

**SYNTHESISED TEXT OF THE MLI AND THE CONVENTION  
BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF SLOVENIA FOR  
THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME  
AND ON CAPITAL**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Convention between the Republic of Austria and the Republic of Slovenia for the avoidance of double taxation with respect to Taxes on Income and on Capital signed on 1 October 1997 amended by the Protocol signed on 26 September 2006 and the Protocol signed on 28 September 2011 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Austria on 7 June 2017 and by the Republic of Slovenia on 7 June 2017 (the “MLI”).

This document was prepared jointly by the competent authorities of the Republic of Austria and the Republic of Slovenia and represents their shared understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and of the Republic of Slovenia submitted to the Depository upon ratification on 22 March 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention.

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

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

References

The authentic legal texts of the MLI and the Convention can be found in in Austria on the webpage of the Federal Ministry of Finance, <https://english.bmf.gv.at/taxation/The-Austrian-Tax-Treaty-Network.html> and in Slovenia in the Official Journal of the Republic of Slovenia, nos. 4/98-MP, 22/06-MP, 6/12-MP and 2/18-MP (<https://www.uradni-list.si>).

The MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and the MLI position of the Republic of Slovenia submitted to the Depository upon ratification on 22 March 2018 of can be found on the MLI Depository (OECD) webpage (<http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>).

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

### Entry into Effect of the MLI Provisions

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

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017 for the Republic of Austria and 22 March 2018 for the Republic of Slovenia.

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and the Republic of Slovenia.

This document provides specific information on the dates on or after which each of the provisions of the MLI has effect with respect to the Convention throughout this document.

## C O N V E N T I O N

### BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF SLOVENIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Austria and the Republic of Slovenia,

[REPLACED by paragraph 1 of Article 6 of the MLI] [desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,]

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:<sup>1</sup>*

#### ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

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

Have agreed as follows:

#### Article 1

##### PERSONAL SCOPE

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

#### Article 2

##### TAXES COVERED

(1) This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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<sup>1</sup> In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Republic of Austria with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2019

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Republic of Slovenia with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied with respect to taxable periods beginning on or after 1 January 2019.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in Austria:

1. the income tax (die Einkommensteuer);
  2. the corporation tax (die Körperschaftsteuer);
  3. the land tax (die Grundsteuer);
  4. the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);
  5. the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken);
- (hereinafter referred to as "Austrian tax");

b) in Slovenia:

1. the tax on profits of legal persons, including income from transportation services of a foreign person not having his agency in the territory of the Republic of Slovenia;
  2. the tax on income of individuals, including wages and salaries, income from agricultural activities, income from business, capital gains and income from immovable and movable property;
  3. the tax on property;
- (hereinafter referred to as "Slovenian tax").

(4) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

### **Article 3**

#### **GENERAL DEFINITIONS**

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

a) the terms "Contracting State" and "the other Contracting State" refer to the Republic of Slovenia or to the Republic of Austria, depending on the context in this Convention; and, when used in a geographical sense, to the territory of Slovenia or Austria, in the case of Slovenia including the sea area, sea-bed and subsoil adjacent to the territorial sea, if Slovenia may exercise its sovereign rights and jurisdiction over such sea area, sea-bed and subsoil in accordance with its domestic legislation and international law;

b) the term "person" includes an individual, a company and any other body of persons;

c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

e) the term “international traffic“ means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

f) the term “competent authority“ means:

(i) in Slovenia: the Ministry of Finance of the Republic of Slovenia or his authorized representative;

(ii) in Austria: the Federal Minister of Finance or his authorized representative;

g) the term “national“ means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

(2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

## **Article 4**

### **RESIDENT**

(1) For the purposes of this Convention, the term “resident of a Contracting State“ means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

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

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

## **Article 5**

### **PERMANENT ESTABLISHMENT**

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

(2) The term “permanent establishment“ includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(4) **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article the term “permanent establishment“ shall be deemed not to include:

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

*The following paragraph 2 of Article 13 of the MLI modifies paragraph 4 of Article 5 of this Convention :<sup>2</sup>*

**ARTICLE 13 - ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH  
THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)**

<sup>2</sup> In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 2 of Article 13 of the MLI has effect in the Republic of Austria with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2019;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 2 of Article 13 of the MLI has effect in the Republic of Slovenia with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied with respect to taxable periods beginning on or after 1 January 2019.

