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

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Republic of Austria and the Republic of Estonia for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital signed on 5 April 2001 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Austria on 7 June 2017 and by the Republic of Estonia on 29 June 2018 (the "MLI").

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

The document was prepared on the basis of the MLI position of the Republic of Austria submitted to the Depositary upon ratification on 22 September 2017, as updated upon notification of extension of the list of agreements on 30 August 2023, and of the Republic of Estonia submitted to the Depositary upon ratification on15 January 2021. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

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

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

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

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

References

The authentic legal texts of the MLI and the Convention can be found on the webpage of the Federal Ministry of Finance (https://www.bmf.gv.at/).

The MLI position of the Republic of Austria submitted to the Depositary upon ratification on 22 September 2017, as updated upon notification of extension of the list of agreements on 30 August 2023, and the MLI position of the Republic of Estonia submitted to the Depositary upon ratification on 15 January 2021 can be found on the MLI Depositary (OECD) webpage (http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf).

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

Entry into Effect of the MLI Provisions

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

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017, as updated upon notification of extension of the list of agreements on 30 August 2023, for the Republic of Austria and 15 January 2021 for the Republic of Estonia.

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and 1 May 2021 for the Republic of Estonia.

Date of receipt by the Depositary of the Republic of Estonia's notification of the completion of internal procedures for the entry into effect of the provisions of the MLI: 25 November 2021.

Notification of the updated positions of the Republic of Austria by the Depositary: 30 August 2023.

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

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

The Republic of Austria and the Republic of Estonia, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:[1]

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

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

Have agreed as follows:

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

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

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

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

(a) in Austria:

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

(hereinafter referred to as "Austrian tax");

(b) in Estonia:

1. the income tax (tulumaks);
2. the local income tax (kohalik tulumaks);
3. the land tax (maamaks);

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[1] In accordance with paragraphs 1, 3 and 7 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect with respect to this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022, which corresponds to the first day of the next calendar year that begins on or after 30 days after the date of receipt by the Depositary of the notification of the Republic of Estonia that it has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to the Convention; and

b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2023, which corresponds to the first day of the next calendar year that begins on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification of the Republic of Estonia that it has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to the Convention.

(hereinafter referred to as “Estonian tax”).

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

Article 3

GENERAL DEFINITIONS

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

(a) the term “Austria” means the Republic of Austria;

(b) the term “Estonia” means the Republic of Estonia and, when used in the geographical sense, means the territory of Estonia and any other area adjacent to the territorial waters of Estonia within which under the laws of Estonia and in accordance with international law, the rights of Estonia may be exercised with respect to the sea bed and its sub-soil and their natural resources;

(c) the terms “a Contracting State” and “the other Contracting State” mean Austria or Estonia, 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 “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;

(h) the term “competent authority” means:

(i) in Austria: the Federal Minister of Finance or his authorised representative;

(ii) in Estonia: the Minister of Finance or his authorised representative;

(i) (i) the term “national” means:

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

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

(2) As regards the application of the Convention at any time by a Contracting State, any term not de-question by mutual agreement and determine the mode of application of the Convention to such person. In fined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

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

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

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

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

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

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

(3) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under the Convention.

Article 5

PERMANENT ESTABLISHMENT

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

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

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site, a construction, assembly or installation project or a supervisory activity connected therewith constitutes a permanent establishment only if such site, project or activity lasts for a period of more than nine months.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, where the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and where the conditions between the agent and the enterprise differ from those which would be made between independent persons, such agent shall not be considered an agent of an independent status within the meaning of this paragraph. In such case the provisions of paragraph 5 shall apply.

(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, any option or similar right to acquire immovable property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

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

Article 7

BUSINESS PROFITS

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

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

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

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

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

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

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

(8) Nothing in this Article shall prevent a Contracting State from applying its law relating to the taxation of any person who carries on the business of insurance. However, the tax so charged shall not exceed 5.4 per cent of the gross amount of premiums of the business of insurance.

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

Article 8

SHIPPING AND AIR TRANSPORT

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

Article 9

ASSOCIATED ENTERPRISES

(1) Where

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

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

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

(2) Where a Contracting State includes in the profits of an enterprise of 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 firstmentioned 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:

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

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

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

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

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

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

Article 11

INTEREST

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the 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.

(3) Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State, derived and beneficially owned by the Government of the other Contracting State, including its political subdivisions and its local authorities, the Central Bank or any financial institution wholly owned by that Government, or interest derived on loans guaranteed by that Government shall be exempt from tax in the first-mentioned State;

(b) interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(i) the recipient is a resident of that other State, and

(ii) such recipient is an enterprise of that other State and is the beneficial owner of the interest, and

(iii) the interest is paid with respect to indebtedness arising on the sale on credit, by that enterprise, of any merchandise or industrial, commercial or scientific equipment to an enterprise of the first-mentioned State, except where the sale or indebtedness is between related persons.

(4) The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, 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, 2 and 3 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 a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(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:

(a) 5 per cent of the gross amount of the royalties paid for the use of industrial, commercial or scientific equipment;

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

(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 broad-casting, 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 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 13

CAPITAL GAINS

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State or shares in a company the assets of which consist mainly of such property 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 by that enterprise or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

Article 14

INDEPENDENT PERSONAL SERVICES

(1) Income derived by 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 Contracting State but only so much of it as is attributable to that fixed base. For this purpose, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities referred to above that are performed in that other State shall be attributable to that fixed base.

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

Article 15

DEPENDENT PERSONAL SERVICES

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

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

(c) the remuneration is not borne by a permanent establishment 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.

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 or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 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 exercised in a Contracting State by an entertainer or a sportsman 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. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

Article 18

PENSIONS

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

Article 19

GOVERNMENT SERVICE

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

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

(i) is a national of that State; or

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

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

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

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

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

Article 20

STUDENTS

Payments which a student, an apprentice or a 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 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

OTHER INCOME

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

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

Article 22

CAPITAL

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

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

(3) Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

Article 23

ELIMINATION OF DOUBLE TAXATION

(1) **[MODIFIED by paragraph 2 of Article 5 of the MLI]** [In the case of a resident of Austria double taxation shall be avoided as follows:

(a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Estonia, Austria shall, subject to the provisions of subparagraphs b) to e), exempt such income or capital from tax;

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

(c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital;

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

(e) Where a company that is a resident of Austria derives dividends from a company that is a resident of Estonia in which it owns at least 10% of the share capital Austria shall exempt such dividends under the conditions set out for the international holding privilege in the generally applicable provisions of the law of Austria.]

The following paragraph 2 of Article 5 of the MLI applies to paragraph 1 of Article 23 of this Convention with respect to the residents of the Republic of Estonia:[2]

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

Paragraph 1 of Article 23 of this Convention shall not apply where Estonia applies the provisions of this Convention to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed. In the latter case, Austria shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in Estonia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income or capital which may be taxed in Estonia.

(2) In the case of a resident of Estonia double taxation shall be avoided as follows:

(a) Where a resident of Estonia derives income or owns capital which, in accordance with this Convention, may be taxed in Austria, unless a more favourable treatment is provided in its domestic law, Estonia shall allow:

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

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

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

(b) For the purpose of subparagraph a), where a company that is a resident of Estonia receives a dividend from a company that is a resident of Austria in which it owns at least 10 per cent of its shares having full voting rights, the tax paid in Austria shall include not only the tax paid on the dividend, but also the tax paid on the underlying profits of the company out of which the dividend was 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.

[2] In accordance with paragraph 3 and 5 of Article 35 of the MLI, paragraph 2 of Article 5 of the MLI has effect with respect to this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and

b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2025.

(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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the firstmentioned 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 the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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

Article 26

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received 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, or the determination of appeals in relation to, the taxes covered by the Convention. 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 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).

(3) The mode of application of this Article shall be settled by an administrative arrangement between the competent authorities of the Contracting States.

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.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:[3]

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

Article 28

ENTRY INTO FORCE

(1) The Contracting States shall notify each other when the constitutional requirements for the entry into force of this Convention have been complied with.

(2) The Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in both Contracting States:

(a) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following the year in which the Convention enters into force;

(b) in respect of other taxes on income and taxes on capital, for taxes chargeable for any 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.

Article 29

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. In such event, the Convention shall cease to have effect in both Contracting States:

(a) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following the year in which the notice has been given;

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[3] In accordance with paragraphs 1, 3 and 7 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect with respect to this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022, which corresponds to the first day of the next calendar year that begins on or after 30 days after the date of receipt by the Depositary of the notification of the Republic of Estonia that it has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to the Convention; and

b) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2023, which corresponds to the first day of the next calendar year that begins on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification of the Republic of Estonia that it has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to the Convention.

(b) in respect of other taxes on income and taxes on capital, for taxes chargeable for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice has been given.

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

DONE in duplicate at Tallinn, on April 5, 2001, in the German, Estonian and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Republic of Austria:

Ferrero-Waldner

For the Republic of Estonia:

Ilves