

**SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN  
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA AND THE  
GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME AND PROPERTY**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the Government of the People’s Republic of China and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Property signed on 4 December, 1995 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the People’s Republic of China on 7 June, 2017 and by Ukraine on 23 July, 2018 (the “MLI”).

The document was prepared on the basis of the MLI position of the People’s Republic of China submitted to the Depositary upon approval on 25 May, 2022 and of the MLI position of Ukraine submitted to the Depositary upon ratification on 8 August, 2019. 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 Agreement.

The authentic legal texts of the Agreement 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 Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. 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 Agreement (such as “Covered Tax Agreement” and “Agreement”, “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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 Agreement or to the Agreement must be understood as referring to the Agreement 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 Agreement can be found on the webpage of the State Taxation Administration of the People's Republic of China.

(<http://www.chinatax.gov.cn/n810341/n810770/index.html>)

The MLI position of the People's Republic of China submitted to the Depositary upon approval on 25 May, 2022 and the MLI position of Ukraine submitted to the Depositary upon ratification on 8 August, 2019 can be found on the MLI Depositary (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**

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

Dates of the deposit of instruments of ratification, acceptance or approval: 25 May, 2022 for the People's Republic of China and 8 August, 2019 for Ukraine.

Entry into force of the MLI: 1 September, 2022 for the People's Republic of China and 1 December, 2019 for Ukraine.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI have effect with respect to the application of this Agreement:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January, 2023; and
- b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 March, 2023.

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA AND  
THE GOVERNMENT OF UKRAINE  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME AND PROPERTY**

The Government of the People’s Republic of China and the Government of Ukraine;

Desiring to promote the development of economic, scientific, technical and cultural cooperation between both States and **[REPLACED by paragraph 1 of Article 6 of the MLI]** [to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and property];

*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 Agreement:*

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

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

Have agreed as follows:

**ARTICLE 1  
PERSONAL SCOPE**

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

**ARTICLE 2  
TAXES COVERED**

1. This Agreement shall apply to taxes on income and on property 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 property all taxes imposed on total income, on total property, or on elements of income or of property, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are:

(a) in the People's Republic of China:

(i) the individual income tax;

(ii) the income tax for enterprises with foreign investment and foreign enterprises;

(iii) the local income tax;

(hereinafter referred to as "Chinese tax" )

(b) in Ukraine:

(i) the tax on profit of enterprises;

(ii) the income tax on citizens.

(hereinafter referred to as "Ukrainian tax" )

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

### **ARTICLE 3**

#### **GENERAL DEFINITIONS**

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

- (a) the term “China” means the People’s Republic of China; when used in geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with international law;
- (b) the term “Ukraine” when used in geographical sense, means the territory of Ukraine, its Continental Shelf and its exclusive (maritime) economic zone, including any area outside the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated, as an area within which the rights of Ukraine with respect to the seabed and sub-soil and their natural resources may be exercised;
- (c) the terms “a Contracting State” and “the other Contracting State” mean China or Ukraine 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 which is treated as a body corporate for tax purposes;
- (f) 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;
- (g) the term “national” means:
  - (i) physical persons possessing the citizenship or national status (nationality) of a Contracting State;
  - (ii) all legal persons, partnership and associations deriving their status as such from the laws in force of a Contracting State;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which is a resident of 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, in the case of China, the State Administration of Taxation or its authorized representative, and in the case of Ukraine, the Ministry of Finance or its authorized representative.

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

## **ARTICLE 4**

### **RESIDENT**

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office, place of management, place of registration or any other criterion of a similar nature.

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

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine that the person is a resident of a Contracting State for the purposes of this Agreement by mutual agreement.

