- (b) that it is expedient that those arrangements should have effect.

4. Arrangements specified

- (1) The arrangements specified for the purposes of section 3(a) are the arrangements in—
 - (a) the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (*Convention*) done at Paris on 24 November 2016 and signed by the Central People's Government on 7 June 2017 in the English language; and

- (b) the reservations and notifications applicable to Hong Kong made under the Convention by the Central People's Government on 25 May 2022 in the English language.
- (2) The English text of the Convention is reproduced in the English text of Schedule 1. A Chinese translation of the Convention is set out in the Chinese text of that Schedule.
- (3) The English text of the reservations and notifications referred to in subsection (1)(b) is reproduced in the English text of Schedule 2. A Chinese translation of the reservations and notifications is set out in the Chinese text of that Schedule.
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Schedule 1

[s. 4]

Convention

The Parties to this Convention,

Recognising that governments lose substantial corporate tax revenue because of aggressive international tax planning that has the effect of artificially shifting profits to locations where they are subject to non-taxation or reduced taxation;

Mindful that base erosion and profit shifting (hereinafter referred to as "BEPS") is a pressing issue not only for industrialised countries but also for emerging economies and developing countries;

Recognising the importance of ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created;

Welcoming the package of measures developed under the OECD/G20 BEPS project (hereinafter referred to as the "OECD/G20 BEPS package");

Noting that the OECD/G20 BEPS package included tax treaty-related measures to address certain hybrid mismatch arrangements, prevent treaty abuse, address artificial avoidance of permanent establishment status, and improve dispute resolution;

Conscious of the need to ensure swift, co-ordinated and consistent implementation of the treaty-related BEPS measures in a multilateral context;

Noting the need to ensure that existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements 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 those agreements for the indirect benefit of residents of third jurisdictions);

Recognising the need for an effective mechanism to implement agreed changes in a synchronised and efficient manner across the network of existing agreements for the avoidance of double taxation on income without the need to bilaterally renegotiate each such agreement;

Have agreed as follows:

PART I.

SCOPE AND INTERPRETATION OF TERMS

Article 1 – Scope of the Convention

This Convention modifies all Covered Tax Agreements as defined in subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms).

Article 2 – Interpretation of Terms

1. For the purpose of this Convention, the following definitions apply:

- a) The term “Covered Tax Agreement” means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):
 - i) that is in force between two or more:
 - A) Parties; and/or
 - B) jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible; and
 - ii) with respect to which each such Party has made a notification to the Depository listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention.
- b) The term “Party” means:
 - i) A State for which this Convention is in force pursuant to Article 34 (Entry into Force); or
 - ii) A jurisdiction which has signed this Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval) and for which this Convention is in force pursuant to Article 34 (Entry into Force).

- c) The term “Contracting Jurisdiction” means a party to a Covered Tax Agreement.
 - d) The term “Signatory” means a State or jurisdiction which has signed this Convention but for which the Convention is not yet in force.
2. As regards the application of this Convention at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the relevant Covered Tax Agreement.

PART II.

HYBRID MISMATCHES

Article 3 – Transparent Entities

1. For the purposes of a Covered Tax Agreement, 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 Jurisdiction shall be considered to be income of a resident of a Contracting Jurisdiction but only to the extent that the income is treated, for purposes of taxation by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction.
2. Provisions of a Covered Tax Agreement that require a Contracting Jurisdiction to exempt from income tax or provide a deduction or credit equal to the income tax paid with respect to income derived by a resident of that Contracting Jurisdiction which may be taxed in the other Contracting Jurisdiction according to the provisions of the Covered Tax Agreement shall

not apply to the extent that such provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction.

3. With respect to Covered Tax Agreements for which one or more Parties has made the reservation described in subparagraph a) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents), the following sentence will be added at the end of paragraph 1: “In no case shall the provisions of this paragraph be construed to affect a Contracting Jurisdiction’s right to tax the residents of that Contracting Jurisdiction.”

4. Paragraph 1 (as it may be modified by paragraph 3) shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that they address whether income derived by or through entities or arrangements that are treated as fiscally transparent under the tax law of either Contracting Jurisdiction (whether through a general rule or by identifying in detail the treatment of specific fact patterns and types of entities or arrangements) shall be treated as income of a resident of a Contracting Jurisdiction.

5. A Party may reserve the right:
 - a) for the entirety of this Article not to apply to its Covered Tax Agreements;
 - b) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4;
 - c) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which denies treaty benefits in the case of income derived by or

through an entity or arrangement established in a third jurisdiction;

- d) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements;
- e) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements and denies treaty benefits in the case of income derived by or through an entity or arrangement established in a third jurisdiction;
- f) for paragraph 2 not to apply to its Covered Tax Agreements;
- g) for paragraph 1 to apply only to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements.

6. Each Party that has not made a reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 4 that is not subject to a reservation under subparagraphs c) through e) of paragraph 5, and if so, the article and paragraph number of each such provision. In the case of a Party that has made the reservation described in subparagraph g) of paragraph 5, the notification pursuant to the preceding sentence shall be limited to Covered Tax Agreements that are subject to that reservation. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (as it may be modified by paragraph

3) to the extent provided in paragraph 4. In other cases, paragraph 1 (as it may be modified by paragraph 3) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (as it may be modified by paragraph 3).

Article 4 – Dual Resident Entities

1. Where by reason of the provisions of a Covered Tax Agreement a person other than an individual is a resident of more than one Contracting Jurisdiction, the competent authorities of the Contracting Jurisdictions shall endeavour to determine by mutual agreement the Contracting Jurisdiction of which such person shall be deemed to be a resident for the purposes of the Covered Tax Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Jurisdictions.

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions in cases in which that person would otherwise be treated as a resident of more than one Contracting Jurisdiction. Paragraph 1 shall not apply, however, to provisions of a Covered Tax Agreement specifically addressing the residence of companies participating in dual-listed company arrangements.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;

- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;
- c) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by denying treaty benefits without requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;
- d) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence, and that set out the treatment of that person under the Covered Tax Agreement where such an agreement cannot be reached;
- e) to replace the last sentence of paragraph 1 with the following text for the purposes of its Covered Tax Agreements: “In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement.”;

- f) for the entirety of this Article not to apply to its Covered Tax Agreements with Parties that have made the reservation described in subparagraph e).

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 2 that is not subject to a reservation under subparagraphs b) through d) of paragraph 3, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

Article 5 – Application of Methods for Elimination of Double Taxation

1. A Party may choose to apply either paragraphs 2 and 3 (Option A), paragraphs 4 and 5 (Option B), or paragraphs 6 and 7 (Option C), or may choose to apply none of the Options. Where each Contracting Jurisdiction to a Covered Tax Agreement chooses a different Option (or where one Contracting Jurisdiction chooses to apply an Option and the other chooses to apply none of the Options), the Option chosen by each Contracting Jurisdiction shall apply with respect to its own residents.

Option A

2. Provisions of a Covered Tax Agreement that would otherwise exempt income derived or capital owned by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction for the purpose of eliminating double taxation shall not apply where the other Contracting Jurisdiction applies the provisions of the Covered Tax Agreement to exempt

such income or capital from tax or to limit the rate at which such income or capital may be taxed. In the latter case, the first-mentioned Contracting Jurisdiction shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in that other Contracting Jurisdiction. 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 or capital which may be taxed in that other Contracting Jurisdiction.

3. Paragraph 2 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income or capital described in that paragraph.

Option B

4. Provisions of a Covered Tax Agreement that would otherwise exempt income derived by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction for the purpose of eliminating double taxation because such income is treated as a dividend by that Contracting Jurisdiction shall not apply where such income gives rise to a deduction for the purpose of determining the taxable profits of a resident of the other Contracting Jurisdiction under the laws of that other Contracting Jurisdiction. In such case, the first-mentioned Contracting Jurisdiction shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other Contracting Jurisdiction. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to such income which may be taxed in that other Contracting Jurisdiction.

5. Paragraph 4 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income described in that paragraph.

Option C

6. a) Where a resident of a Contracting Jurisdiction derives income or owns capital which may be taxed in the other Contracting Jurisdiction in accordance with the provisions of a Covered Tax Agreement (except to the extent that these provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction), the first-mentioned Contracting Jurisdiction shall allow:
- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Contracting Jurisdiction;
 - ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other Contracting Jurisdiction.

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

- b) Where in accordance with any provision of the Covered Tax Agreement income derived or capital owned by a resident of a Contracting Jurisdiction is exempt from tax in that Contracting Jurisdiction, such Contracting Jurisdiction may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

7. Paragraph 6 shall apply in place of provisions of a Covered Tax Agreement that, for purposes of eliminating double taxation, require a Contracting Jurisdiction to exempt from tax in that Contracting Jurisdiction income derived or capital owned by a resident of that Contracting Jurisdiction which, in accordance with the provisions of the Covered Tax Agreement, may be taxed in the other Contracting Jurisdiction.

8. A Party that does not choose to apply an Option under paragraph 1 may reserve the right for the entirety of this Article not to apply with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements).

9. A Party that does not choose to apply Option C may reserve the right, with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements), not to permit the other Contracting Jurisdiction(s) to apply Option C.

10. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depositary of its choice of Option. Such notification shall also include:

- a) in the case of a Party that chooses to apply Option A, the list of its Covered Tax Agreements which contain a provision described in paragraph 3, as well as the article and paragraph number of each such provision;
- b) in the case of a Party that chooses to apply Option B, the list of its Covered Tax Agreements which contain a provision described in paragraph 5, as well as the article and paragraph number of each such provision;

- c) in the case of a Party that chooses to apply Option C, the list of its Covered Tax Agreements which contain a provision described in paragraph 7, as well as the article and paragraph number of each such provision.

An Option shall apply with respect to a provision of a Covered Tax Agreement only where the Party that has chosen to apply that Option has made such a notification with respect to that provision.

PART III.

TREATY ABUSE

Article 6 – Purpose of a Covered Tax Agreement

1. A Covered Tax Agreement shall be modified to include the following preamble text:

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

2. The text described in paragraph 1 shall be included in a Covered Tax Agreement in place of or in the absence of preamble language of the Covered Tax Agreement referring to an intent to eliminate double taxation, whether or not that language also refers to the intent not to create opportunities for non-taxation or reduced taxation.

3. A Party may also choose to include the following preamble text with respect to its Covered Tax Agreements that do not contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters:

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

4. A Party may reserve the right for paragraph 1 not to apply to its Covered Tax Agreements that already contain preamble language describing the intent of the Contracting Jurisdictions to eliminate double taxation without creating opportunities for non-taxation or reduced taxation, whether that language is limited to cases of tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Covered Tax Agreement for the indirect benefit of residents of third jurisdictions) or applies more broadly.

5. Each Party shall notify the Depositary of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains preamble language described in paragraph 2, and if so, the text of the relevant preambular paragraph. Where all Contracting Jurisdictions have made such a notification with respect to that preamble language, such preamble language shall be replaced by the text described in paragraph 1. In other cases, the text described in paragraph 1 shall be included in addition to the existing preamble language.

6. Each Party that chooses to apply paragraph 3 shall notify the Depositary of its choice. Such notification shall also include the list of its Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters. The text described in paragraph 3 shall be included in a Covered Tax Agreement only where all Contracting Jurisdictions have

chosen to apply that paragraph and have made such a notification with respect to the Covered Tax Agreement.

Article 7 – Prevention of Treaty Abuse

1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement 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 Covered Tax Agreement.

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.

3. A Party that has not made the reservation described in subparagraph a) of paragraph 15 may also choose to apply paragraph 4 with respect to its Covered Tax Agreements.

4. Where a benefit under a Covered Tax Agreement is denied to a person under provisions of the Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits, the competent authority of the Contracting Jurisdiction that

would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement. The competent authority of the Contracting Jurisdiction to which a request has been made under this paragraph by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before rejecting the request.

