

# SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE CZECH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

## General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Republic of Austria and the Czech Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 8 June 2006 as amended by the Protocol signed on 9 March 2012 (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 and by the Czech Republic on 7 June 2017 (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 Czech Republic submitted to the Depository upon ratification on 13 May 2020. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

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

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 on the webpage of the Federal Ministry of Finance (<https://www.bmf.gv.at/>).

The MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and the MLI position of the Czech Republic submitted to the Depository upon ratification on 13 May 2020 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 this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of Austria and the Czech Republic in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017 for the Republic of Austria and 13 May 2020 for the Czech Republic.

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and 1 September 2020 for the Czech Republic.

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.

**CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE CZECH REPUBLIC  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL  
EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

**The Republic of Austria and the Czech Republic,**

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

**PERSONS COVERED**

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.

(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:

(i) the income tax;

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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 2021; 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 2022;  
and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Czech Republic 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 2021; and
- b) with respect to all other taxes levied by the Czech Republic, for taxes levied with respect to taxable periods beginning on or after 1 March 2021.

- (ii) the corporation tax;
- (iii) the land tax;
- (iv) the tax on agricultural and forestry enterprises;
- (v) the tax on the value of vacant plots;  
(hereinafter referred to as "Austrian tax");

b) in the Czech Republic:

- (i) the tax on income of individuals;
- (ii) the tax on income of legal persons;
- (iii) the tax on immovable property;  
(hereinafter referred to as "Czech tax").

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

### Article 3

#### **GENERAL DEFINITIONS**

- (1) For the purposes of this Convention, unless the context otherwise requires:
- a) the term "the Czech Republic" means the territory of the Czech Republic over which, under Czech legislation and in accordance with international law, the sovereign rights of the Czech Republic are exercised;
  - b) the term "Austria" means the Republic of Austria;
  - c) the terms "a Contracting State" and "the other Contracting State" mean the Czech Republic or the Republic of Austria, as the context requires;
  - d) the term "person" includes an individual, a company and any other body of persons;
  - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the term "enterprise" applies to the carrying on of any business;
  - g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that 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;
  - i) the term "competent authority" means:
    - (i) in the case of Austria: the Federal Minister of Finance or his authorised representative;
    - (ii) in the case of the Czech Republic: the Minister of Finance or his authorised representative;
  - j) 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;
  - k) the term "business" includes the performance of professional services and of

of other activities of an independent character.

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

#### Article 4

#### **RESIDENT**

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

#### Article 5

#### **PERMANENT ESTABLISHMENT**

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

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

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

(3) The term "permanent establishment" likewise encompasses:

- a) a building site, or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months;
- b) the furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State or through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue in the territory of the other Contracting State for a period or periods exceeding in the aggregate six months within any twelve month period.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

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

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

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

## Article 6

### **INCOME FROM IMMOVABLE PROPERTY**

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

(2) The term "immovable property" shall have the meaning which it has under the law of the

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

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

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

#### Article 7

### **BUSINESS PROFITS**

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

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

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

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

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

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

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

#### Article 8

### **SHIPPING 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**

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.

#### 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) a) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

b) If the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends, such dividends shall be taxable only in the Contracting State of which the beneficial owner of the dividends is a resident.

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 or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company paying the income 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

#### Article 11

#### **INTEREST**

(1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) 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 purposes of this Article. The term "interest" shall not include any item of income which is considered as a dividend under the provisions of paragraph 3 of Article 10.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

(5) 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, the royalties mentioned in sub-paragraph a) of paragraph 3 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

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

(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:

- a) any patent, trade mark, design or model, plan, secret formula or process, computer software, or industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;
- b) any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or radio broadcasting.

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

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

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

#### Article 13

#### **CAPITAL GAINS**

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in 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 owning such ships or aircraft 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

#### **INCOME FROM EMPLOYMENT**

(1) Subject to the provisions of Articles 15, 17, and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived 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 all the following conditions are met:

- a) the recipient is employed in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

(3) In the computation of the periods mentioned in sub-paragraph a) of paragraph 2, the following days shall be included:

- a) all days of physical presence including days of arrivals and departures, and
- b) days spent outside the State of activity such as Saturdays and Sundays, national holidays, holidays, and business trips directly connected with the employment of the recipient in that State, after which the activity was resumed in the territory of that State.

(4) 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 15

### **DIRECTORS' FEES**

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

#### Article 16

### **ARTISTES AND SPORTSMEN**

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

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

#### Article 17

### **PENSIONS**

(1) Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Periodic and non-periodic benefits granted by a Contracting State or a political subdivision or a local authority thereof to a resident of the other Contracting State as compensation for political persecution (including restitution payments) or for injury or damages sustained as a consequence of hostilities, shall not be taxable in either Contracting State.

(3) Periodic and non-periodic benefits granted by a Contracting State or a political subdivision or a local authority thereof to a resident of the other Contracting State as compensation for

injury or damages sustained as a consequence of military service or civilian alternative service, or of a crime, vaccination or a similar event shall be taxable only in the first-mentioned State.

(4) Maintenance payments, including those for children, made by a resident of a Contracting State to a resident of the other Contracting State shall be exempted from tax in that other State. Where, however, such maintenance payments are deductible in the first-mentioned State in computing the taxable income of the payer, they shall be taxable only in the other Contracting State. Tax allowances in mitigation of social burdens are not deemed to be deductions for the purposes of this paragraph.

#### Article 18

### **GOVERNMENT SERVICE**

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

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

(i) is a national of that State; or

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

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

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

(3) The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision, a local authority or other public entity thereof.

#### Article 19

### **STUDENTS**

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

#### Article 20

### **OTHER INCOME**

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

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

Article 21

**CAPITAL**

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

(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by 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 owning such ships or aircraft is situated.

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

Article 22

**ELIMINATION OF DOUBLE TAXATION**

(1) In the case of a resident of Austria, double taxation shall be eliminated as follows:

- a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Czech Republic, Austria shall, subject to the provisions of sub-paragraph b) and paragraph 3, exempt such income or capital from tax.
- b) Where a resident of Austria derives items of income which, in accordance with the provisions of Articles 10 and 12, may be taxed in the Czech Republic, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Czech Republic. 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 the Czech Republic.
- c) The provisions of sub-paragraph a) shall not apply to income derived or capital owned by a resident of Austria where the Czech Republic applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 12 to such income.

(2) Subject to the provisions of the laws of the Czech Republic regarding the elimination of double taxation, in the case of a resident of the Czech Republic, double taxation shall be eliminated as follows:

The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income or of capital which according to the provisions of this Convention may also be taxed in Austria, but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in Austria. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income or capital which, in accordance with the provisions of this Convention, may be taxed in Austria.

(3) Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in

calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

### Article 23

#### **NON-DISCRIMINATION**

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

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

(3) Except where the provisions of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

### Article 24

#### **MUTUAL AGREEMENT PROCEDURE**

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## Article 25

### **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. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests. 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) or to the basic rights granted by a State in the area of data protection.

(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 26

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:<sup>2</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 27

**ENTRY INTO FORCE**

(1) Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and its provisions shall have effect:

- a) in respect of taxes withheld at source, to income paid or credited on or after 1st January in the calendar year next following that in which the Convention enters into force;
- b) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after 1st January in the calendar year next following that in which the Convention enters into force.

(2) The Convention between the Czechoslovak Socialist Republic and the Republic of Austria for the avoidance of double taxation with respect to taxes on income and on capital signed at Vienna on 7th March 1978 shall cease to be in force and in effect in relation between the Czech Republic and the Republic of Austria on the date of the entry into effect of this Convention.

Article 28

**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 notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have

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<sup>2</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 2021; 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 2022;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Czech Republic 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 2021; and
- b) with respect to all other taxes levied by the Czech Republic, for taxes levied with respect to taxable periods beginning on or after 1 March 2021.

effect:

- a) in respect of taxes withheld at source, to income paid or credited on or after 1st January in the calendar year next following that in which the notice is given;
- b) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after 1st January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE in duplicate at Prague this 8<sup>th</sup> day of June 2006 in the English language.

For the Republic of Austria:

Margot Klestil-Löffler m.p.

For the Czech Republic:

Bohuslav Sobotka m.p.

## **PROTOCOL**

At the moment of signing the Convention between the Czech Republic and the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

(1) With reference to Article 5

It is understood that any transportation of goods is not considered as a service in the sense of the provision of sub-paragraph b) of paragraph 3 of Article 5 of this Convention.

(2) With reference to Article 12

In the case that the Czech Republic will achieve with all the other EU member states an agreement (through conventions for the avoidance of double taxation or otherwise) that the royalties of the type mentioned in sub-paragraph a) of paragraph 3 of Article 12 of this Convention may be taxed in the State of their source at the rate of 10 per cent of their gross amount, then such rate of 10 per cent will be applicable for the purposes of paragraph 2 of Article 12 of this Convention in relation to such royalties from the date of which the agreement between the Czech Republic and the last of the remaining EU member states will have effect.

(3) With reference to Article 22

By virtue of an ordinance based on section 48 of the Austrian Federal Tax Proceedings Code (Bundesabgabenordnung) Austria may apply the credit method for the avoidance of double taxation in specified cases due regard being had to the principles as laid down in Article 23 B of the OECD Model Tax Convention if reciprocal application of the credit method should be in the public interest of Austria. It is agreed that such switch-over to the credit method shall take place only upon prior notification to the competent authority of the Czech Republic.

(4) With reference to Article 25

(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 or able to obtain 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 scope of the exchange of information provided in Article 25 does not include speculative requests that have no apparent nexus to an open examination or investigation.

(3) It is understood that paragraph 5 of Article 25 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in duplicate at Prague this 8<sup>th</sup> day of June 2006 in the English language.

For the Republic of Austria:

Margot Klestil-Löffler m.p.

For the Czech Republic:

Bohuslav Sobotka m.p.