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

- a) the activities specifically listed in paragraph 4 of Article 5 of 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.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

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

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **Article 7**

### **BUSINESS PROFITS**

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

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

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

(7) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

(8) The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

## **Article 8**

### **SHIPPING AND AIR TRANSPORT**

(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(3) The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

(1) Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

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

## **Article 10**

### **DIVIDENDS**

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

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

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

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

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

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

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **INTEREST**

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

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

(2a) Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

a) the payer of the interest is the Contracting State or a political subdivision or a local authority or Central Bank thereof;

b) the interest is paid to the other Contracting State or a political subdivision or a local authority or Central Bank thereof;

c) the interest is paid in respect of a loan made, approved, guaranteed or insured by an institution which is authorized in accordance with internal law to act as the export financing institution on behalf of the Contracting State.

(3) The term “interest“ as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

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

## **Article 12**

### **ROYALTIES**

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

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

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

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

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

## **Article 13**

### **CAPITAL GAINS**

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly

available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

### **DIRECTORS' FEES**

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

## **Article 17**

### **ARTISTES AND SPORTSMEN**

(1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, however, income derived from personal activities by a resident of a Contracting State in his capacity of a performer or sportsman shall be

taxable only in the first - mentioned Contracting State if the activities have been performed in the other Contracting State within the scope of cultural or sports exchange program approved by both Contracting States.

## **Article 18**

### **PENSIONS**

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

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

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of paragraph 1 of this Article shall likewise apply in respect of remuneration paid to the Austrian Foreign Trade Commissioner for Slovenia and to the members of the staff of the Austrian Foreign Trade Commissioner for Slovenia.

(4) The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 20**

### **PROFESSORS AND RESEARCHERS**

Within a period of two years from first coming into a Contracting State and becoming its resident for the purpose of teaching, lecturing or performing research work at a university, college or other school, or at any other recognized educational or research institution of the said Contracting State, of a natural person then, or immediately prior to that time being a resident of the other Contracting State, the remuneration of such a person with respect to such teaching, lecturing or research work shall not be subject to taxation in the first-mentioned State.

## **Article 21**

### **STUDENTS**

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

(2) Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship carried out in the first-mentioned State.

## **Article 22**

### **OTHER INCOME**

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

## **Article 23**

### **CAPITAL**

(1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 24**

### **ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

(1) In Austria:

a) **[MODIFIED by paragraph 2 of Article 5 of the MLI]** [Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Slovenia, Austria shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax.]

*The following paragraph 2 of Article 5 of the MLI applies to subparagraph a) of paragraph 2 of Article 24 of this Agreement with respect to the residents of Austria:*<sup>3</sup>

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION  
(Option A)

Subparagraph a) of paragraph 2 of Article 24 of this Convention shall not apply where Slovenia applies the provisions of this Convention to exempt income derived or capital owned by a resident of Austria from tax or to limit the rate at which such income or capital may be taxed. In the latter case, Austria shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in Slovenia. 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 Slovenia.

b) Where a resident of Austria derives items of income which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Slovenia, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Slovenia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Slovenia.

c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria 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.

d) Income derived by a resident of Austria which is considered by Austria to be taxable under this Convention in Slovenia may nevertheless be taxed in Austria if, after the conduct of a mutual agreement procedure, Slovenia exempts that income from tax by virtue of this Convention.

(2) In Slovenia:

a) Where a resident of Slovenia derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Austria, Slovenia shall allow:

i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Austria;

ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Austria.

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<sup>3</sup> In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 2 of Article 5 of the MLI has effect in the Republic of Austria with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2019;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 2 of Article 5 of the MLI has effect in the Republic of Slovenia with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied with respect to taxable periods beginning on or after 1 January 2019.

Such deduction shall in no case exceed that portion of the income tax or capital tax which has been computed before making the deduction which is attributable to the income or the capital, as the case may be, which may be taxed in Austria.

b) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Slovenia is exempt from tax in Slovenia, Slovenia 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.

## **Article 25**

### **NON-DISCRIMINATION**

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

(2) Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

(3) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(5) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(6) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 26**

### **MUTUAL AGREEMENT PROCEDURE**

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent

authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

*The following part VI of the MLI applies to this Convention :<sup>4</sup>*

#### PART VI OF THE MLI (ARBITRATION)

*Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI*

1. Where:

a) under paragraph 1 of Article 26 of this Convention, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 26 of the Convention, within a period of three-years beginning on the start date referred to in paragraph 8 or 9 of Article 19 of the MLI, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States 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 States pursuant to the provisions of paragraph 10 of Article 19 of the MLI.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI 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 of Article 19 of the MLI 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 of Article 19 of the MLI, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI. The arbitration decision shall be final.