5. Paragraph 4 shall apply to provisions of a Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.

6. A Party may also choose to apply the provisions contained in paragraphs 8 through 13 (hereinafter referred to as the “Simplified Limitation on Benefits Provision”) to its Covered Tax Agreements by making the notification described in subparagraph c) of paragraph 17. The Simplified Limitation on Benefits Provision shall apply with respect to a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it.

7. In cases where some but not all of the Contracting Jurisdictions to a Covered Tax Agreement choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, then, notwithstanding the provisions of that paragraph, the Simplified Limitation on Benefits Provision shall apply with respect to the granting of benefits under the Covered Tax Agreement:

- a) by all Contracting Jurisdictions, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly; or
- b) only by the Contracting Jurisdictions that choose to apply the Simplified Limitation on Benefits Provision, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly.

Simplified Limitation on Benefits Provision

8. Except as otherwise provided in the Simplified Limitation on Benefits Provision, a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall not be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement, other than a benefit under provisions of the Covered Tax Agreement:

- a) which determine the residence of a person other than an individual which is a resident of more than one Contracting Jurisdiction by reason of provisions of the Covered Tax Agreement that define a resident of a Contracting Jurisdiction;
- b) which provide that a Contracting Jurisdiction will grant to an enterprise of that Contracting Jurisdiction a corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of an associated enterprise; or

- c) which allow residents of a Contracting Jurisdiction to request that the competent authority of that Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement,

unless such resident is a “qualified person”, as defined in paragraph 9 at the time that the benefit would be accorded.

9. A resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be a qualified person at a time when a benefit would otherwise be accorded by the Covered Tax Agreement if, at that time, the resident is:

- a) an individual;
- b) that Contracting Jurisdiction, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting Jurisdiction, political subdivision or local authority;
- c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- d) a person, other than an individual, that:
 - i) is a non-profit organisation of a type that is agreed to by the Contracting Jurisdictions through an exchange of diplomatic notes; or
 - ii) is an entity or arrangement established in that Contracting Jurisdiction that is treated as a separate person under the taxation laws of that Contracting Jurisdiction and:

- A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting Jurisdiction or one of its political subdivisions or local authorities; or

- B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision A);

- e) a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit would otherwise be accorded, persons who are residents of that Contracting Jurisdiction and that are entitled to benefits of the Covered Tax Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

10. a) A resident of a Contracting Jurisdiction to a Covered Tax Agreement will be entitled to benefits of the Covered Tax Agreement with respect to an item of income derived from the other Contracting Jurisdiction, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting Jurisdiction, and the income derived from the other Contracting Jurisdiction emanates from, or is incidental to, that business. For purposes of the Simplified Limitation on Benefits Provision, the term “active conduct of a business” shall not include the following activities or any combination thereof:

- i) operating as a holding company;

- ii) providing overall supervision or administration of a group of companies;
 - iii) providing group financing (including cash pooling); or
 - iv) making or managing investments, unless these activities are carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business as such.
- b) If a resident of a Contracting Jurisdiction to a Covered Tax Agreement derives an item of income from a business activity conducted by that resident in the other Contracting Jurisdiction, or derives an item of income arising in the other Contracting Jurisdiction from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned Contracting Jurisdiction to which the item is related is substantial in relation to the same activity or a complementary business activity carried on by the resident or such connected person in the other Contracting Jurisdiction. Whether a business activity is substantial for the purposes of this subparagraph shall be determined based on all the facts and circumstances.
- c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be deemed to be conducted by such resident.

11. A resident of a Contracting Jurisdiction to a Covered Tax Agreement that is not a qualified person shall also be entitled to a benefit that would

otherwise be accorded by the Covered Tax Agreement with respect to an item of income if, on at least half of the days of any twelve-month period that includes the time when the benefit would otherwise be accorded, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the beneficial interests of the resident.

12. If a resident of a Contracting Jurisdiction to a Covered Tax Agreement is neither a qualified person pursuant to the provisions of paragraph 9, nor entitled to benefits under paragraph 10 or 11, the competent authority of the other Contracting Jurisdiction may, nevertheless, grant the benefits of the Covered Tax Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of the Covered Tax Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under the Covered Tax Agreement. Before either granting or denying a request made under this paragraph by a resident of a Contracting Jurisdiction, the competent authority of the other Contracting Jurisdiction to which the request has been made shall consult with the competent authority of the first-mentioned Contracting Jurisdiction.

13. For the purposes of the Simplified Limitation on Benefits Provision:

- a) the term “recognised stock exchange” means:
 - i) any stock exchange established and regulated as such under the laws of either Contracting Jurisdiction; and
 - ii) any other stock exchange agreed upon by the competent authorities of the Contracting Jurisdictions;

- b) the term “principal class of shares” means the class or classes of shares of a company which represents the majority of the aggregate vote and value of the company or the class or classes of beneficial interests of an entity which represents in the aggregate a majority of the aggregate vote and value of the entity;
- c) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting Jurisdiction to a Covered Tax Agreement under the domestic law of that Contracting Jurisdiction, the Covered Tax Agreement or any other international instrument which are equivalent to, or more favourable than, benefits to be accorded to that item of income under the Covered Tax Agreement; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;
- d) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;
- e) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances,

one has control of the other or both are under the control of the same person or persons.

14. The Simplified Limitation on Benefits Provision shall apply in place of or in the absence of provisions of a Covered Tax Agreement that would limit the benefits of the Covered Tax Agreement (or that would limit benefits other than a benefit under the provisions of the Covered Tax Agreement relating to residence, associated enterprises or non-discrimination or a benefit that is not restricted solely to residents of a Contracting Jurisdiction) only to a resident that qualifies for such benefits by meeting one or more categorical tests.

15. A Party may reserve the right:

- a) for paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to adopt a combination of a detailed limitation on benefits provision and either rules to address conduit financing structures or a principal purpose test, thereby meeting the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package; in such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard;
- b) for paragraph 1 (and paragraph 4, in the case of a Party that has chosen to apply that paragraph) not to apply to its Covered Tax Agreements that already contain provisions that deny all of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits;

- c) for the Simplified Limitation on Benefits Provision not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 14.

16. Except where the Simplified Limitation on Benefits Provision applies with respect to the granting of benefits under a Covered Tax Agreement by one or more Parties pursuant to paragraph 7, a Party that chooses pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision may reserve the right for the entirety of this Article not to apply with respect to its Covered Tax Agreements for which one or more of the other Contracting Jurisdictions has not chosen to apply the Simplified Limitation on Benefits Provision. In such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package.

- 17. a) Each Party that has not made the reservation described in subparagraph a) of paragraph 15 shall notify the Depository of whether each of its Covered Tax Agreements that is not subject to a reservation described in subparagraph b) of paragraph 15 contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (and where applicable, paragraph 4). In other cases, paragraph 1 (and where applicable, paragraph 4) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (and where applicable, paragraph 4). A Party making a notification under this subparagraph may also include a statement that while such Party accepts the application of paragraph 1 alone as an interim measure, it intends where possible to adopt a limitation

on benefits provision, in addition to or in replacement of paragraph 1, through bilateral negotiation.

- b) Each Party that chooses to apply paragraph 4 shall notify the Depository of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification.
- c) Each Party that chooses to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6 shall notify the Depository of its choice. Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.
- d) Each Party that does not choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, but chooses to apply either subparagraph a) or b) of paragraph 7 shall notify the Depository of its choice of subparagraph. Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.
- e) Where all Contracting Jurisdictions have made a notification under subparagraph c) or d) with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the Simplified Limitation on Benefits Provision. In other cases, the Simplified Limitation on Benefits Provision shall supersede the provisions of the Covered Tax Agreement only to the extent

that those provisions are incompatible with the Simplified
Limitation on Benefits Provision.

Article 8 – Dividend Transfer Transactions

1. Provisions of a Covered Tax Agreement that exempt dividends paid by a company which is a resident of a Contracting Jurisdiction from tax or that limit the rate at which such dividends may be taxed, provided that the beneficial owner or the recipient is a company which is a resident of the other Contracting Jurisdiction and which owns, holds or controls more than a certain amount of the capital, shares, stock, voting power, voting rights or similar ownership interests of the company paying the dividends, shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

2. The minimum holding period provided in paragraph 1 shall apply in place of or in the absence of a minimum holding period in provisions of a Covered Tax Agreement described in paragraph 1.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements to the extent that the provisions described in paragraph 1 already include:

- i) a minimum holding period;
- ii) a minimum holding period shorter than a 365 day period;
or
- iii) a minimum holding period longer than a 365 day period.

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 1 that is not subject to a reservation described in subparagraph b) of paragraph 3, and if so, the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

1. Provisions of a Covered Tax Agreement providing that gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction (or provided that more than a certain part of the property of the entity consists of such immovable property (real property)):

- a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

- b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions.
2. The period provided in subparagraph a) of paragraph 1 shall apply in place of or in the absence of a time period for determining whether the relevant value threshold in provisions of a Covered Tax Agreement described in paragraph 1 was met.
3. A Party may also choose to apply paragraph 4 with respect to its Covered Tax Agreements.
4. For purposes of a Covered Tax Agreement, gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting Jurisdiction 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 Jurisdiction.
5. Paragraph 4 shall apply in place of or in the absence of provisions of a Covered Tax Agreement providing that gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction, or provided that more than a certain part of the property of the entity consists of such immovable property (real property).
6. A Party may reserve the right:

- a) for paragraph 1 not to apply to its Covered Tax Agreements;
 - b) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements;
 - c) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements;
 - d) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that includes a period for determining whether the relevant value threshold was met;
 - e) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that applies to the alienation of interests other than shares;
 - f) for paragraph 4 not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 5.
7. Each Party that has not made the reservation described in subparagraph a) of paragraph 6 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 1, and if so, the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision.
8. Each Party that chooses to apply paragraph 4 shall notify the Depository of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification. In

such case, paragraph 1 shall not apply with respect to that Covered Tax Agreement. In the case of a Party that has not made the reservation described in subparagraph f) of paragraph 6 and has made the reservation described in subparagraph a) of paragraph 6, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 5, as well as the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement under this paragraph or paragraph 7, that provision shall be replaced by the provisions of paragraph 4. In other cases, paragraph 4 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 4.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

1. Where:
 - a) an enterprise of a Contracting Jurisdiction to a Covered Tax Agreement derives income from the other Contracting Jurisdiction and the first-mentioned Contracting Jurisdiction treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
 - b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting Jurisdiction,

the benefits of the Covered Tax Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting Jurisdiction on that item of income if that permanent establishment were situated in the

first-mentioned Contracting Jurisdiction. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting Jurisdiction, notwithstanding any other provisions of the Covered Tax Agreement.

2. Paragraph 1 shall not apply if the income derived from the other Contracting Jurisdiction described in paragraph 1 is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).
3. If benefits under a Covered Tax Agreement are denied pursuant to paragraph 1 with respect to an item of income derived by a resident of a Contracting Jurisdiction, the competent authority of the other Contracting Jurisdiction may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2. The competent authority of the Contracting Jurisdiction to which a request has been made under the preceding sentence by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before either granting or denying the request.
4. Paragraphs 1 through 3 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that deny or limit benefits that would otherwise be granted to an enterprise of a Contracting Jurisdiction which derives income from the other Contracting Jurisdiction that is attributable to a permanent establishment of the enterprise situated in a third jurisdiction.
5. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 4;
- c) for this Article to apply only to its Covered Tax Agreements that already contain the provisions described in paragraph 4.

6. Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 4, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraphs 1 through 3. In other cases, paragraphs 1 through 3 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with those paragraphs.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents

1. A Covered Tax Agreement shall not affect the taxation by a Contracting Jurisdiction of its residents, except with respect to the benefits granted under provisions of the Covered Tax Agreement:

- a) which require that Contracting Jurisdiction to grant to an enterprise of that Contracting Jurisdiction a correlative or corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the

- Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of a permanent establishment of the enterprise or the profits of an associated enterprise;
- b) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual derives income in respect of services rendered to the other Contracting Jurisdiction or a political subdivision or local authority or other comparable body thereof;
- c) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual is also a student, business apprentice or trainee, or a teacher, professor, lecturer, instructor, researcher or research scholar who meets the conditions of the Covered Tax Agreement;
- d) which require that Contracting Jurisdiction to provide a tax credit or tax exemption to residents of that Contracting Jurisdiction with respect to the income that the other Contracting Jurisdiction may tax in accordance with the Covered Tax Agreement (including profits that are attributable to a permanent establishment situated in that other Contracting Jurisdiction in accordance with the Covered Tax Agreement);
- e) which protect residents of that Contracting Jurisdiction against certain discriminatory taxation practices by that Contracting Jurisdiction;
- f) which allow residents of that Contracting Jurisdiction to request that the competent authority of that or either

Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement;

- g) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction when that individual is a member of a diplomatic mission, government mission or consular post of the other Contracting Jurisdiction;
 - h) which provide that pensions or other payments made under the social security legislation of the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction;
 - i) which provide that pensions and similar payments, annuities, alimony payments or other maintenance payments arising in the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction; or
 - j) which otherwise expressly limit a Contracting Jurisdiction's right to tax its own residents or provide expressly that the Contracting Jurisdiction in which an item of income arises has the exclusive right to tax that item of income.
2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement stating that the Covered Tax Agreement would not affect the taxation by a Contracting Jurisdiction of its residents.
3. A Party may reserve the right:
- a) for the entirety of this Article not to apply to its Covered Tax Agreements;

- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 2.

4. Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

PART IV.

AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

1. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, but subject to paragraph 2, where a person is acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting Jurisdiction in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting Jurisdiction, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the Covered Tax Agreement (as it may be modified by this Convention).

2. Paragraph 1 shall not apply where the person acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise of the other Contracting Jurisdiction carries on business in the first-mentioned Contracting Jurisdiction as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

3. a) Paragraph 1 shall apply in place of provisions of a Covered Tax Agreement that describe the conditions under which an enterprise shall be deemed to have a permanent establishment in a Contracting Jurisdiction (or a person shall be deemed to be a permanent establishment in a Contracting Jurisdiction) in respect of an activity which a person other than an agent of an independent status undertakes for the enterprise, but only to the extent that such provisions address the situation in which such

person has, and habitually exercises, in that Contracting Jurisdiction an authority to conclude contracts in the name of the enterprise.

b) Paragraph 2 shall apply in place of provisions of a Covered Tax Agreement that provide that an enterprise shall not be deemed to have a permanent establishment in a Contracting Jurisdiction in respect of an activity which an agent of an independent status undertakes for the enterprise.

4. A Party may reserve the right for the entirety of this Article not to apply to its Covered Tax Agreements.

5. Each Party that has not made a reservation described in paragraph 4 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in subparagraph a) of paragraph 3, as well as the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision.

6. Each Party that has not made a reservation described in paragraph 4 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in subparagraph b) of paragraph 3, as well as the article and paragraph number of each such provision. Paragraph 2 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

1. A Party may choose to apply paragraph 2 (Option A) or paragraph 3 (Option B) or to apply neither Option.

Option A

2. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

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

Option B

3. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character, except to the extent that the relevant provision of the Covered Tax Agreement provides explicitly that a specific activity shall be deemed not to constitute a permanent establishment provided that the activity is of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a), provided that this activity is of a preparatory or auxiliary character;
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. A provision of a Covered Tax Agreement (as it may be modified by paragraph 2 or 3) that lists specific activities deemed not to constitute a permanent establishment 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 Jurisdiction and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of a Covered Tax Agreement defining a permanent establishment; or

- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

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

- 5.
 - a) Paragraph 2 or 3 shall apply in place of the relevant parts of provisions of a Covered Tax Agreement that list specific activities that are deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business (or provisions of a Covered Tax Agreement that operate in a comparable manner).
 - b) Paragraph 4 shall apply to provisions of a Covered Tax Agreement (as they may be modified by paragraph 2 or 3) that list specific activities that are deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business (or provisions of a Covered Tax Agreement that operate in a comparable manner).
- 6. A Party may reserve the right:
 - a) for the entirety of this Article not to apply to its Covered Tax Agreements;
 - b) for paragraph 2 not to apply to its Covered Tax Agreements that explicitly state that a list of specific activities shall be deemed

not to constitute a permanent establishment only if each of the activities is of a preparatory or auxiliary character;

- c) for paragraph 4 not to apply to its Covered Tax Agreements.

7. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depository of its choice of Option. Such notification shall also include the list of its Covered Tax Agreements which contain a provision described in subparagraph a) of paragraph 5, as well as the article and paragraph number of each such provision. An Option shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply the same Option and have made such a notification with respect to that provision.

8. Each Party that has not made a reservation described in subparagraph a) or c) of paragraph 6 and does not choose to apply an Option under paragraph 1 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in subparagraph b) of paragraph 5, as well as the article and paragraph number of each such provision. Paragraph 4 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision under this paragraph or paragraph 7.

Article 14 – Splitting-up of Contracts

1. For the sole purpose of determining whether the period (or periods) referred to in a provision of a Covered Tax Agreement that stipulates a period (or periods) of time after which specific projects or activities shall constitute a permanent establishment has been exceeded:

- a) where an enterprise of a Contracting Jurisdiction carries on activities in the other Contracting Jurisdiction at a place that

constitutes a building site, construction project, installation project or other specific project identified in the relevant provision of the Covered Tax Agreement, or carries on supervisory or consultancy activities in connection with such a place, in the case of a provision of a Covered Tax Agreement that refers to such activities, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period or periods referred to in the relevant provision of the Covered Tax Agreement; and

- b) where connected activities are carried on in that other Contracting Jurisdiction at (or, where the relevant provision of the Covered Tax Agreement applies to supervisory or consultancy activities, in connection with) the same building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement.

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that such provisions address the division of contracts into multiple parts to avoid the application of a time period or periods in relation to the existence of a permanent establishment for specific projects or activities described in paragraph 1.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply with respect to provisions of its Covered Tax Agreements relating to the exploration for or exploitation of natural resources.

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2 that is not subject to a reservation under subparagraph b) of paragraph 3, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 to the extent provided in paragraph 2. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

Article 15 – Definition of a Person Closely Related to an Enterprise

1. For the purposes of the provisions of a Covered Tax Agreement that are modified by paragraph 2 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies), paragraph 4 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), or paragraph 1 of Article 14 (Splitting-up of Contracts), 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.

2. A Party that has made the reservations described in paragraph 4 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies), subparagraph a) or c) of paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), and subparagraph a) of paragraph 3 of Article 14 (Splitting-up of Contracts) may reserve the right for the entirety of this Article not to apply to the Covered Tax Agreements to which those reservations apply.

PART V.

IMPROVING DISPUTE RESOLUTION

Article 16 – Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of either Contracting Jurisdiction. 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 Covered Tax Agreement.

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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.

3. The competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.

4. a) i) The first sentence of paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement (or parts thereof) that provide that where a person considers that the actions of one or both of the Contracting Jurisdiction result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of the Contracting Jurisdiction of which that person is a resident including provisions under which, if the case presented by that person comes under the provisions of a Covered Tax Agreement relating to non-discrimination based on nationality, the case may be presented to the competent authority of the Contracting Jurisdiction of which that person is a national.

ii) The second sentence of paragraph 1 shall apply in place of provisions of a Covered Tax Agreement that provide

that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, or in the absence of a provision of a Covered Tax Agreement describing the time period within which such a case must be presented.

- b) i) The first sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authority that is presented with the case by the person referred to in paragraph 1 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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement.
- ii) The second sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement providing that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.
- c) i) The first sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement.

- ii) The second sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.

5. A Party may reserve the right:

- a) for the first sentence of paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was

- presented does not consider the taxpayer's objection to be justified;
- b) for the second sentence of paragraph 1 not to apply to its Covered Tax Agreements that do not provide that the case referred to in the first sentence of paragraph 1 must be presented within a specific time period on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by ensuring that for the purposes of all such Covered Tax Agreements the taxpayer referred to in paragraph 1 is allowed to present the case within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement;
 - c) for the second sentence of paragraph 2 not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements:
 - i) any agreement reached via the mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Jurisdictions; or
 - ii) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:
 - A) the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is

- mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and
- B) the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default).
6. a) Each Party that has not made a reservation described in subparagraph a) of paragraph 5 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in clause i) of subparagraph a) of paragraph 4, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the first sentence of paragraph 1. In other cases, the first sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with that sentence.

- b) Each Party that has not made the reservation described in subparagraph b) of paragraph 5 shall notify the Depositary of:
 - i) the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; a provision of a Covered Tax Agreement shall be replaced by the second sentence of paragraph 1 where all Contracting Jurisdictions have made such a notification with respect to that provision; in other cases, subject to clause ii), the second sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the second sentence of paragraph 1;
 - ii) the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; the second sentence of paragraph 1 shall not apply to a Covered Tax Agreement where any Contracting Jurisdiction has made such a notification with respect to that Covered Tax Agreement.
- c) Each Party shall notify the Depositary of:

- i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph b) of paragraph 4; the first sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;
 - ii) in the case of a Party that has not made the reservation described in subparagraph c) of paragraph 5, the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph b) of paragraph 4; the second sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.
- d) Each Party shall notify the Depositary of:
 - i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph c) of paragraph 4; the first sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;
 - ii) the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph c) of paragraph 4; the second sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.

Article 17 – Corresponding Adjustments

1. Where a Contracting Jurisdiction includes in the profits of an enterprise of that Contracting Jurisdiction — and taxes accordingly — profits on which an enterprise of the other Contracting Jurisdiction has been charged to tax in that other Contracting Jurisdiction and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting Jurisdiction 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 Covered Tax Agreement and the competent authorities of the Contracting Jurisdictions shall if necessary consult each other.

2. Paragraph 1 shall apply in place of or in the absence of a provision that requires a Contracting Jurisdiction to make an appropriate adjustment to the amount of the tax charged therein on the profits of an enterprise of that Contracting Jurisdiction where the other Contracting Jurisdiction includes those profits in the profits of an enterprise of that other Contracting Jurisdiction and taxes those profits accordingly, and the profits so included are profits which would have accrued to the enterprise of that other Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 2;

- b) for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in the absence of a provision referred to in paragraph 2 in its Covered Tax Agreement:
 - i) it shall make the appropriate adjustment referred to in paragraph 1; or
 - ii) its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure;
- c) in the case of a Party that has made a reservation under clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure), for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in its bilateral treaty negotiations it shall accept a treaty provision of the type contained in paragraph 1, provided that the Contracting Jurisdictions were able to reach agreement on that provision and on the provisions described in clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure).

4. Each Party that has not made a reservation described in paragraph 3 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

PART VI.

ARBITRATION

Article 18 – Choice to Apply Part VI

A Party may choose to apply this Part with respect to its Covered Tax Agreements and shall notify the Depository accordingly. This Part shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement only where both Contracting Jurisdictions have made such a notification.

Article 19 – Mandatory Binding Arbitration

1. Where:
 - a) under a provision of a Covered Tax Agreement (as it may be modified by paragraph 1 of Article 16 (Mutual Agreement Procedure)) that provides that a person may present a case to a competent authority of a Contracting Jurisdiction where that person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement (as it may be modified by the Convention), a person has presented a case to the competent authority of a Contracting Jurisdiction on the basis that the actions of one or both of the Contracting Jurisdictions have resulted for that person in taxation not in accordance with the provisions of the Covered Tax Agreement (as it may be modified by the Convention); and

- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to a provision of a Covered Tax Agreement (as it may be modified by paragraph 2 of Article 16 (Mutual Agreement Procedure)) that provides that the competent authority shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting Jurisdiction, within a period of two years beginning on the start date referred to in paragraph 8 or 9, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting Jurisdictions have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the Contracting Jurisdictions pursuant to the provisions of paragraph 10.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 will stop running until the suspension has been lifted.
3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional

material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1, the period provided in subparagraph b) of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.
- b) The arbitration decision shall be binding on both Contracting Jurisdictions except in the following cases:
 - i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
 - ii) if a final decision of the courts of one of the Contracting Jurisdictions holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph

1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings)). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

- iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 shall, within two calendar months of receiving the request:

- a) send a notification to the person who presented the case that it has received the request; and
- b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting Jurisdiction.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting Jurisdiction) it shall either:

- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or

- b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting Jurisdiction pursuant to subparagraph b) of paragraph 5.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6.

10. The competent authorities of the Contracting Jurisdictions shall by mutual agreement (pursuant to the article of the relevant Covered Tax Agreement regarding procedures for mutual agreement) settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

11. For purposes of applying this Article to its Covered Tax Agreements, a Party may reserve the right to replace the two-year period set forth in subparagraph b) of paragraph 1 with a three-year period.

12. A Party may reserve the right for the following rules to apply with respect to its Covered Tax Agreements notwithstanding the other provisions of this Article:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by this Convention shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting Jurisdiction;
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting Jurisdictions, the arbitration process shall terminate.

Article 20 – Appointment of Arbitrators

1. Except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, paragraphs 2 through 4 shall apply for the purposes of this Part.
2. The following rules shall govern the appointment of the members of an arbitration panel:
 - a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
 - b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 (Mandatory Binding Arbitration). The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who

- shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting Jurisdiction.
- c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting Jurisdictions and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a Contracting Jurisdiction fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting Jurisdictions, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting Jurisdiction.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting Jurisdictions, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting Jurisdiction.

Article 21 – Confidentiality of Arbitration Proceedings

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of the relevant Covered Tax Agreement and of the domestic laws of the Contracting Jurisdictions related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of the Covered Tax Agreement related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting Jurisdictions shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of the Covered Tax Agreement related to exchange of information and administrative assistance and under the applicable laws of the Contracting Jurisdictions.

Article 22 – Resolution of a Case Prior to the Conclusion of the Arbitration

For the purposes of this Part and the provisions of the relevant Covered Tax Agreement that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions:

- a) the competent authorities of the Contracting Jurisdictions reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 – Type of Arbitration Process

1. Except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

- a) After a case is submitted to arbitration, the competent authority of each Contracting Jurisdiction shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting Jurisdictions). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to the Covered Tax Agreement, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting Jurisdictions have been unable to reach agreement on an issue regarding the conditions for application of a provision of the relevant Covered Tax Agreement (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

- b) The competent authority of each Contracting Jurisdiction may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
 - c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting Jurisdictions. The arbitration decision shall have no precedential value.
2. For the purpose of applying this Article with respect to its Covered Tax Agreements, a Party may reserve the right for paragraph 1 not to apply to its Covered Tax Agreements. In such a case, except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding:
- a) After a case is submitted to arbitration, the competent authority of each Contracting Jurisdiction shall provide any information

- that may be necessary for the arbitration decision to all panel members without undue delay. Unless the competent authorities of the Contracting Jurisdictions agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.
- b) The arbitration panel shall decide the issues submitted to arbitration in accordance with the applicable provisions of the Covered Tax Agreement and, subject to these provisions, of those of the domestic laws of the Contracting Jurisdictions. The panel members shall also consider any other sources which the competent authorities of the Contracting Jurisdictions may by mutual agreement expressly identify.
 - c) The arbitration decision shall be delivered to the competent authorities of the Contracting Jurisdictions in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision shall be adopted by a simple majority of the panel members. The arbitration decision shall have no precedential value.
3. A Party that has not made the reservation described in paragraph 2 may reserve the right for the preceding paragraphs of this Article not to apply with respect to its Covered Tax Agreements with Parties that have made such a reservation. In such a case, the competent authorities of the Contracting Jurisdictions of each such Covered Tax Agreement shall endeavour to reach agreement on the type of arbitration process that shall apply with respect to that Covered Tax Agreement. Until such an agreement is reached, Article 19 (Mandatory Binding Arbitration) shall not apply with respect to such a Covered Tax Agreement.

4. A Party may also choose to apply paragraph 5 with respect to its Covered Tax Agreements and shall notify the Depository accordingly. Paragraph 5 shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement where either of the Contracting Jurisdictions has made such a notification.

5. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting Jurisdictions to a Covered Tax Agreement shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under the Covered Tax Agreement, as well as the arbitration proceeding under this Part, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions, a person that presented the case or one of that person's advisors materially breaches that agreement.

6. Notwithstanding paragraph 4, a Party that does not choose to apply paragraph 5 may reserve the right for paragraph 5 not to apply with respect to one or more identified Covered Tax Agreements or with respect to all of its Covered Tax Agreements.

7. A Party that chooses to apply paragraph 5 may reserve the right for this Part not to apply with respect to all Covered Tax Agreements for which the other Contracting Jurisdiction makes a reservation pursuant to paragraph 6.

Article 24 – Agreement on a Different Resolution

1. For purposes of applying this Part with respect to its Covered Tax Agreements, a Party may choose to apply paragraph 2 and shall notify the Depository accordingly. Paragraph 2 shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement only where both Contracting Jurisdictions have made such a notification.

2. Notwithstanding paragraph 4 of Article 19 (Mandatory Binding Arbitration), an arbitration decision pursuant to this Part shall not be binding on the Contracting Jurisdictions to a Covered Tax Agreement and shall not be implemented if the competent authorities of the Contracting Jurisdictions agree on a different resolution of all unresolved issues within three calendar months after the arbitration decision has been delivered to them.

3. A Party that chooses to apply paragraph 2 may reserve the right for paragraph 2 to apply only with respect to its Covered Tax Agreements for which paragraph 2 of Article 23 (Type of Arbitration Process) applies.

Article 25 – Costs of Arbitration Proceedings

In an arbitration proceeding under this Part, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the Contracting Jurisdictions, shall be borne by the Contracting Jurisdictions in a manner to be settled by mutual agreement between the competent authorities of the Contracting Jurisdictions. In the absence of such agreement, each Contracting Jurisdiction shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the Contracting Jurisdictions in equal shares.

Article 26 – Compatibility

1. Subject to Article 18 (Choice to Apply Part VI), the provisions of this Part shall apply in place of or in the absence of provisions of a Covered Tax Agreement that provide for arbitration of unresolved issues arising from a mutual agreement procedure case. Each Party that chooses to apply this Part shall notify the Depository of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains such a provision, and if so, the article and paragraph number of each such provision. Where two Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of this Part as between those Contracting Jurisdictions.

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Subject to paragraph 1, nothing in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting Jurisdictions are or will become parties.

4. A Party may reserve the right for this Part not to apply with respect to one or more identified Covered Tax Agreements (or to all of its Covered Tax Agreements) that already provide for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

PART VII.

FINAL PROVISIONS

Article 27 – Signature and Ratification, Acceptance or Approval

1. As of 31 December 2016, this Convention shall be open for signature by:
 - a) all States;
 - b) Guernsey (the United Kingdom of Great Britain and Northern Ireland); Isle of Man (the United Kingdom of Great Britain and Northern Ireland); Jersey (the United Kingdom of Great Britain and Northern Ireland); and
 - c) any other jurisdiction authorised to become a Party by means of a decision by consensus of the Parties and Signatories.
2. This Convention is subject to ratification, acceptance or approval.

Article 28 – Reservations

1. Subject to paragraph 2, no reservations may be made to this Convention except those expressly permitted by:
 - a) Paragraph 5 of Article 3 (Transparent Entities);
 - b) Paragraph 3 of Article 4 (Dual Resident Entities);
 - c) Paragraphs 8 and 9 of Article 5 (Application of Methods for Elimination of Double Taxation);

- d) Paragraph 4 of Article 6 (Purpose of a Covered Tax Agreement);
- e) Paragraphs 15 and 16 of Article 7 (Prevention of Treaty Abuse);
- f) Paragraph 3 of Article 8 (Dividend Transfer Transactions);
- g) Paragraph 6 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
- h) Paragraph 5 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
- i) Paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
- j) Paragraph 4 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies);
- k) Paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);
- l) Paragraph 3 of Article 14 (Splitting-up of Contracts);
- m) Paragraph 2 of Article 15 (Definition of a Person Closely Related to an Enterprise);
- n) Paragraph 5 of Article 16 (Mutual Agreement Procedure);

- o) Paragraph 3 of Article 17 (Corresponding Adjustments);
 - p) Paragraphs 11 and 12 of Article 19 (Mandatory Binding Arbitration);
 - q) Paragraphs 2, 3, 6, and 7 of Article 23 (Type of Arbitration Process);
 - r) Paragraph 3 of Article 24 (Agreement on a Different Resolution);
 - s) Paragraph 4 of Article 26 (Compatibility);
 - t) Paragraphs 6 and 7 of Article 35 (Entry into Effect); and
 - u) Paragraph 2 of Article 36 (Entry into Effect of Part VI).
- 2.
- a) Notwithstanding paragraph 1, a Party that chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) may formulate one or more reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI (Arbitration). For a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, reservations pursuant to this subparagraph shall be made at the same time as that Party's notification to the Depository pursuant to Article 18 (Choice to Apply Part VI).
 - b) Reservations made under subparagraph a) are subject to acceptance. A reservation made under subparagraph a) shall be considered to have been accepted by a Party if it has not notified the Depository that it objects to the reservation by the end of a

period of twelve calendar months beginning on the date of notification of the reservation by the Depositary or by the date on which it deposits its instrument of ratification, acceptance, or approval, whichever is later. For a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, objections to prior reservations made by other Parties pursuant to subparagraph a) can be made at the time of the first-mentioned Party's notification to the Depositary pursuant to Article 18 (Choice to Apply Part VI). Where a Party raises an objection to a reservation made under subparagraph a), the entirety of Part VI (Arbitration) shall not apply as between the objecting Party and the reserving Party.

3. Unless explicitly provided otherwise in the relevant provisions of this Convention, a reservation made in accordance with paragraph 1 or 2 shall:

- a) modify for the reserving Party in its relations with another Party the provisions of this Convention to which the reservation relates to the extent of the reservation; and
- b) modify those provisions to the same extent for the other Party in its relations with the reserving Party.

4. Reservations applicable to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, where that jurisdiction or territory is not a Party to the Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval), shall be made by the responsible Party and can be different from the reservations made by that Party for its own Covered Tax Agreements.

5. Reservations shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval, subject to the provisions of paragraphs 2, 6 and 9 of this Article, and paragraph 5 of Article 29 (Notifications). However, for a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, reservations described in subparagraphs p), q), r) and s) of paragraph 1 of this Article shall be made at the same time as that Party's notification to the Depositary pursuant to Article 18 (Choice to Apply Part VI).

6. If reservations are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless the document containing the reservations explicitly specifies that it is to be considered definitive, subject to the provisions of paragraphs 2, 5 and 9 of this Article, and paragraph 5 of Article 29 (Notifications).

7. If reservations are not made at the time of signature, a provisional list of expected reservations shall be provided to the Depositary at that time.

8. For reservations made pursuant to each of the following provisions, a list of agreements notified pursuant to clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) that are within the scope of the reservation as defined in the relevant provision (and, in the case of a reservation under any of the following provisions other than those listed in subparagraphs c), d) and n), the article and paragraph number of each relevant provision) must be provided when such reservations are made:

- a) Subparagraphs b), c), d), e) and g) of paragraph 5 of Article 3 (Transparent Entities);
- b) Subparagraphs b), c) and d) of paragraph 3 of Article 4 (Dual Resident Entities);

- c) Paragraphs 8 and 9 of Article 5 (Application of Methods for Elimination of Double Taxation);
- d) Paragraph 4 of Article 6 (Purpose of a Covered Tax Agreement);
- e) Subparagraphs b) and c) of paragraph 15 of Article 7 (Prevention of Treaty Abuse);
- f) Clauses i), ii), and iii) of subparagraph b) of paragraph 3 of Article 8 (Dividend Transfer Transactions);
- g) Subparagraphs d), e) and f) of paragraph 6 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
- h) Subparagraphs b) and c) of paragraph 5 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
- i) Subparagraph b) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
- j) Subparagraph b) of paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);
- k) Subparagraph b) of paragraph 3 of Article 14 (Splitting-up of Contracts);

- l) Subparagraph b) of paragraph 5 of Article 16 (Mutual Agreement Procedure);
- m) Subparagraph a) of paragraph 3 of Article 17 (Corresponding Adjustments);
- n) Paragraph 6 of Article 23 (Type of Arbitration Process); and
- o) Paragraph 4 of Article 26 (Compatibility).

The reservations described in subparagraphs a) through o) above shall not apply to any Covered Tax Agreement that is not included on the list described in this paragraph.

9. Any Party which has made a reservation in accordance with paragraph 1 or 2 may at any time withdraw it or replace it with a more limited reservation by means of a notification addressed to the Depositary. Such Party shall make any additional notifications pursuant to paragraph 6 of Article 29 (Notifications) which may be required as a result of the withdrawal or replacement of the reservation. Subject to paragraph 7 of Article 35 (Entry into Effect), the withdrawal or replacement shall take effect:

- a) with respect to a Covered Tax Agreement solely with States or jurisdictions that are Parties to the Convention when the notification of withdrawal or replacement of the reservation is received by the Depositary:
 - i) for reservations in respect of provisions relating to taxes withheld at source, where the event giving rise to such taxes occurs on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by

- the Depository of the notification of withdrawal or replacement of the reservation; and
- ii) for reservations in respect of all other provisions, for taxes levied with respect to taxable periods beginning on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depository of the notification of withdrawal or replacement of the reservation; and
- b) with respect to a Covered Tax Agreement for which one or more Contracting Jurisdictions becomes a Party to this Convention after the date of receipt by the Depository of the notification of withdrawal or replacement: on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions.

Article 29 – Notifications

1. Subject to paragraphs 5 and 6 of this Article, and paragraph 7 of Article 35 (Entry into Effect), notifications pursuant to the following provisions shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval:

- a) Clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms);
- b) Paragraph 6 of Article 3 (Transparent Entities);
- c) Paragraph 4 of Article 4 (Dual Resident Entities);

- d) Paragraph 10 of Article 5 (Application of Methods for Elimination of Double Taxation);
- e) Paragraphs 5 and 6 of Article 6 (Purpose of a Covered Tax Agreement);
- f) Paragraph 17 of Article 7 (Prevention of Treaty Abuse);
- g) Paragraph 4 of Article 8 (Dividend Transfer Transactions);
- h) Paragraphs 7 and 8 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
- i) Paragraph 6 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
- j) Paragraph 4 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
- k) Paragraphs 5 and 6 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies);
- l) Paragraphs 7 and 8 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);
- m) Paragraph 4 of Article 14 (Splitting-up of Contracts);
- n) Paragraph 6 of Article 16 (Mutual Agreement Procedure);

- o) Paragraph 4 of Article 17 (Corresponding Adjustments);
- p) Article 18 (Choice to Apply Part VI);
- q) Paragraph 4 of Article 23 (Type of Arbitration Process);
- r) Paragraph 1 of Article 24 (Agreement on a Different Resolution);
- s) Paragraph 1 of Article 26 (Compatibility); and
- t) Paragraphs 1, 2, 3, 5 and 7 of Article 35 (Entry into Effect).

2. Notifications in respect of Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, where that jurisdiction or territory is not a Party to the Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval), shall be made by the responsible Party and can be different from the notifications made by that Party for its own Covered Tax Agreements.

3. If notifications are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless the document containing the notifications explicitly specifies that it is to be considered definitive, subject to the provisions of paragraphs 5 and 6 of this Article, and paragraph 7 of Article 35 (Entry into Effect).

4. If notifications are not made at the time of signature, a provisional list of expected notifications shall be provided at that time.

5. A Party may extend at any time the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) by means of a notification addressed to the Depository. The Party shall specify in this notification whether the agreement falls within the scope of any of the reservations made by the Party which are listed in paragraph 8 of Article 28 (Reservations). The Party may also make a new reservation described in paragraph 8 of Article 28 (Reservations) if the additional agreement would be the first to fall within the scope of such a reservation. The Party shall also specify any additional notifications that may be required under subparagraphs b) through s) of paragraph 1 to reflect the inclusion of the additional agreements. In addition, if the extension results for the first time in the inclusion of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, the Party shall specify any reservations (pursuant to paragraph 4 of Article 28 (Reservations)) or notifications (pursuant to paragraph 2 of this Article) applicable to Covered Tax Agreements entered into by or on behalf of that jurisdiction or territory. On the date on which the added agreement(s) notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) become Covered Tax Agreements, the provisions of Article 35 (Entry into Effect) shall govern the date on which the modifications to the Covered Tax Agreement shall have effect.

6. A Party may make additional notifications pursuant to subparagraphs b) through s) of paragraph 1 by means of a notification addressed to the Depository. These notifications shall take effect:

- a) with respect to Covered Tax Agreements solely with States or jurisdictions that are Parties to the Convention when the additional notification is received by the Depository:
 - i) for notifications in respect of provisions relating to taxes withheld at source, where the event giving rise to such taxes occurs on or after 1 January of the year next

following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the additional notification; and

- ii) for notifications in respect of all other provisions, for taxes levied with respect to taxable periods beginning on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the additional notification; and
- b) with respect to a Covered Tax Agreement for which one or more Contracting Jurisdictions becomes a Party to this Convention after the date of receipt by the Depositary of the additional notification: on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions.

Article 30 – Subsequent Modifications of Covered Tax Agreements

The provisions in this Convention are without prejudice to subsequent modifications to a Covered Tax Agreement which may be agreed between the Contracting Jurisdictions of the Covered Tax Agreement.

Article 31 – Conference of the Parties

1. The Parties may convene a Conference of the Parties for the purposes of taking any decisions or exercising any functions as may be required or appropriate under the provisions of this Convention.
2. The Conference of the Parties shall be served by the Depositary.

3. Any Party may request a Conference of the Parties by communicating a request to the Depositary. The Depositary shall inform all Parties of any request. Thereafter, the Depositary shall convene a Conference of the Parties, provided that the request is supported by one-third of the Parties within six calendar months of the communication by the Depositary of the request.

Article 32 – Interpretation and Implementation

1. Any question arising as to the interpretation or implementation of provisions of a Covered Tax Agreement as they are modified by this Convention shall be determined in accordance with the provision(s) of the Covered Tax Agreement relating to the resolution by mutual agreement of questions of interpretation or application of the Covered Tax Agreement (as those provisions may be modified by this Convention).
2. Any question arising as to the interpretation or implementation of this Convention may be addressed by a Conference of the Parties convened in accordance with paragraph 3 of Article 31 (Conference of the Parties).

Article 33 – Amendment

1. Any Party may propose an amendment to this Convention by submitting the proposed amendment to the Depositary.
2. A Conference of the Parties may be convened to consider the proposed amendment in accordance with paragraph 3 of Article 31 (Conference of the Parties).

Article 34 – Entry into Force

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval.
2. For each Signatory ratifying, accepting, or approving this Convention after the deposit of the fifth instrument of ratification, acceptance or approval, the Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by such Signatory of its instrument of ratification, acceptance or approval.

Article 35 – Entry into Effect

1. The provisions of this Convention shall have effect in each Contracting Jurisdiction with respect to a Covered Tax Agreement:
 - a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the next calendar year that begins on or after the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement; and
 - b) with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depository that they intend to apply such shorter period) from the latest of the dates on which this Convention

enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement.

2. Solely for the purpose of its own application of subparagraph a) of paragraph 1 and subparagraph a) of paragraph 5, a Party may choose to substitute “taxable period” for “calendar year”, and shall notify the Depository accordingly.
3. Solely for the purpose of its own application of subparagraph b) of paragraph 1 and subparagraph b) of paragraph 5, a Party may choose to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”, and shall notify the Depository accordingly.
4. Notwithstanding the preceding provisions of this Article, Article 16 (Mutual Agreement Procedure) shall have effect with respect to a Covered Tax Agreement for a case presented to the competent authority of a Contracting Jurisdiction on or after the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement, except for cases that were not eligible to be presented as of that date under the Covered Tax Agreement prior to its modification by the Convention, without regard to the taxable period to which the case relates.
5. For a new Covered Tax Agreement resulting from an extension pursuant to paragraph 5 of Article 29 (Notifications) of the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms), the provisions of this Convention shall have effect in each Contracting Jurisdiction:
 - a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such

taxes occurs on or after the first day of the next calendar year that begins on or after 30 days after the date of the communication by the Depository of the notification of the extension of the list of agreements; and

- b) with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of nine calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depository that they intend to apply such shorter period) from the date of the communication by the Depository of the notification of the extension of the list of agreements.

6. A Party may reserve the right for paragraph 4 not to apply with respect to its Covered Tax Agreements.

7. a) A Party may reserve the right to replace:

- i) the references in paragraphs 1 and 4 to “the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”; and
- ii) the references in paragraph 5 to “the date of the communication by the Depository of the notification of the extension of the list of agreements”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this

Convention with respect to that specific Covered Tax Agreement”;

- iii) the references in subparagraph a) of paragraph 9 of Article 28 (Reservations) to “on the date of the communication by the Depository of the notification of withdrawal or replacement of the reservation”; and
- iv) the reference in subparagraph b) of paragraph 9 of Article 28 (Reservations) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the withdrawal or replacement of the reservation with respect to that specific Covered Tax Agreement”;

- v) the references in subparagraph a) of paragraph 6 of Article 29 (Notifications) to “on the date of the communication by the Depository of the additional notification”; and
- vi) the reference in subparagraph b) of paragraph 6 of Article 29 (Notifications) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting

Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the additional notification with respect to that specific Covered Tax Agreement”;

- vii) the references in paragraphs 1 and 2 of Article 36 (Entry into Effect of Part VI) to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement”;

- viii) the reference in paragraph 3 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depository of the notification of the extension of the list of agreements”;
- ix) the references in paragraph 4 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depository of the notification of withdrawal of the reservation”, “the date of the communication by the Depository of the notification of replacement of the reservation” and “the date of the communication by the Depository of the notification of withdrawal of the objection to the reservation”; and

- x) the reference in paragraph 5 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depository of the additional notification”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of Part VI (Arbitration) with respect to that specific Covered Tax Agreement”.

- b) A Party making a reservation in accordance with subparagraph a) shall notify the confirmation of the completion of its internal procedures simultaneously to the Depository and the other Contracting Jurisdiction(s).
- c) If one or more Contracting Jurisdictions to a Covered Tax Agreement makes a reservation under this paragraph, the date of entry into effect of the provisions of the Convention, of the withdrawal or replacement of a reservation, of an additional notification with respect to that Covered Tax Agreement, or of Part VI (Arbitration) shall be governed by this paragraph for all Contracting Jurisdictions to the Covered Tax Agreement.

Article 36 – Entry into Effect of Part VI

1. Notwithstanding paragraph 9 of Article 28 (Reservations), paragraph 6 of Article 29 (Notifications), and paragraphs 1 through 6 of Article 35 (Entry into Effect), with respect to two Contracting Jurisdictions to a Covered Tax Agreement, the provisions of Part VI (Arbitration) shall have effect:

- a) with respect to cases presented to the competent authority of a Contracting Jurisdiction (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)), on or after the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement; and
 - b) with respect to cases presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement, on the date when both Contracting Jurisdictions have notified the Depository that they have reached mutual agreement pursuant to paragraph 10 of Article 19 (Mandatory Binding Arbitration), along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting Jurisdiction (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)) according to the terms of that mutual agreement.
2. A Party may reserve the right for Part VI (Arbitration) to apply to a case presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement only to the extent that the competent authorities of both Contracting Jurisdictions agree that it will apply to that specific case.
3. In the case of a new Covered Tax Agreement resulting from an extension pursuant to paragraph 5 of Article 29 (Notifications) of the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms), the references in paragraphs 1 and 2 of this Article to “the later of the dates on which this Convention enters into

force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depository of the notification of the extension of the list of agreements”.

4. A withdrawal or replacement of a reservation made under paragraph 4 of Article 26 (Compatibility) pursuant to paragraph 9 of Article 28 (Reservations), or the withdrawal of an objection to a reservation made under paragraph 2 of Article 28 (Reservations) which results in the application of Part VI (Arbitration) between two Contracting Jurisdictions to a Covered Tax Agreement, shall have effect according to subparagraphs a) and b) of paragraph 1 of this Article, except that the references to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depository of the notification of withdrawal of the reservation”, “the date of the communication by the Depository of the notification of replacement of the reservation” or “the date of the communication by the Depository of the notification of withdrawal of the objection to the reservation”, respectively.

5. An additional notification made pursuant to subparagraph p) of paragraph 1 of Article 29 (Notifications) shall have effect according to subparagraphs a) and b) of paragraph 1, except that the references in paragraphs 1 and 2 of this Article to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depository of the additional notification”.

Article 37 – Withdrawal

1. Any Party may, at any time, withdraw from this Convention by means of a notification addressed to the Depository.

2. Withdrawal pursuant to paragraph 1 shall become effective on the date of receipt of the notification by the Depositary. In cases where this Convention has entered into force with respect to all Contracting Jurisdictions to a Covered Tax Agreement before the date on which a Party's withdrawal becomes effective, that Covered Tax Agreement shall remain as modified by this Convention.

Article 38 – Relation with Protocols

1. This Convention may be supplemented by one or more protocols.
2. In order to become a party to a protocol, a State or jurisdiction must also be a Party to this Convention.
3. A Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with its provisions.

Article 39 – Depositary

1. The Secretary-General of the Organisation for Economic Co-operation and Development shall be the Depositary of this Convention and any protocols pursuant to Article 38 (Relation with Protocols).
2. The Depositary shall notify the Parties and Signatories within one calendar month of:
 - a) any signature pursuant to Article 27 (Signature and Ratification, Acceptance or Approval);

- b) the deposit of any instrument of ratification, acceptance or approval pursuant to Article 27 (Signature and Ratification, Acceptance or Approval);
 - c) any reservation or withdrawal or replacement of a reservation pursuant to Article 28 (Reservations);
 - d) any notification or additional notification pursuant to Article 29 (Notifications);
 - e) any proposed amendment to this Convention pursuant to Article 33 (Amendment);
 - f) any withdrawal from this Convention pursuant to Article 37 (Withdrawal); and
 - g) any other communication related to this Convention.
3. The Depositary shall maintain publicly available lists of:
 - a) Covered Tax Agreements;
 - b) reservations made by the Parties; and
 - c) notifications made by the Parties.

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

Done at Paris, the 24th day of November 2016, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Organisation for Economic Co-operation and Development.

Schedule 2

[s. 4]

Reservations and Notifications Applicable to Hong Kong Made under Convention by Central People's Government

Article 2 – Interpretation of Terms

Notification - Agreements Covered by the Convention

Pursuant to Article 2(1)(a)(ii) of the Convention, the HKSAR wishes the following agreements to be covered by the Convention:

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
1	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of	Austria	Original	25-05-2010	01-01-2011
			Amending Instrument (a)	25-06-2012	03-07-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

96

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Fiscal Evasion with respect to Taxes on Income and on Capital				
2	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Belarus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Belarus	Original	16-01-2017	30-11-2017
3	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to	Belgium	Original	10-12-2003	07-10-2004

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

97

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Taxes on Income and on Capital				
4	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Brunei	Original	20-03-2010	19-12-2010
5	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and	Cambodia	Original	20-06-2019 and 26-06-2019	27-12-2019

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

98

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	the Prevention of Fiscal Evasion with respect to Taxes on Income				
6	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Canada	Original	11-11-2012	29-10-2013
7	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Czech Republic for the Avoidance of Double Taxation and the Prevention of Fiscal	Czech	Original	06-06-2011	24-01-2012

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

99

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Evasion with respect to Taxes on Income				
8	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion	France	Original	21-10-2010	01-12-2011
9	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Guernsey	Original	28-03-2013 and 22-04-2013	05-12-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

100

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
10	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Hungary	Original	12-05-2010	23-02-2011
11	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	India	Original	19-03-2018	30-11-2018

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

101

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
12	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Indonesia	Original	23-03-2010	28-03-2012
13	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Ireland	Original	22-06-2010	10-02-2011
14	Agreement between the Government of the	Italy	Original	14-01-2013	10-08-2015

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

102

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion				
15	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Japan	Original Amending Instrument (a)	09-11-2010 10-12-2014	14-08-2011 06-07-2015
16	Agreement between the Government of the Hong Kong Special Administrative Region of the People's	Jersey	Original	15-02-2012 and 22-02-2012	03-07-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

103

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Republic of China and the Government of Jersey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income				
17	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Korea	Original	08-07-2014	27-09-2016
18	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the	Kuwait	Original	13-05-2010	24-07-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

104

No	Title	Other Contracting Jurisdiction	Original/ Amending Instrument	Date of Signature	Date of Entry into Force
	State of Kuwait for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income				
19	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Latvia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Latvia	Original	13-04-2016	24-11-2017
20	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Principality of Liechtenstein for the	Liechtenstein	Original	12-08-2010	08-07-2011

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

105

No	Title	Other Contracting Jurisdiction	Original/ Amending Instrument	Date of Signature	Date of Entry into Force
	Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital				
21	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Luxembourg	Original	02-11-2007	20-01-2009
			Amending Instrument (a)	11-11-2010	17-08-2011
22	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Malaysia for the Avoidance of Double Taxation and the	Malaysia	Original	25-04-2012	28-12-2012

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

106

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Prevention of Fiscal Evasion with respect to Taxes on Income				
23	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Malta	Original	08-11-2011	18-07-2012
24	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with	Mexico	Original	18-06-2012	07-03-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

107

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	respect to Taxes on Income				
25	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Netherlands	Original	22-03-2010	24-10-2011
26	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	New Zealand	Original Amending Instrument (a)	01-12-2010 15-06-2017 and 28-06-2017	09-11-2011 09-08-2018

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

108

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
27	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Pakistan	Original	17-02-2017	24-11-2017
28	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Portugal	Original	22-03-2011	03-06-2012
29	Agreement between the Government of the Hong Kong Special	Qatar	Original	13-05-2013	05-12-2013

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

109

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Administrative Region of the People's Republic of China and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income				
30	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Romania	Original	18-11-2015	21-11-2016
31	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Russian Federation for	Russia	Original	18-01-2016	29-07-2016

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order

Schedule 2

110

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income				
32	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income	Saudi Arabia	Original	24-08-2017	01-09-2018
33	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of South Africa for the	South Africa	Original	30-09-2014 and 16-10-2014	20-10-2015

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order

Schedule 2

111

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income				
34	Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Spain	Original	01-04-2011	13-04-2012
35	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income	Switzerland	Original	04-10-2011	15-10-2012

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

112

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
36	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Thailand	Original	07-09-2005	07-12-2005
37	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	United Arab Emirates	Original	11-12-2014	10-12-2015

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

113

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
38	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains	United Kingdom	Original	21-06-2010	20-12-2010
39	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal	Vietnam	Original	16-12-2008	12-08-2009
			Amending Instrument (a)	13-01-2014	08-01-2015

No	Title	Other Contracting Jurisdiction	Original/Amending Instrument	Date of Signature	Date of Entry into Force
	Evasion with respect to Taxes on Income				

Article 3 – Transparent Entities

Reservation

Pursuant to Article 3(5)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 3 not to apply to its Covered Tax Agreements.

Article 4 – Dual Resident Entities

Reservation

Pursuant to Article 4(3)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 4 not to apply to its Covered Tax Agreements.

Article 5 – Application of Methods for Elimination of Double Taxation

Reservation

Pursuant to Article 5(8) of the Convention, the HKSAR reserves the right for the entirety of Article 5 not to apply with respect to all of its Covered Tax Agreements.

Article 6 – Purpose of a Covered Tax Agreement

Reservation

Pursuant to Article 6(4) of the Convention, the HKSAR reserves the right for Article 6(1) not to apply to its Covered Tax Agreements that already contain preamble language describing the intent of the Contracting Jurisdictions to eliminate double taxation without creating opportunities for non-taxation or reduced taxation, whether that language is limited to cases of tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Covered Tax Agreement for the indirect benefit of residents of third jurisdictions) or applies more broadly. The following agreement contains preamble language that is within the scope of this reservation.

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
2	Belarus	Intending to eliminate double taxation with respect to taxes on income and on capital 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 Agreement for the indirect benefit of residents of third Parties);

Notification of Choice of Optional Provisions

Pursuant to Article 6(6) of the Convention, the HKSAR hereby chooses to apply Article 6(3).

Notification of Existing Preamble Language in Listed Agreements

Pursuant to Article 6(5) of the Convention, the HKSAR considers that the following agreements are not within the scope of a reservation under Article 6(4) and contain preamble language described in Article 6(2). The text of the relevant preambular paragraph is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
1	Austria	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;
3	Belgium	DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
4	Brunei	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
5	Cambodia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
6	Canada	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
7	Czech	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
8	France	Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion,
9	Guernsey	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
10	Hungary	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
11	India	desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
12	Indonesia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
13	Ireland	Desiring to conclude an Agreement for the avoidance of double taxation and the

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

118

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
		prevention of fiscal evasion with respect to taxes on income;
14	Italy	Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion;
15	Japan	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
16	Jersey	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
17	Korea	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
18	Kuwait	desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
19	Latvia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Inland Revenue (Multilateral Convention to Implement Tax Treaty Related
Measures to Prevent Base Erosion and Profit Shifting) Order
Schedule 2

119

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
20	Liechtenstein	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
21	Luxembourg	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;
22	Malaysia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
23	Malta	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
24	Mexico	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
25	Netherlands	DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
26	New Zealand	Desiring to conclude an Agreement for the avoidance of double taxation and the

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
		prevention of fiscal evasion with respect to taxes on income,
27	Pakistan	desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,
28	Portugal	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
29	Qatar	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
30	Romania	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
31	Russia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
32	Saudi Arabia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income;

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
33	South Africa	DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
34	Spain	desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,
35	Switzerland	Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income,
36	Thailand	DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
37	United Arab Emirates	<Desiring to promote their mutual economic relations> through the conclusion between them of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
38	United Kingdom	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;
39	Vietnam	Desiring to conclude an Agreement for the avoidance of double taxation and the

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
		prevention of fiscal evasion with respect to taxes on income,

Notification of Listed Agreements Not Containing Existing Preamble Language

Pursuant to Article 6(6) of the Convention, the HKSAR considers that the following agreements do not contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters.

Listed Agreement Number	Other Contracting Jurisdiction
1	Austria
3	Belgium
4	Brunei
5	Cambodia
6	Canada
7	Czech
8	France
9	Guernsey
10	Hungary
11	India
12	Indonesia
13	Ireland

Listed Agreement Number	Other Contracting Jurisdiction
14	Italy
15	Japan
16	Jersey
17	Korea
18	Kuwait
19	Latvia
20	Liechtenstein
21	Luxembourg
22	Malaysia
23	Malta
24	Mexico
25	Netherlands
26	New Zealand
27	Pakistan
28	Portugal
29	Qatar
30	Romania
31	Russia
32	Saudi Arabia
33	South Africa
34	Spain
35	Switzerland
36	Thailand

Listed Agreement Number	Other Contracting Jurisdiction
37	United Arab Emirates
38	United Kingdom
39	Vietnam

Article 7 – Prevention of Treaty Abuse

Reservation

Pursuant to Article 7(15)(b) of the Convention, the HKSAR reserves the right for Article 7(1) not to apply to its Covered Tax Agreements that already contain provisions that deny all of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits. The following agreements contain provisions that are within the scope of this reservation.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
2	Belarus	Article 27(1)
27	Pakistan	Article 28(1)

Notification of Existing Provisions in Listed Agreements

Pursuant to Article 7(17)(a) of the Convention, the HKSAR considers that the following agreements are not subject to a reservation under Article 7(15)(b) and contain a provision described in Article 7(2). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
4	Brunei	Articles 10(5), 11(8), 12(7) and 13(7)
6	Canada	Articles 10(7), 11(9) and 12(7)
8	France	Articles 10(6), 11(8), 12(7) and 13(6)
11	India	Articles 10(6), 11(8), 12(7), 13(7), 14(7) and 28(2)
12	Indonesia	Articles 10(7), 11(8) and 12(7)
14	Italy	Articles 10(6), 11(8), 12(7) and 21(4)
15	Japan	Article 26
17	Korea	Article 26(1)
24	Mexico	Protocol (9)
26	New Zealand	Articles 10(8), 11(10) and 12(7)
28	Portugal	Protocol (3)
29	Qatar	Articles 10(5), 11(5) and 12(7)
30	Romania	Articles 10(7), 11(9), 12(7) and 20(3)
31	Russia	Articles 10(7), 11(6), 12(7) and 13(6)

Listed Agreement Number	Other Contracting Jurisdiction	Provision
33	South Africa	Articles 10(6), 11(8) and 12(7)
34	Spain	Protocol (3)
35	Switzerland	Articles 10(8), 11(5), 12(7) and 21(3)
38	United Kingdom	Articles 10(6), 11(7), 12(7) and 20(6)

Article 8 – Dividend Transfer Transactions

Reservation

Pursuant to Article 8(3)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 8 not to apply to its Covered Tax Agreements.

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

Reservation

Pursuant to Article 9(6)(a) of the Convention, the HKSAR reserves the right for Article 9(1) not to apply to its Covered Tax Agreements.

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

Reservation

Pursuant to Article 10(5)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 10 not to apply to its Covered Tax Agreements.

Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents

Reservation

Pursuant to Article 11(3)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 11 not to apply to its Covered Tax Agreements.

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

Reservation

Pursuant to Article 12(4) of the Convention, the HKSAR reserves the right for the entirety of Article 12 not to apply to its Covered Tax Agreements.

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

Reservation

Pursuant to Article 13(6)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 13 not to apply to its Covered Tax Agreements.

Article 14 – Splitting-up of Contracts

Reservation

Pursuant to Article 14(3)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 14 not to apply to its Covered Tax Agreements.

Article 15 – Definition of a Person Closely Related to an Enterprise

Reservation

Pursuant to Article 15(2) of the Convention, the HKSAR reserves the right for the entirety of Article 15 not to apply to the Covered Tax Agreement to which the reservations described in Article 12(4), Article 13(6)(a) or (c), and Article 14(3)(a) apply.

Article 16 – Mutual Agreement Procedure

Notification of Existing Provisions in Listed Agreements

Pursuant to Article 16(6)(a) of the Convention, the HKSAR considers that the following agreements contain a provision described in Article 16(4)(a)(i). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Austria	Article 24(1), first sentence
3	Belgium	Article 24(1), first sentence

Listed Agreement Number	Other Contracting Jurisdiction	Provision
4	Brunei	Article 24(1), first sentence
6	Canada	Article 23(1), first sentence
7	Czech	Article 23(1), first sentence
8	France	Article 24(1), first sentence
9	Guernsey	Article 23(1), first sentence
10	Hungary	Article 23(1), first sentence
11	India	Article 25(1), first sentence *
12	Indonesia	Article 24(1), first sentence
13	Ireland	Article 23(1), first sentence
14	Italy	Article 24(1), first sentence
15	Japan	Article 24(1), first sentence
16	Jersey	Article 23(1), first sentence
17	Korea	Article 23(1), first sentence *

Listed Agreement Number	Other Contracting Jurisdiction	Provision
18	Kuwait	Article 23(1), first sentence
19	Latvia	Article 23(1), first sentence *
20	Liechtenstein	Article 24(1), first sentence
21	Luxembourg	Article 24(1), first sentence
22	Malaysia	Article 25(1), first sentence *
23	Malta	Article 23(1), first sentence *
24	Mexico	Article 24(1), first sentence *
25	Netherlands	Article 24(1), first sentence
26	New Zealand	Article 23(1), first sentence
27	Pakistan	Article 25(1), first sentence *
28	Portugal	Article 24(1), first sentence
29	Qatar	Article 24(1), first sentence *
30	Romania	Article 23(1), first sentence *

Listed Agreement Number	Other Contracting Jurisdiction	Provision
31	Russia	Article 24(1), first sentence *
32	Saudi Arabia	Article 24(1), first sentence
33	South Africa	Article 23(1), first sentence *
34	Spain	Article 23(1), first sentence
35	Switzerland	Article 24(1), first sentence
36	Thailand	Article 24(1), first sentence
37	United Arab Emirates	Article 23(1), first sentence *
38	United Kingdom	Article 23(1), first sentence
39	Vietnam	Article 24(1), first sentence

* “First sentence” refers to the first sentence of the relevant paragraph of the text in the English language, or the first and the second sentences of the relevant paragraph of the text in the Chinese language/the translated text in the Chinese language.

Pursuant to Article 16(6)(b)(i) of the Convention, the HKSAR considers that the following agreement contains a provision that provides that a case referred to in the first sentence of Article 16(1) must be presented within a

specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
14	Italy	Article 24(1), second sentence

Pursuant to Article 16(6)(b)(ii) of the Convention, the HKSAR considers that the following agreements contain a provision that provides that a case referred to in the first sentence of Article 16(1) must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Austria	Article 24(1), second sentence
2	Belarus	Article 24(1), second sentence
3	Belgium	Article 24(1), second sentence
4	Brunei	Article 24(1), second sentence

Listed Agreement Number	Other Contracting Jurisdiction	Provision
5	Cambodia	Article 25(1), second sentence
6	Canada	Article 23(1), second sentence
7	Czech	Article 23(1), second sentence
8	France	Article 24(1), second sentence
9	Guernsey	Article 23(1), second sentence
10	Hungary	Article 23(1), second sentence
11	India	Article 25(1), second sentence **
12	Indonesia	Article 24(1), second sentence
13	Ireland	Article 23(1), second sentence
15	Japan	Article 24(1), second sentence
16	Jersey	Article 23(1), second sentence
17	Korea	Article 23(1), second sentence **
18	Kuwait	Article 23(1), second sentence

Listed Agreement Number	Other Contracting Jurisdiction	Provision
19	Latvia	Article 23(1), second sentence **
20	Liechtenstein	Article 24(1), second sentence
21	Luxembourg	Article 24(1), second sentence
22	Malaysia	Article 25(1), second sentence **
23	Malta	Article 23(1), second sentence **
24	Mexico	Article 24(1), second sentence **
25	Netherlands	Article 24(1), second sentence
26	New Zealand	Article 23(1), second sentence
27	Pakistan	Article 25(1), second sentence **
28	Portugal	Article 24(1), second sentence
29	Qatar	Article 24(1), second sentence **
30	Romania	Article 23(1), second sentence **
31	Russia	Article 24(1), second sentence **

Listed Agreement Number	Other Contracting Jurisdiction	Provision
32	Saudi Arabia	Article 24(1), second sentence
33	South Africa	Article 23(1), second sentence **
34	Spain	Article 23(1), second sentence
35	Switzerland	Article 24(1), second sentence
36	Thailand	Article 24(1), second sentence
37	United Arab Emirates	Article 23(1), second sentence **
38	United Kingdom	Article 23(1), second sentence
39	Vietnam	Article 24(1), second sentence

** "Second sentence" refers to the second sentence of the relevant paragraph of the text in the English language, or the third sentence of the relevant paragraph of the text in the Chinese language/the translated text in the Chinese language.

Notification of Listed Agreements Not Containing Existing Provisions

Pursuant to Article 16(6)(c)(ii) of the Convention, the HKSAR considers that the following agreements do not contain a provision described in Article 16(4)(b)(ii).

Listed Agreement Number	Other Contracting Jurisdiction
14	Italy
24	Mexico

Pursuant to Article 16(6)(d)(ii) of the Convention, the HKSAR considers that the following agreements do not contain a provision described in Article 16(4)(c)(ii).

Listed Agreement Number	Other Contracting Jurisdiction
3	Belgium
26	New Zealand

Article 17 – Corresponding Adjustments

Reservation

Pursuant to Article 17(3)(a) of the Convention, the HKSAR reserves the right for the entirety of Article 17 not to apply to its Covered Tax Agreements that already contain a provision described in Article 17(2). The following agreements contain provisions that are within the scope of this reservation.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Austria	Article 9(2)
2	Belarus	Article 9(2)
3	Belgium	Article 9(2)
4	Brunei	Article 9(2)

Listed Agreement Number	Other Contracting Jurisdiction	Provision
5	Cambodia	Article 9(2)
6	Canada	Article 9(2)
7	Czech	Article 9(2)
8	France	Article 9(2)
9	Guernsey	Article 9(2)
10	Hungary	Article 9(2)
11	India	Article 9(2)
12	Indonesia	Article 9(2)
13	Ireland	Article 9(2)
14	Italy	Article 9(2)
15	Japan	Article 9(2)
16	Jersey	Article 9(2)
17	Korea	Article 9(2)
18	Kuwait	Article 9(2)
19	Latvia	Article 9(2)
20	Liechtenstein	Article 9(2)
21	Luxembourg	Article 9(2)
22	Malaysia	Article 9(2)
23	Malta	Article 9(2)
24	Mexico	Article 9(2)
25	Netherlands	Article 9(2)
26	New Zealand	Article 9(2)
27	Pakistan	Article 9(2)

Listed Agreement Number	Other Contracting Jurisdiction	Provision
28	Portugal	Article 9(2)
29	Qatar	Article 9(2)
30	Romania	Article 9(2)
31	Russia	Article 9(2)
32	Saudi Arabia	Article 9(2)
33	South Africa	Article 9(2)
34	Spain	Article 9(2)
35	Switzerland	Article 9(2)
36	Thailand	Article 9(2)
37	United Arab Emirates	Article 9(2)
38	United Kingdom	Article 9(2)
39	Vietnam	Article 9(2)

Article 35 – Entry into Effect

Notification of Choice of Optional Provisions

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

Reservation

Pursuant to Article 35(6) of the Convention, the HKSAR reserves the right for Article 35(4) not to apply with respect to its Covered Tax Agreements.

Pursuant to Article 35(7)(a) of the Convention, the HKSAR reserves the right to replace:

- i) the references in Article 35(1) and (4) to “the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”; and
- ii) the references in Article 35(5) to “the date of the communication by the Depository of the notification of the extension of the list of agreements”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement”;

- iii) the references in Article 28(9)(a) to “on the date of the communication by the Depository of the notification of withdrawal or replacement of the reservation”; and
- iv) the reference in Article 28(9)(b) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depository of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the withdrawal or replacement of the reservation with respect to that specific Covered Tax Agreement”;

- v) the references in Article 29(6)(a) to “on the date of the communication by the Depositary of the additional notification”; and
- vi) the reference in Article 29(6)(b) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the additional notification with respect to that specific Covered Tax Agreement”;

- vii) the references in Article 36(1) and (2) (Entry into Effect of Part VI) to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement”;

- viii) the reference in Article 36(3) (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the notification of the extension of the list of agreements”;
- ix) the references in Article 36(4) (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the notification of withdrawal of the reservation”, “the date of the

communication by the Depositary of the notification of replacement of the reservation” and “the date of the communication by the Depositary of the notification of withdrawal of the objection to the reservation”; and

- x) the reference in Article 36(5) (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the additional notification”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of Part VI (Arbitration) with respect to that specific Covered Tax Agreement”.

Clerk to the Executive Council

COUNCIL CHAMBER

2022

Explanatory Note

This Order is made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (*IRO*) to give effect to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (*Convention*).

2. The Convention was done at Paris on 24 November 2016 as part of the Organisation for Economic Co-operation and Development's package of actions to counter certain tax avoidance strategies commonly known as base erosion and profit shifting or BEPS (*BEPS*) (the package is referred to as *BEPS package*). The Convention operates to modify the application of an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered) (*tax agreement*) so as to implement the tax agreement-related measures to prevent BEPS if each party to the tax agreement is a party to the Convention and makes a notification listing the tax agreement as an agreement which it wishes to be covered by the Convention. The extent to which the tax agreement is modified depends on the reservations and notifications made by the parties under the Convention. If a party to the Convention is responsible for a jurisdiction, a tax agreement entered into by the jurisdiction may likewise be modified if reservations and notifications applicable to the jurisdiction are made in respect of the agreement under the Convention by that party to the Convention.
3. The Central People's Government signed the Convention on 7 June 2017, and decided to extend the application of the Convention to Hong Kong. Reservations and notifications applicable to Hong Kong

were made under the Convention by the Central People's Government on 25 May 2022.

4. Under section 49(1A) of the IRO, if the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong for certain purposes, and that it is expedient that those arrangements should have effect, those arrangements have effect. Arrangements that may be specified in an order under section 49(1A) of the IRO include arrangements that are made by the Central People's Government and applied to Hong Kong.
5. Sections 3 and 4 of the Order contain the declaration and specification for the purposes of section 49(1A) of the IRO. The Convention and the reservations and notifications applicable to Hong Kong made under the Convention by the Central People's Government were done in the English language and they are reproduced in the English text of Schedules 1 and 2 to the Order. The Chinese translations of the Convention and the reservations and notifications are set out in the Chinese text of Schedules 1 and 2 to the Order.
6. With the reservations and notifications mentioned above, 39 bilateral comprehensive avoidance of double taxation agreements (each called a *CDTA*) to which Hong Kong is a party are listed as agreements which Hong Kong wishes to be covered by the Convention. A CDTA is a Covered Tax Agreement within the meaning of the Convention if the other party to the CDTA is a party to the Convention and makes a notification listing the CDTA as an agreement which the other party wishes to be covered by the Convention.
7. In relation to each of the Covered Tax Agreements and subject to the reservations and notifications made under the Convention by the other party to the Covered Tax Agreement—

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- (a) the minimum standards of the BEPS package provided for under Articles 6(1), 7 and 16 of the Convention are to be implemented in Hong Kong as follows—
- (i) the preamble of the Covered Tax Agreement is modified to state the intention to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements (Article 6(1) of the Convention);
 - (ii) the Covered Tax Agreement is modified so that a benefit under the Covered Tax Agreement is generally not to be granted in respect of an item of income or capital if obtaining the benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in the benefit (Article 7 of the Convention);
 - (iii) dispute resolution is improved by incorporating into the Covered Tax Agreement Article 25(1), (2) and (3) (on mutual agreement procedure) of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (as it read on 21 November 2017) subject to certain variations (Article 16 of the Convention); and
- (b) pursuant to Article 6(3) of the Convention, the preamble of the Covered Tax Agreement is modified to refer to a desire to develop an economic relationship and to enhance co-operation in tax matters.

**Hong Kong's Position under
Key Articles of the Multilateral Instrument¹**

Article	Nature	Modification of Covered Tax Agreement ² by the Article (if implemented) / Hong Kong's Position
Article 3 – Transparent Entities	Optional	<p>This Article modifies a Covered Tax Agreement to provide that income derived by or through a fiscally transparent entity or arrangement shall be considered to be income of a resident of a contracting jurisdiction but only to the extent that the income is treated, for the purposes of taxation, as the income of a resident of that contracting jurisdiction.</p> <p>Hong Kong will not implement this Article.</p>
Article 4 – Dual Resident Entities	Optional	<p>This Article modifies a Covered Tax Agreement to provide that the competent authorities of the contracting jurisdictions shall endeavour to determine by mutual agreement the contracting jurisdiction of which a dual resident entity shall be deemed to be a resident for the purposes of the Covered Tax Agreement.</p> <p>Hong Kong will not implement this Article.</p>

¹ In line with the minimalist approach, we will adopt only the mandatory provisions of the Multilateral Instrument (save for an optional provision under Article 6).

² Covered Tax Agreement refers to the CDTAs to be covered by the Multilateral Instrument.

<p>Article 5 – Application of Methods for Elimination of Double Taxation</p>	<p>Optional</p>	<p>This Article provides three alternative ways in which a Party to the Multilateral Instrument may choose to apply to address problems arising from existing provisions in a Covered Tax Agreement that exempt income derived or capital owned by a resident of a contracting jurisdiction from tax in that jurisdiction where such income or capital is not taxed in the source jurisdiction.</p> <p>Hong Kong will not implement this Article.</p>
<p>Article 6 – Purpose of a Covered Tax Agreement</p>	<p>Containing both mandatory and optional provisions</p>	<p>This Article mandates a Party to the Multilateral Instrument to include in the preamble of its Covered Tax Agreements an express statement that the common intention of the contracting jurisdictions is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements).</p> <p>This Article also includes an optional provision allowing a Party to the Multilateral Instrument to include in its Covered Tax Agreements preamble language referring to a desire to further develop an economic relationship and to enhance cooperation in tax matters.</p> <p>Hong Kong will implement both the mandatory and optional provisions of this Article.</p>

<p>Article 7 – Prevention of Treaty Abuse</p>	<p>Containing both mandatory and optional provisions</p>	<p>This Article mandates a Party to the Multilateral Instrument to prevent treaty abuse through adopting in its Covered Tax Agreements one of the following rules, i.e. the principal purpose test (“PPT”) rule; the limitation on benefits (“LOB”) rule and PPT rule; or the LOB rule and a mechanism to deal with conduit arrangements not already dealt with in the Covered Tax Agreements.</p> <p>This Article also includes an optional provision which provides discretion to the competent authorities of the contracting jurisdictions to grant tax treaty benefits to a taxpayer, upon request, despite that the taxpayer fails the PPT rule.</p> <p>Hong Kong will implement the mandatory provision of this Article and adopt the “PPT” rule. Hong Kong will not implement the optional provision.</p>
<p>Article 8 – Dividend Transfer Transactions</p>	<p>Optional</p>	<p>This Article modifies a Covered Tax Agreement to provide for the 365-day minimum shareholding period for entitlement to reduced treaty rate on dividends.</p> <p>Hong Kong will not implement this Article.</p>
<p>Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from</p>	<p>Optional</p>	<p>This Article provides for two changes to provisions of a Covered Tax Agreement on taxation on capital gains from alienation of shares or interests of entities deriving their value principally from immovable property: (a)</p>

Immovable Property		<p>introduction of the 365-day testing period; and (b) expansion of the scope of interests covered, so as to address situations in which assets are contributed to the entity shortly before the sale of shares or comparable interests in that entity in order to dilute the proportion of the value of the entity that is derived from the immovable property.</p> <p>Hong Kong will not implement this Article.</p>
<p>Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions</p>	Optional	<p>This Article modifies a Covered Tax Agreement to provide that tax treaty benefits shall not apply where an enterprise (<i>parent enterprise</i>) that is a resident of a contracting jurisdiction (<i>parent enterprise’s jurisdiction</i>) derives from the other contracting jurisdiction “passive” income that is attributable to a permanent establishment situated in a third jurisdiction, and that income is both exempt from tax in the parent enterprise’s jurisdiction and taxed in the third jurisdiction at less than 60% of the tax that would be imposed in the parent enterprise’s jurisdiction had the permanent establishment been situated in the parent enterprise’s jurisdiction.</p> <p>Hong Kong will not implement this Article.</p>
<p>Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own</p>	Optional	<p>This Article modifies a Covered Tax Agreement to preserve the right of a contracting jurisdiction to tax its own residents.</p>

Residents		Hong Kong will not implement this Article.
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies	Optional	<p>This Article modifies a Covered Tax Agreement to provide that where an intermediary acting on behalf of an enterprise habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, that enterprise shall be deemed to have a “permanent establishment” in the jurisdiction in respect of any activities that the intermediary undertakes for the enterprise.</p> <p>Hong Kong will not implement this Article.</p>
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Optional	<p>This Article modifies a Covered Tax Agreement to provide that the activities specifically listed as exceptions to permanent establishment status in existing Covered Tax Agreements will be deemed not to constitute a permanent establishment only if they are of a preparatory or auxiliary character.</p> <p>Hong Kong will not implement this Article.</p>
Article 14 – Splitting-up of Contracts	Optional	<p>This Article modifies a Covered Tax Agreement to address the artificial avoidance of permanent establishment status through splitting-up of contracts.</p> <p>Hong Kong will not implement this Article.</p>

<p>Article 15 – Definition of a Person Closely Related to an Enterprise</p>	<p>Optional</p>	<p>This Article modifies a Covered Tax Agreement to provide for the conditions under which a person will be considered to be “closely related” to an enterprise for the purpose of determining whether a permanent establishment exists under Articles 12, 13 and 14 of the Multilateral Instrument.</p> <p>Hong Kong will not implement this Article.</p>
<p>Article 16 – Mutual Agreement Procedure</p>	<p>Mandatory</p>	<p>This Article modifies a Covered Tax Agreement to deal with dispute resolution through presentation of cases under the mutual agreement procedure.</p> <p>Hong Kong will implement this Article.</p>
<p>Article 17 – Corresponding Adjustments</p>	<p>Optional</p>	<p>This Article modifies a Covered Tax Agreement to require a contracting jurisdiction to make a corresponding adjustment where the other contracting jurisdiction makes an adjustment that reflects the arm’s length profits of an enterprise.</p> <p>Hong Kong will not implement this Article because the existing Covered Tax Agreements already contain a provision requiring the making of corresponding adjustments.</p>
<p>Articles 18 – 26 Arbitration</p>	<p>Optional</p>	<p>These Articles allow the contracting jurisdictions, having regard to their circumstances and needs, to modify a Covered Tax Agreement by providing for a person’s right to refer issues which cannot be settled via mutual</p>

		agreement procedure to arbitration. Hong Kong will not implement these Articles.
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**Economic, Financial and Civil Service
Implications of the Proposal**

Economic Implications

The proposal will demonstrate Hong Kong's commitment to implementing the BEPS package and participating in international tax co-operation. This is particularly crucial for Hong Kong to preserve its competitiveness and reputation as an international financial and business centre. The proposal to modify the application of Hong Kong's CDTAs will also prevent tax treaty shopping and enhance the dispute resolution mechanism with no adverse impact on taxpayers.

Financial and Civil Service Implications

2. Resources have been provided to the Financial Services and the Treasury Bureau and the Inland Revenue Department since 2019-20 and beyond to cope with treaty negotiations, stakeholders' engagement, legislative exercises and implementation work arising from reinforced international tax co-operation.
3. Since the proposal to modify the application of Hong Kong's CDTAs will prevent tax treaty shopping, it may help avoid loss of Government revenue.