**ARTICLE 5**  
**PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (g) a warehouse or other structure used as a sales outlet.
3. The term “permanent establishment” likewise encompasses:
  - (a) a building site, 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 18 months;
  - (b) the furnishing of services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than 18 months.
4. Notwithstanding the provisions of paragraphs 1 to 3, 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 subparagraphs (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 the provisions of paragraph 6 apply—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts on behalf of the enterprise, or maintains a stock of goods or merchandise belonging to the enterprise, from which regular sale of such goods and merchandise is carried on in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting 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 of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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 situated in the other Contracting State may be taxed in that other Contracting 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 of this Article 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 of this Article 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 Contracting 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 Contracting State, but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, 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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent

establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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 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 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 paragraphs 1 to 5 of this Article, 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **INTERNATIONAL TRANSPORT**

1. Profits derived by an enterprise which is a resident 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, profits from the operation of ships or aircraft in international traffic include:

- (a) income from the rental on a bareboat basis of ships or aircraft; and

- (b) profits from the use, maintenance or rental of container (including trailers and related equipment for the transport of container) used for the transport of goods or merchandise; 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 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9**

### **ASSOCIATED ENTERPRISES**

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

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

- 2. Where a Contracting State includes in the profits of an enterprise of that Contracting State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other 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 Agreement 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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

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

(b) 10 per cent of the gross amount of the dividends in all other cases.

The provisions of 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 of this Article 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 Contracting 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 of this Agreement, 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 Contracting 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 Contracting 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 Contracting 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 Contracting 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 Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political subdivision, a local authority and the Central Bank thereof or any financial institution in the discharge of functions of a governmental nature, and wholly owned by that Government, shall be exempt from tax in the first-mentioned State.
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 of this Article 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 Contracting 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 of this Agreement, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a political subdivision, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting 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 Agreement.

## **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 Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, know-how, 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 Contracting 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 of this Agreement, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a political subdivision, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting 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 Agreement.

### **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 of this Agreement and situated in the other Contracting State may be taxed in that other Contracting 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise which is a resident of a Contracting State or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]**[Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.]

*The following subparagraph b) of paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Agreement:*

#### **ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY**

Paragraph 4 of Article 13 of the Agreement shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of this Agreement.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

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

## **ARTICLE 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;

(b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

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, 20 and 21 of this Agreement, 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 Contracting 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 Contracting State.



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

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise which is a resident of a Contracting State in international traffic, shall be taxable only in that Contracting 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 Contracting State.

## **ARTICLE 17**

### **ARTISTES AND SPORTSPERSON**

1. Notwithstanding the provisions of Articles 14 and 15 of this Agreement, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, 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 Contracting 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 of this Agreement, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States or substantially financed from the public funds of each Contracting State shall be exempt from tax in that other Contracting State.

## **ARTICLE 18**

### **PENSIONS**

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

## **ARTICLE 19**

### **GOVERNMENT SERVICE**

1. (a) Remuneration, other than pension, paid by the Government of a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State, a political subdivision or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.  
  
(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that other State who:
  - (i) is a national of that other State; or
  - (ii) did not become a resident of that other State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State, a political subdivision or a local authority thereof shall be taxable only in that Contracting State.  
  
(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, 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 15, 16, 17 and 18 of this Agreement shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State, a political subdivision or a local authority thereof.

## **ARTICLE 20**

### **TEACHERS AND RESEARCHERS**

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution accredited by the Government of the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State, for a period of three years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.

## **ARTICLE 21**

### **STUDENTS AND TRAINEES**

1. A student, business apprentice or trainee 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, training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:

- (a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;
- (b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organization.

2. A student, business apprentice or trainee referred to in paragraph 1 shall, in respect of remuneration from employment, be entitled during his or her education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he or she is visiting.

## **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 Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 of this Agreement, 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 Contracting 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 of this Agreement, as the case may be, shall apply.

## **ARTICLE 23**

### **PROPERTY**

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

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

3. Property represented by ships and aircraft operated by an enterprise which is a resident of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

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

## **ARTICLE 24**

### **METHODS FOR ELIMINATION OF DOUBLE TAXATION**

1. In China, double taxation shall be eliminated as follows:

- (a) Where a resident of China derives income from Ukraine the amount of tax on that income payable in Ukraine in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that

resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

- (b) Where the income derived from Ukraine is a dividend paid by a company which is a resident of Ukraine to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid in Ukraine by the company paying the dividend in respect of its income.

2. In Ukraine, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Ukraine regarding the elimination of tax payable in a territory outside Ukraine (which shall not affect the general principle hereof), Chinese tax paid under the laws of China and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable property from sources within China shall be allowed as a credit against any Ukrainian tax computed by reference to the same profits, income or property by reference to which the Ukrainian tax is computed. Such deductions in either case shall not exceed that part of income tax or property tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the property which may be taxed in that other State.

## **ARTICLE 25**

### **NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph 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 7 of Article 11, or paragraph 6 of Article 12 of this Agreement 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 property 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 property of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to taxes covered by this Agreement.

## **ARTICLE 26**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25 of this Agreement 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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 proceeding paragraphs.

**ARTICLE 27**  
**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1 of this Agreement. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*) .

**ARTICLE 28**  
**DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:*

## ARTICLE 7 OF THE MLI –PREVENTION OF TREATY ABUSE

### *(Principal purposes test provision)*

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

## ARTICLE 29

### ENTRY INTO FORCE

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

(a) in China:

In respect of income derived during the taxable years beginning on or after the first day of January next following that in which this Agreement enters into force;

(b) in Ukraine:

- (i) in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the Agreement enters into force;
- (ii) in respect of tax on profit of enterprises for any taxation period beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force;
- (iii) in respect of income tax on citizens for any payments made on or after the sixtieth day following that day on which the Agreement enters into force.

## ARTICLE 30

### TERMINATION



This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a) in China:

In respect of income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given;

(b) in Ukraine:

- (i) in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the notice is given;
- (ii) in respect of tax on profit of enterprises for any taxation period beginning on or after the first day of January in the calendar year next following that in which the notice is given;
- (iii) in respect of income tax on citizens for any payments made on or after the sixtieth day following that day on which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto have signed this Agreement.

DONE at Beijing on the 4th day of December, 1995 in duplicate in the Chinese, Ukrainian and English languages, all texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

**For the Government  
of the People's Republic of China**

**For the Government  
of Ukraine**

## **PROTOCOL**

At the signing of the Agreement between the Government of the People's Republic of China and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Property (hereinafter referred to as "the Agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. With reference to Article 2:

It is understood that the provisions of this Agreement should not include any penalty imposed for non-compliance of the laws and regulations relating to the taxes to which this Agreement applies.

2. With reference to Article 3:

It is understood that the definition of the term "company" as any body corporate or any entity which is treated as a body corporate for tax purposes referred to in sub-paragraph (e), paragraph 1, Article 3 should include partnership which is treated as a company or a body corporate for tax purposes.

3. With reference to Article 5:

- (a) The time period for determining permanent establishment provided in paragraph 3, Article 5, shall continue in force for 5 years from the date of the implementation of this Agreement, and the competent authorities of the Contracting States shall, after the expiration of the 5 years, consult with each other for the purpose of reaching an agreement upon the time period for determining permanent establishment other than the period provided in paragraph 3, Article 5, or upon the continuation of such period according to the results of the implementation of paragraph 3, Article 5.
- (b) Notwithstanding the provisions of sub-paragraph (b), paragraph 3, Article 5, the furnishing of consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, shall constitute permanent establishment only where such services continue for the same project or a connected project for a period or periods aggregating more than 12 months.

4. With reference to Article 8:

Income derived from China by an enterprise which is a resident of Ukraine from the operation of ships or aircraft in international traffic shall be exempt from the

business tax in China; income derived from Ukraine by an enterprise which is a resident of China from the operation of ships or aircraft in international traffic shall be exempt from any tax similar to the business tax in China which may be imposed in Ukraine.

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

DONE at Beijing on the 4th day of December, 1995 in the Chinese, Ukrainian and English languages, all texts being equally authentic. In the case of divergence of interpretations, the English text shall prevail.

**For the Government  
of the People's Republic of China**

**For the Government  
of Ukraine**