<sup>4</sup> In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI have effect with respect to this Convention with respect to cases presented to the competent authority of a Contracting State on or after 1 July 2018.

In accordance with paragraph 2 of Article 36 of the MLI, Part VI (Arbitration) of the MLI apply to a case presented to the competent authority of a Contracting State prior to 1 July 2018 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

b) The arbitration decision shall be binding on both Contracting States 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 States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 of Article 19 of the MLI 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) of the MLI). 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 of Article 19 of the MLI 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 State.

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 State) 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 of Article 19 of the MLI, 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 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting State pursuant to subparagraph b) of paragraph 5 of Article 19 of the MLI.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI; 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 of Article 19 of the MLI, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 of Article 19 of the MLI.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 26 of this Convention 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.

12. Notwithstanding the other provisions of this Article of the MLI:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by the MLI 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 State;
- 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 States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

#### *Article 20 (Appointment of Arbitrators) of the MLI*

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 of Article 20 of the MLI 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 of the MLI. 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 State.
- 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 States 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 State fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, 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 State.

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 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, 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 State.

*Article 21 (Confidentiality of Arbitration Proceedings) of the MLI*

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this Convention and of the domestic laws of the Contracting States 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 this Convention related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting States 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 this Convention related to exchange of information and administrative assistance and under the applicable laws of the Contracting States.

*Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI*

For the purposes of this Part and the provisions of this Convention 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 States:

- a) the competent authorities of the Contracting States 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.

*Paragraphs 2 and 5 of Article 23 (Type of Arbitration Process) of the MLI  
(Alternative 2 – Independent opinion)*

2. Except to the extent that the competent authorities of the Contracting States 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 State 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 States 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 this Convention and, subject to these provisions, of those of the domestic laws of the Contracting States. The panel members shall also consider any other sources which the competent authorities of the Contracting States may by mutual agreement expressly identify.
- c) The arbitration decision shall be delivered to the competent authorities of the Contracting States 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.

5. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States 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 this Convention, 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 States, a person that presented the case or one of that person's advisors materially breaches that agreement.

*Paragraph 2 of Article 24 (Agreement on a Different Resolution) of the MLI*

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

*Article 25 (Costs of Arbitration Proceedings) of the MLI*

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 States, shall be borne by the Contracting States in a manner to be settled by mutual agreement between the competent authorities of the Contracting States. In the absence of such agreement, each Contracting State 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 States in equal shares.

*Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI*

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. 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 States are or will become parties.

*Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI*

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, the Republic of Austria formulates the following reservation with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI:

The Republic of Austria reserves the right to exclude from the scope of Part VI cases involving the application of its domestic general anti-avoidance rules contained in the Federal Fiscal Code ("Bundesabgabenordnung"), in particular its sections 21 and 22. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Austria shall notify the Depositary of any such subsequent provisions.

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, the Republic of Slovenia formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI:

1. The Republic of Slovenia reserves the right to exclude from the scope of Part VI cases concerning items of income or capital that are not taxed by a Contracting State because they are not included in the taxable base in that Contracting State or because they are subject to an exemption or zero tax rate provided only under the domestic tax law of that Contracting State and that is specific to such item of income or capital.
2. The Republic of Slovenia reserves the right to exclude from the scope of Part VI cases involving conduct for which the taxpayer, a person acting on its behalf, or a related person:
  - i. Has been found guilty by a court of a criminal tax offence; or
  - ii. Has been subject to a serious penalty for tax fraud, evasion or avoidance.

For this purpose, the legislative provisions governing serious penalties for tax fraud, evasion or avoidance are contained in the Tax Procedure Act. Any subsequent provisions replacing, amending or updating these provisions would also be comprehended. The Republic of Slovenia shall notify the Depository of any such subsequent provisions.

3. The Republic of Slovenia reserves the right to exclude from the scope of Part VI cases involving the residence of companies and other entities.
4. The Republic of Slovenia reserves the right to exclude from the scope of Part VI cases involving the application of domestic anti-avoidance provisions. For this purpose, the Republic of Slovenia's domestic anti-avoidance provisions shall include such provisions contained in the tax laws.

