

**SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX
TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING
(MLI) AND THE CONVENTION BETWEEN THE REPUBLIC OF KOREA AND THE
REPUBLIC OF SERBIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME**

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Republic of Korea and the Republic of Serbia for the Avoidance of Double Taxation with respect to Taxes on Income signed on 22 January 2016 (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 Korea (Korea) and the Republic of Serbia (Serbia) on June 7, 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of Serbia and represents a shared understanding of the modifications made to the Convention by the MLI.

This document was prepared on the basis of the MLI position of Korea submitted to the Depositary upon ratification on 13 May 2020 and of the MLI position of Serbia submitted to the Depositary upon ratification on 5 June 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 sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

The authentic legal texts of the MLI can be found at the following link:
<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

The authentic legal texts of the Convention can be found at the following link:
<http://www.law.go.kr/trtyBInfoP.do?trtySeq=12499&chrClsCd=010202>

The MLI position of Korea submitted to the Depositary upon ratification on 13 May 2020 and the MLI position of Serbia submitted to the Depositary upon ratification on 5 June 2018 can be found on the MLI Depositary (OECD) webpage.

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

The MLI enters into force for Korea on 1 September 2020 and for Serbia on 1 October 2018 and has effect as follows:

- (a) The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:
 - (i) 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
 - (ii) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 March 2021; and
- (b) Notwithstanding (a), Article 16 (Mutual Agreement Procedure) of the MLI shall have effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after 1 September 2020, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

**CONVENTION BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF
SERBIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES
ON INCOME**

THE REPUBLIC OF KOREA AND THE REPUBLIC OF SERBIA

[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,] with a view to establishing stable conditions for comprehensive development of economic and other cooperation and investment between the two countries,

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 the Convention:

Article 6 of the MLI- Purpose of a Covered Tax Agreement

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

Have agreed as follows:

**Article 1
PERSONS COVERED**

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

**Article 2
TAXES COVERED**

1. This Convention shall apply to taxes on income 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 all taxes imposed on total income, or on elements of income, 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:

1) in Serbia:

- (1) the corporate income tax; and
- (2) the personal income tax
(hereinafter referred to as "Serbian tax");

2) in Korea:

- (1) the income tax;
- (2) the corporation tax;
- (3) the special tax for rural development; and
- (4) the local income tax
(hereinafter referred to as "Korean 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:

- 1) the terms "a Contracting State" and "the other Contracting State" mean Korea or Serbia, as the context requires;
- 2) the term "Serbia" means the Republic of Serbia, and when used in a geographic sense it means the territory of the Republic of Serbia;
- 3) the term "Korea" means the Republic of Korea, and when used in a geographical sense, the territory of the Republic of Korea including its territorial sea, and any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil, and their natural resources may be exercised;
- 4) the term "national", in relation to a Contracting State, means:
 - (1) any individual possessing the nationality of that Contracting State; and

- (2) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- 5) the term "tax" means Korean tax or Serbian tax, as the context requires;
- 6) the term "person" includes an individual, a company and any other body of persons;
- 7) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- 8) 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;
- 9) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- 10) the term "competent authority" means:
 - (1) in Serbia, the Ministry of Finance or its authorised representative;
 - (2) in Korea, the Minister of Strategy and Finance or his authorised representative.

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 head or main office, 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.
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:
 - 1) 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);
 - 2) 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;

- 3) 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;
- 4) 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:

- 1) a place of management;
- 2) a branch;
- 3) an office;
- 4) a factory;
- 5) a workshop; and
- 6) 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. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- 1) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- 2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- 3) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- 4) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- 5) 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;

- 6) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs 1) to 5), 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 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. The profits to be attributed to a permanent establishment may be determined on the basis of separate accounts relating to the permanent establishment. 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 of this Article 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 embodied 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

INTERNATIONAL TRAFFIC

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article the term “profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic” shall include profits from:

- 1) the rental of a ship or aircraft on a bare boat charter basis; and
- 2) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers);

by that enterprise where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

- 1) 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
- 2) 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 that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

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

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

- 1) 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;
- 2) 10 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 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of such interest and such interest is derived by:

- 1) the Government of the other Contracting State or political subdivisions or local authorities thereof;
- 2) the Central or National Bank of the other Contracting State;
- 3) a financial institution wholly owned by the Government of the other Contracting State or political subdivisions or local authorities thereof.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein or performs in that other State

independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 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.

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

Article 12

ROYALTIES

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:

- 1) 5 per cent of the gross amount of the royalties within the meaning of subparagraph 1) of paragraph 3 of this Article;
- 2) 10 per cent of the gross amount of the royalties within the meaning of subparagraph 2) of paragraph 3 of this Article.

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:

- 1) for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting;

- 2) for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article 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 a resident of that State. Where, however, the person paying the royalties, whether 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 derived by an enterprise of a Contracting State 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 that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

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

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is 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 based.

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 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- 1) the recipient is present in the other State for a period or periods not exceeding in the

aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

- 2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- 3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State shall be taxable only in that State if the remuneration is paid in respect of an employment exercised in the other Contracting State in connection with a building site, a construction or installation project in connection therewith, for a period not exceeding twelve months, during which such site or project does not constitute a permanent establishment in that other State.

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 theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof or if the activities are exercised within the framework of a cultural or sports exchange programme approved by both Contracting States. In such a case, the income is taxable only in the Contracting State in which the artiste or sportsman is a resident.

Article 18

PENSIONS, SOCIAL SECURITY PAYMENTS AND SIMILAR PAYMENTS

1. Payments received by an individual, being a resident of a Contracting State, under the social security legislation of the other Contracting State, or under any other scheme out of funds created by that other State or a political subdivision or a local authority thereof, may be taxed in that other State.

2. Subject to the provisions of paragraph 1 of this Article and paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State, whether in consideration of past employment or not, shall be taxable only in the other Contracting State. However, pensions and other similar remuneration may be taxed in the first-mentioned Contracting State where:

- 1) contributions paid by the beneficiary to the pension scheme were deducted from the beneficiary's taxable income in the first-mentioned Contracting State under the law of that State; or
- 2) contributions paid by an employer were not taxable income for the beneficiary in the first-mentioned Contracting State under the law of that State.

3. Pensions and other similar remuneration shall be deemed to arise in a Contracting State if paid by a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or other similar institution is established, recognised for tax purposes and controlled in accordance with the laws of that State.

Article 19

GOVERNMENT SERVICE

1. 1) Salaries, wages and other similar remuneration 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.

- 2) 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:
 - (1) is a national of that State; or
 - (2) did not become a resident of that State solely for the purpose of rendering the services.
2. 1) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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.
- 2) However, such pensions and other similar remuneration 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 salaries, wages and other similar remuneration paid to the employees of:
 - 1) in the case of Serbia
 - (1) National Bank of Serbia;
 - (2) the representative office of the Chamber of Commerce of the Republic of Serbia in the Republic of Korea;
 - (3) the representative office of the National Tourism Organisation of Serbia in the Republic of Korea;
 - (4) Serbia Investment and Export Promotion Agency (SIEPA) and other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.
 - 2) in the case of Korea:
 - (1) the Bank of Korea;
 - (2) the Korea Export-Import Bank;
 - (3) the Korea Trade Insurance Corporation;
 - (4) the Korea Investment Corporation;
 - (5) the Korea Finance Corporation;
 - (6) the Korea Trade-Investment Promotion Agency and other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.
4. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pension and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or political subdivision or local authority thereof.

Article 20
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 21
PROFESSORS, TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State for the purpose of teaching or carrying out research at an university, college, school, or other similar recognised educational institution and who is or was immediately before that visit a resident of the other Contracting State shall be exempted from taxation in the first-mentioned Contracting State on remuneration for such teaching or research for a period not exceeding two years from the date of his first visit for that purpose.
2. The provisions of paragraph 1 of this Article shall not apply to remuneration from research if such research is undertaken not for public interest but primarily for the private benefit of a specific person or persons.

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 case may be, shall apply.

Article 23
ELIMINATION OF DOUBLE TAXATION

1. In Serbia double taxation shall be eliminated as follows:

Where a resident of Serbia derives income which, in accordance with the provisions of this Convention, may be taxed in Korea, Serbia shall allow, as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Korea.

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

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

2. In Korea double taxation shall be eliminated as follows:

Subject to the provisions of Korean tax law regarding the allowance as credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle thereof);

- 1) where a resident of Korea derives income from Serbia which may be taxed in Serbia under the laws of Serbia in accordance with the provisions of this Convention, in respect of that income, the amount of Serbian tax payable shall be allowed as a credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income;
- 2) where the income derived from Serbia is dividend paid by a company which is a resident of Serbia to a company which is a resident of Korea which owns at least 10 per cent of the voting shares issued by or the capital stock of the company paying the dividends, the credit shall take into account the Serbian tax payable by the company in respect of the profits out of which such dividend is paid.

Article 24
NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 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.

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 25

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 24, 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 this 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.

Article 26

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.

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

- 1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- 2) 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;
- 3) 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 fiduciary capacity or because the information relates to ownership interests in a person.

Article 27

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.

ARTICLE 28

LIMITATION ON BENEFITS

1. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [In respect of Articles 10, 11, 12, 13, and 22, a resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention, if the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, a debt-claim, or a right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.]

The following paragraph 1 of Article 7 of the MLI replaces paragraph 1 of Article 28 of the Convention:

Article 7 of the MLI – Prevention of Treaty Abuse
(Principal purposes test provision)

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] shall not be granted in respect of an item of income 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 [<i>the Convention</i>].

2. Nothing in this Article shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes.

Article 29

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, when the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the later of these notifications and its provisions shall have effect:

1) in Serbia:

in respect of the taxes on income derived in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the Convention enters into force;

2) in Korea:

(1) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Convention enters into force; and

(2) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Convention enters into force.

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 at least six months before the end of any calendar year after the fifth year from the date of entry into force of this Convention. In such event, the Convention shall cease to have effect:

1) in Serbia:

in respect of the taxes on income derived in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given;

2) in Korea:

- (1) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which the notice is given; and
- (2) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given.

In witness whereof, the undersigned, being duly authorised thereto, by their respective Governments, have signed this Convention.

Done at Belgrade this 22nd day of January 2016 in two originals, in the Korean, Serbian, and English languages, all three texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF SERBIA

Lee Do-hoon,

Dusan Vujovic,

Ambassador to Serbia

Minister of Finance

PROTOCOL

At the moment of signing the Convention between the Republic of Korea and the Republic of Serbia for the Avoidance of Double Taxation with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

I. Ad Articles 11 and 12

If, after the signature of this Convention, Serbia has signed a Convention for the avoidance of double taxation with a third State which is a member of the OECD, and that Convention contains lower withholding tax rates, the competent authority of Serbia shall notify the competent authority of Korea of the relevant changes without delay after the signature of that Convention. The

competent authorities of the Contracting States should meet as soon as possible to reduce the rates provided in Articles 11 and 12.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

Done at Belgrade this 22nd day of January 2016 in two originals, in the Korean, Serbian, and English languages, all three texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

FOR THE REPUBLIC OF KOREA

Lee Do-hoon,
Ambassador to Serbia

FOR THE REPUBLIC OF SERBIA

Dusan Vujovic,
Minister of Finance