## **Article 27**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## Article 28

### DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

*The following paragraphs 1 to 3 of Article 10 of the MLI apply and supersede the provisions of this Convention :*  
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#### ARTICLE 10 OF THE MLI – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENTS SITUATED IN THIRD JURISDICTIONS

1. Where:

a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

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

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<sup>5</sup> In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraphs 1 to 3 of Article 10 of the MLI have effect in the Republic of Austria with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2019;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraphs 1 to 3 of Article 10 of the MLI have effect in the Republic of Slovenia with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied with respect to taxable periods beginning on or after 1 January 2019.

any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of this Convention.

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

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention :<sup>6</sup>*

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

Notwithstanding any provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income 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 this Convention.

## **Article 29**

### **ENTRY INTO FORCE**

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

(2) The Convention shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect in respect of taxes for any fiscal year beginning after December 31 in the calendar year in which the exchange of instruments of ratification takes place.

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<sup>6</sup> In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Republic of Austria with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2019;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Republic of Slovenia with respect to this Convention:

- 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 1 January 2019; and
- b) with respect to all other taxes levied by the Republic of Slovenia, for taxes levied with respect to taxable periods beginning on or after 1 January 2019.

## Article 30

### TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June in a calendar year after the fifth year from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect in respect of the taxes for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Convention.

DONE in duplicate in Ljubljana on the 1st day of October 1997, in the German, Slovenian and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the  
Republic of Austria  
Dr. Gerhard Wagner

For the  
Republic of Slovenia  
Milojka Kolar

### ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed in Ljubljana on 1 October 1997 as amended by the Protocol signed in Ljubljana on 26 September 2006, this day concluded between the Republic of Austria and the Republic of Slovenia, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

#### **Ad Article 27:**

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 27 does not include measures which constitute "fishing expeditions".

3. It is understood that paragraph 5 of Article 27 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that – in addition to the above mentioned principles – for the interpretation of Article 27 the principles established in the OECD Commentaries including the technical note prepared by the OECD Secretariat, which is added as an Annex to this Additional Protocol, shall be considered as well.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Additional Protocol.

DONE in duplicate at Ljubljana on 28 September 2011 in the German, Slovenian and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the  
Republic of Austria  
Andreas Schieder

For the  
Republic of Slovenia  
Mateja Vraničar

## ANNEX

### **Technical note on paragraph 5 of Article 26 of the OECD Model Tax Convention**

Paragraph 5 of Article 26 of the OECD Model Tax Convention provides that bank secrecy cannot be an obstacle to exchange of information for tax purposes. Article 26 also provides for important safeguards in order to protect the confidentiality of taxpayers' information.

The standard requires information exchange on request only. Where information is requested, it must be exchanged only where it is "foreseeably relevant" to the administration or enforcement of the domestic laws of the treaty partner. Countries are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, competent authorities should demonstrate the foreseeable relevance of the requested information. It would, for instance, not be possible for a State to request information randomly on bank accounts held by its residents in banks located in the other State. Also, even when auditing a taxpayer, a tax administration would not request information on a specific taxpayer when no transaction or indication of possible transactions has been identified as involving an nexus with the other state. On the other hand, for example, when a tax administration assesses the tax liability of a specific taxpayer and suspects that this taxpayer has a bank account in the other State, then the competent authority may request information on this specific taxpayer. This could also be the case where a number of taxpayers have been identified, for example, as holding offshore credit cards from banks located in the other state. The requesting State should, however, have pursued all domestic means to access the requested information. For further details, you may wish to consult the commentaries to the Article 26 of the OECD Model Tax Convention and Article 5 of the Model Agreement on Exchange of Information.

Where information is exchanged it is subject to strict confidentiality rules. It is expressly provided in Article 26 that information communicated shall be treated as secret. It can only be used for the purposes provided for in the convention. Sanctions for the violation of such secrecy are governed by administrative and penal laws in all states. Typically, unauthorised disclosure of tax related information received from another country is a criminal offence punishable by a jail sentence.

As you can see from these explanations, which you can find in the OECD Model Tax Convention commentary, as well as in the OECD Manual on Information exchange, bank secrecy is not incompatible with effective exchange of information for tax purposes. All countries have bank secrecy or confidentiality rules.

Meeting the internationally agreed standard on exchange of information requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy.