

**LIETUVOS RESPUBLIKOS VYRIAUSYBĖS KANCELIARIJA  
POLITIKOS ĮGYVENDINIMO GRUPĖ**

**PAŽYMA**

**DĖL TEISĖS AKTŲ PROJEKTŲ DĖL DAUGIAŠALĖS KONVENCIJOS,  
KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS,  
SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI,  
RATIFIKAVIMO**

**(TAP Nr. 18-14; TAIS Nr. 17-13846(2))**

2018-01-15 Nr. NV-147

Vilnius

1. **Projektų rengėjas:** Finansų ministerija.
2. **Projektų tikslas:** ratifikuoti 2017 m. birželio 7 d. Paryžiuje buvo pasirašytą Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui (toliau – Konvencija).
3. **Dabartinė situacija:** Šiuo metu taikomos 54 dvišalės dvigubo apmokestinimo išvengimo sutartys. Sutartis su Maroku pasirašyta, tačiau dar netaikoma, vykdomos vidaus procedūros.  
Visos dvišalės sutartys pagrįstos apmokestinimo teisių pasidalijimo, dvigubo apmokestinimo naikinimo ir bendradarbiavimo mokesčių srityje principais, nustatytais EBPO ir JT dvigubo apmokestinimo išvengimo sutarties modeliuose, kartu atsižvelgiant į Lietuvos pelno, gyventojų pajamų apmokestinimo sistemas ir siektinus bendradarbiavimo mokesčių administravimo srityje standartus.  
Tačiau šiose sutartyse nėra įgyvendintos 2015 m. lapkričio 16–17 d. EBPO ir G20 valstybių vadovų patvirtintose BEPS projekto galutinėse ataskaitose ir Konvencijoje numatytos kovos su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje priemonės.
4. **Projektų esmė:**
  - Konvencija ratifikuotina.
  - Konvencija siekiama **efektyviausiu** (ne dvišalių derybų metu) **ir sinchronizuotu būdu įgyvendinti rekomendacijas ir priemones** kovai su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje.
  - Įtvirtinamos priemonės, nukreiptos prieš piktnaudžiavimą šiomis sutartimis ir gerinančios ginčų, kylančių iš sutarčių, sprendimo mechanizmą.
  - Konvencijos nuostatų lankstumas ir aiškumas užtikrinamas išlygomis, alternatyvomis ir notifikacijomis – pranešimais.
  - Buvo atlikta Lietuvos dvigubo apmokestinimo išvengimo sutarčių nuostatų analizė ir, įvertinus Lietuvos mokesčių administratoriaus pateiktą informaciją, parengtos Lietuvos išlygos ir pranešimai.
5. **Derinimas:** Projektai be pastabų suderinti su Europos teisės departamentu prie Teisingumo ministerijos, Ūkio ministerija per nustatytą laikotarpį pastabų nepateikė. Į Teisingumo ministerijos ir Užsienio reikalų ministerijos pastabas dėl Teisės aktų projektų teisinės technikos atsižvelgta.
6. **Atitiktis Vyriausybės programai:** Projektai įgyvendina LRV programos įgyvendinimo plano 4.3.2. dalies 8 punkte įtvirtintą prioritetų kryptį „Dvigubo apmokestinimo išvengimo sutarčių tinklo nuosekli plėtra, galiojančių sutarčių peržiūra ir keitimas, be kita ko, EBPO BEPS rezultatų, kuriais siekiama užkirsti kelią piktnaudžiavimo praktikoms sutarčių srityje, įgyvendinimas“.
7. **Dalykinio vertinimo išvada:** Siūlome patikslinti Aiškinamajame rašte ir Įstatymo projekto priede teikiamą informaciją apie dvigubo apmokestinimo išvengimo sutarčių skaičių. Siūlome svarstyti Vyriausybės posėdžio B dalyje, su Teisės grupe suderinta be pastabų.

Politikos įgyvendinimo grupės patarėja

Ingrida Kutkienė

Ingrida Kutkienė, tel. 870663830, el. p.



## LIETUVOS RESPUBLIKOS FINANSŲ MINISTERIJA

Lietuvos Respublikos Vyriausybei

2017-12-28 Nr. (14.36-01)-6K-1704601

100 Atkurtai  
Lietuvai**DĖL TEISĖS AKTŲ PROJEKTŲ DĖL DAUGIAŠALĖS KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI RATIFIKAVIMO**

Finansų ministerija, vadovaudamasi Lietuvos Respublikos tarptautinių sutarčių rengimo ir sudarymo taisyklių, patvirtintų Lietuvos Respublikos Vyriausybės 2001 m. spalio 1 d. nutarimu Nr. 1179, 18 punktu, parengė ir teikia šiuos teisės aktų projektus: Lietuvos Respublikos įstatymo dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo projektą, Lietuvos Respublikos Prezidento dekreto „Dėl teikimo Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektą bei Lietuvos Respublikos Vyriausybės nutarimo „Dėl kreipimosi į Respublikos Prezidentą su prašymu pateikti Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektą (toliau kartu – Teisės aktų projektai).

Teisės aktų projektų tikslas – ratifikuoti 2017 m. birželio 7 d. Paryžiuje pasirašytą Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui (toliau – Konvencija). Šios Konvencijos ratifikavimas suteiktų galimybę Lietuvos Respublikai efektyviausiu būdu (ne dvišalių derybų metu) įgyvendinti Ekonominio bendradarbiavimo ir plėtros organizacijos (toliau – EBPO) paskelbtose Mokesčių bazės erozijos ir pelno perkėlimo (angl. *Base Erosion and Profit Shifting*) (toliau – BEPS) projekto galutinėse ataskaitose numatytas priemones, susijusias su dvigubo apmokestinimo išvengimo sutartimis.

Pažymėtina, kad ši Konvencija pasirašyta įgyvendinant Lietuvos Respublikos Vyriausybės programos įgyvendinimo plano 4.3.2. dalies 8 punkte įtvirtintą prioritetų kryptį „Dvigubo apmokestinimo išvengimo sutarčių tinklo nuosekli plėtra, galiojančių sutarčių peržiūra ir keitimas, be kita ko, honorarų apmokestinimo peržiūra ir EBPO BEPS rezultatų, kuriais siekiama užkirsti kelią piktnaudžiavimo praktikoms sutarčių srityje, įgyvendinimas“.

Konvencijos prieš ją pasirašant tekstas kartu su preliminarėmis Lietuvos Respublikos išlygomis ir pranešimais buvo siųsti derinti suinteresuotoms institucijoms bei asocijuotoms verslo struktūroms; pastabų ir pasiūlymų negauta.

Vadovaujantis Lietuvos Respublikos Vyriausybės 2001 m. spalio 1 d. nutarimu Nr. 1179 patvirtintų Lietuvos Respublikos tarptautinių sutarčių rengimo ir sudarymo taisyklių 11 punkto nuostatomis, Konvencijos tekstas kartu su Lietuvos Respublikos išlygomis ir pranešimais buvo

MLI ratifikavimas\_lydraštis\_teikimas LRV\_20171220

pateikti Lietuvos Respublikos Vyriausybės kanceliarijai, kuri atliko Konvencijos ir Lietuvos Respublikos išlygų bei pranešimų teksto vertimą į lietuvių kalbą ir patvirtino jo autentiškumą.

Priėmus Teisės aktų projektus, neigiamų pasekmių nenumatoma.

Teisės aktų projektai neprieštarauja Septynioliktosios Lietuvos Respublikos Vyriausybės programos, kuriai pritarta Lietuvos Respublikos Seimo 2016 m. gruodžio 13 d. nutarimu Nr. XIII-82 „Dėl Lietuvos Respublikos Vyriausybės programos“, nuostatoms.

Teisės aktų projektai neperkelia ir neįgyvendina Europos Sąjungos teisės aktų, nėra notifikuotini Europos Komisijai.

Teisės aktų projektams įgyvendinti papildomų biudžeto lėšų nereikės. Priėmus Teisės aktų projektus, galiojančių teisės aktų keisti arba panaikinti nereikės.

Teisės aktų projektai be pastabų suderinti su Europos teisės departamentu prie Teisingumo ministerijos, Ūkio ministerija per nustatytą laikotarpį pastabų nepateikė. Į Teisingumo ministerijos ir Užsienio reikalų ministerijos pastabas dėl Teisės aktų projektų teisinės technikos atsižvelgta.

Su visuomene buvo konsultuojamasi Teisės aktų projektus paskelbus Lietuvos Respublikos Seimo teisės aktų projektų informacinės sistemos Projektų registravimo posistemėje.

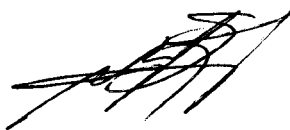
Teisės aktų projektus parengė Finansų ministerijos Mokesčių politikos departamento (direktorė – Jūratė Laurikėnaitė, tel. 239 0151) Mokesčių teisės skyriaus vedėjo pavaduotoja – Jurgita Lisauskienė, tel. 239 0269 ir vyriausioji specialistė Ieva Mackevičiūtė, tel. 239 0187).

Atsižvelgdami į tai, kas išdėstyta, prašome Teisės aktų projektus teikti svarstyti bendra tvarka.

#### PRIDEDAMA:

1. Lietuvos Respublikos įstatymo dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo projektas, 22 lapai.
2. Lietuvos Respublikos Prezidento dekreto „Dėl teikimo Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektas, 1 lapas.
3. Lietuvos Respublikos Vyriausybės nutarimo „Dėl kreipimosi į Respublikos Prezidentą su prašymu pateikti Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektas, 1 lapas.
4. Lietuvos Respublikos įstatymo dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo projekto aiškinamasis raštas, 5 lapai.
5. Konvencijos tekstas lietuvių kalba, 45 lapai.
6. 2017 m. birželio 7 d. pasirašytos Konvencijos tekstas anglų ir prancūzų kalbomis su Lietuvos Respublikos pasirašymo patvirtinimu, 97 lapai.
7. Konvencijos aiškinamasis raštas anglų kalba, 43 lapai.
8. Lietuvos Respublikos išlygos ir pranešimai anglų kalba, 23 lapai.
9. EBPO Teisės reikalų direktorato 2017 m. balandžio 3 d. pažyma dėl Konvencijos veikimo pagal viešosios tarptautinės teisės principus, 8 lapai.
10. Suinteresuotų institucijų raštų kopijos, 3 lapai.

Finansų ministras



Vilius Šapoka

**LIETUVOS RESPUBLIKOS VYRIAUSYBĖ**

**NUTARIMAS**

**DĖL KREIPIMOSI Į RESPUBLIKOS PREZIDENTĄ SU PRAŠYMU PATEIKTI  
LIETUVOS RESPUBLIKOS SEIMUI RATIFIKUOTI DAUGIAŠALĘ KONVENCIJĄ,  
KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS,  
SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO  
PERKĖLIMUI**

2017 m.

d. Nr.

Vilnius

Vadovaudamasi Lietuvos Respublikos tarptautinių sutarčių įstatymo 8 straipsnio 2 dalimi, Lietuvos Respublikos Vyriausybė n u t a r i a:

Kreiptis į Respublikos Prezidentą su prašymu, vadovaujantis Lietuvos Respublikos Konstitucijos 84 straipsnio 2 punktu ir 138 straipsnio pirmosios dalies 6 punktu, pateikti Lietuvos Respublikos Seimui ratifikuoti 2017 m. birželio 7 d. Paryžiuje pasirašytą Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, su Lietuvos Respublikos išlygomis ir pareiškimais.

Ministras Pirmininkas

Užsienio reikalų ministras

FM Teisės departamento  
direktorius

Evaldas Kašėta

2017-11-20

Kalnaitis

2017-11-20

Finansų ministras

Vilnius Sapoka

2017-11-20

**LIETUVOS RESPUBLIKOS PREZIDENTAS**

**DEKRETAS**

**DĖL TEIKIMO LIETUVOS RESPUBLIKOS SEIMUI RATIFIKUOTI  
DAUGIAŠALĘ KONVENCIJĄ, KURIA ĮGYVENDINAMOS SU MOKESČIŲ  
SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ  
BAZĖS EROZIJAI IR PELNO PERKĖLIMUI**

2017 m.

d. Nr.

Vilnius

**1 straipsnis.**

Vadovaudamasis Lietuvos Respublikos Konstitucijos 84 straipsnio 2 punktu,

t e i k i u Lietuvos Respublikos Seimui ratifikuoti 2017 m. birželio 7 d. Paryžiuje pasirašytą Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, su Lietuvos Respublikos išlygomis ir pareiškimais.

**2 straipsnis.**

Šį dekretą Lietuvos Respublikos Seimui pristatys finansų ministras Vilius Šapoka, o jam negalint dalyvauti – finansų viceministrė Daiva Brasiūnaitė.

Respublikos Prezidentas

FM Teisės departamento  
direktorius

Evaldas Kašėta  
2017-11-10

Kalbos redaktorė  
D. J. B.  
D. Senaravičiūtė  
2017-12-20

Finansų ministras  
Vilius Šapoka  
2017-12-20

**LIETUVOS RESPUBLIKOS ĮSTATYMO DĖL DAUGIAŠALĖS KONVENCIJOS,  
KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS,  
SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO  
PERKĖLIMUI, RATIFIKAVIMO  
AIŠKINAMASIS RAŠTAS**

**1. Įstatymo projekto rengimą paskatinusios priežastys, parengto įstatymo projekto tikslai ir uždaviniai**

2017 m. birželio 7 d. Paryžiuje buvo pasirašyta Daugiašalė konvencija, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui (toliau – Konvencija), kuri, vadovaujantis Lietuvos Respublikos Konstitucijos 138 straipsnio pirmosios dalies 6 punktu, turi būti ratifikuota Lietuvos Respublikos Seime. Atsižvelgiant į tai, buvo parengtas Lietuvos Respublikos įstatymo dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo projektas (toliau – Įstatymo projektas).

Pažymėtina, kad nuo 2016 m. Lietuva yra Ekonominio bendradarbiavimo ir plėtros organizacijos (toliau – EBPO) ir G20 Mokesčių bazės erozijos ir pelno perkėlimo (angl. *Base Erosion and Profit Shifting*) (toliau – BEPS) projekto, nustatančio kovai su agresyviu mokestinės naudos planavimu, pasitelkiant apmokestinimo taisyklių tarptautinius skirtumus, skirtas priemones ir jų įgyvendinimo kuo platesniu mastu gaires, asocijuota narė. Tai reiškia, kad Lietuva yra išreiškusi politinį įsipareigojimą ir pasiryžimą įgyvendinti BEPS galutinėse ataskaitose nustatytus minimalius standartus ir dalyvauti atliekant jų įgyvendinimo monitoringą.

Šios Konvencijos ratifikavimas (įsigaliojimas ir taikymas Lietuvos dvigubo apmokestinimo išvengimo sutartims) bus svarbus vertinant Lietuvos, kaip BEPS projekto asocijuotos narės, įsipareigojimus įgyvendinti minimalius standartus atitinkamų EBPO Fiskalinių reikalų komiteto padalinių organizuojamų peržiūrų, numatytų 2018–2019 m., metu.

Taip pat Lietuvos įsipareigojimai įgyvendinti rekomendacijas ir priemones kovai su BEPS, įskaitant ir dvigubo apmokestinimo išvengimo sutarčių srityje, bus svarbūs vertinant Lietuvos, kaip siekiančios narystės EBPO, dalyvavimą EBPO veikloje, kai Fiskalinių reikalų komitetas teiks galutinį sprendimą EBPO Tarybai dėl Lietuvos mokesčių srities politikos atitikties EBPO narių gerajai politinei praktikai.

Šios Konvencijos ratifikavimas svarbus įgyvendinant Lietuvos Respublikos Vyriausybės programos įgyvendinimo plano 4.3.2. dalies 8 punkte įtvirtintą prioritetų kryptį „Dvigubo apmokestinimo išvengimo sutarčių tinklo nuosekli plėtra, galiojančių sutarčių peržiūra ir keitimas, be kita ko, EBPO BEPS rezultatų, kuriais siekiama užkirsti kelią piktnaudžiavimo praktikoms sutarčių srityje, įgyvendinimas“.

Įstatymo projekto tikslas ir uždaviniai – efektyviausiu (ne dvišalių derybų metu) ir sinchronizuotu būdu įgyvendinti rekomendacijas ir priemones kovai su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje, ratifikuojant 2017 m. birželio 7 d. Paryžiuje pasirašytą Konvenciją, kuria būtų modifikuojamos šiuo metu pasirašytos Lietuvos dvišalės dvigubo apmokestinimo išvengimo sutartys: iš esmės įtvirtintos priemonės, nukreiptos prieš piktnaudžiavimą šiomis sutartimis ir gerinančios ginčų, kylančių iš sutarčių, sprendimo mechanizmą.

**2. Įstatymo projekto iniciatoriai ir rengėjai**

Įstatymo projekto iniciatorė ir rengėja yra Lietuvos Respublikos finansų ministerija.

Įstatymo projektą parengė Lietuvos Respublikos finansų ministerijos Mokesčių politikos departamento (direktorė – Jūratė Laurikėnaitė, tel. 239 0151) Mokesčių teisės skyriaus vedėjo pavaduotoja – Jurgita Lissauskienė, tel. 239 0269 ir vyriausioji specialistė Ieva Mackevičiūtė tel. 239 0187.

**3. Dabartinis teisinis įstatymo projekte aptartų teisinių santykių reglamentavimas**

Šiuo metu taikomos penkiasdešimt trys dvigubo apmokestinimo išvengimo sutartys: su Airija, Armėnijos Respublika, Austrijos Respublika, Azerbaidžano Respublika, Baltarusijos Respublika, Belgijos Karalyste, Bulgarijos Respublika, Čekijos Respublika, Danijos Karalyste,

Estijos Respublika, Graikijos Respublika, Gruzija, Indijos Respublika, Islandijos Respublika, Italijos Respublika, Ispanijos Karalyste, Izraelio Valstybe, Jungtinėmis Amerikos Valstijomis, Jungtiniais Arabų Emyratais, Didžiosios Britanijos ir Šiaurės Airijos Jungtine Karalyste, Kanada, Kazachstano Respublika, Kinijos Liaudies Respublika, Kipro Respublika, Kirgizijos Respublika, Korėjos Respublika, Kroatijos Respublika, Latvijos Respublika, Lenkijos Respublika, Liuksemburgo Didžiąja Hercogyste, Makedonijos Respublika, Malta, Meksikos Jungtinėmis Valstijomis, Moldovos Respublika, Nyderlandų Karalyste, Norvegijos Karalyste, Prancūzijos Respublika, Portugalijos Respublika, Rumunijos Respublika, Rusijos Federacija, Serbijos Respublika, Singapūro Respublika, Slovakijos Respublika, Slovėnijos Respublika, Suomijos Respublika, Švedijos Karalyste, Šveicarijos Federacija, Turkmenistanu, Turkijos Respublika, Ukraina, Uzbekistano Respublika, Vengrijos Respublika ir Vokietijos Federacine Respublika. Taip pat šiuo metu yra dar 2 pasirašytos dvigubo apmokestinimo išvengimo sutartys (su Maroku ir Kuveitu), tačiau jos dar netaikomos.

Visos minėtos sutartys pagrįstos apmokestinimo teisių pasidalijimo, dvigubo apmokestinimo naikinimo ir bendradarbiavimo mokesčių srityje principais, nustatytais EBPO ir Jungtinių Tautų dvigubo apmokestinimo išvengimo sutarties modeliuose, kartu atsižvelgiant į Lietuvos pelno, gyventojų pajamų apmokestinimo sistemas ir siektinus bendradarbiavimo mokesčių administravimo srityje standartus.

Tačiau šiose sutartyse nėra įgyvendintos 2015 m. lapkričio 16–17 d. EBPO ir G20 valstybių vadovų patvirtintose BEPS projekto galutinėse ataskaitose ir 2017 m. birželio 7 d. Paryžiuje pasirašytoje Daugiašalėje konvencijoje numatytos kovos su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje<sup>1</sup> priemonės.

Atsižvelgdama į tai, kas išdėstyta anksčiau ir į Konvencijos 2 straipsnio 1 dalies nuostatas (kurios iš esmės suteikia teisę Konvencijos šaliai pasirinkti, kokioms dvigubo apmokestinimo išvengimo sutartims būtų taikoma Konvencija), minėtas 55 sutartis Lietuva Konvencijos pasirašymo metu preliminarai pasiūlė įtraukti į Konvencijos taikymo apimtį. Tačiau Konvencija modifikuotų tik tas Lietuvos nurodytas dvigubo apmokestinimo išvengimo sutartis, kurios taip pat būtų nurodytos ir kitos dvigubo apmokestinimo išvengimo sutarties šalies (šiuo metu pagal EBPO sekretoriato pateikiamą elektroninę duomenų bazę dėl Konvencijos nuostatų suderinamumo tokios sutartys būtų 45). Abiems dvigubo apmokestinimo išvengimo sutarties šalims, esančioms Konvencijos dalyvėmis, atlikus pagal vidaus teisės aktus šios Konvencijos įsigaliojimui būtinas procedūras konkrečiai tai dvigubo apmokestinimo išvengimo sutarčiai ir pateikus pranešimą apie tai depozitarui, šalia taikomų dvigubo apmokestinimo išvengimo sutarčių bus taikomos ir Konvencijos nuostatos, išskyrus tas, dėl kurių Lietuva bus pateikusi išlygas ar Lietuvos pasirinkimas taikyti atitinkamas pasirenkamasias Konvencijos nuostatas nesutaps su kitos dvigubo apmokestinimo išvengimo sutarties šalies pasirinkimu (t. y. Konvencijoje numatytos alternatyvos taikomos simetriškai, išskyrus atvejus, kai asimetrisis jų taikymas aiškiai numatytas Konvencijoje).

#### **4. Naujos teisinio reglamentavimo nuostatos ir kokių teigiamų rezultatų laukiama**

Atsižvelgiant į 3 punkte minėtas problemas ir siekiant efektyviausiu ir sinchronizuotu būdu įgyvendinti rekomendacijas ir kovos su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje priemonės, buvo pasirašyta Konvencija, o kad ši Konvencija galėtų būti taikoma Lietuvos dvigubo apmokestinimo sutartims – parengtas Įstatymo projektas.

Atsižvelgiant į tai, kad BEPS minimalūs standartai dvigubo apmokestinimo išvengimo sutarčių srityje gali būti įgyvendinami skirtingais būdais, ir į tai, kad kuriant Konvenciją dalyvavo daugiau nei 100 valstybių ir jurisdikcijų, kurių mokesčių politika dvigubo apmokestinimo srityje yra labai skirtinga, Konvencijos nuostatų lankstumas ir aiškumas užtikrinamas kiekvienos valstybės ir jurisdikcijos, pasirašančiomis Konvenciją, pateiktomis išlygomis, alternatyvomis ir notifikacijomis – pranešimais apie egzistuojančias dvigubo

<sup>1</sup> BEPS ataskaita dėl 2 veiksmo „Dėl hibridinių neatitikimų“; BEPS ataskaita dėl 6 veiksmo „Dėl piktnaudžiavimo sutartimis“; BEPS ataskaita dėl 7 veiksmo „Dėl nuolatinių buveinių vengimo“; BEPS ataskaita dėl 14 veiksmo „Dėl ginčų sprendimo gerinimo“; BEPS ataskaita dėl 15 veiksmo „Dėl daugiašalės priemonės sukūrimo“.

apmokestinimo išvengimo sutarčių nuostatas, kurios bus modifikuojamos šia Konvencija. Vadovaujantis Konvencijos 28 ir 29 straipsnių nuostatomis, Konvencijai negali būti nustatoma jokia išlyga, išskyrus tas, kurios aiškiai numatytos atitinkamuose Konvencijos straipsniuose. Konvencijos pasirašymo metu pateikiamos valstybių išlygos gali būti laikino pobūdžio, jos patvirtinamos deponuojant Konvencijos ratifikavimo, priėmimo ar patvirtinimo dokumentą. Pažymėtina, kad bet kurią išlygą galima bet kada atšaukti ar pakeisti ją labiau apribojančia išlyga, nusiunčiant depozitarui pranešimą. Atkreiptinas dėmesys, kad naujos išlygos galimos tik dėl naujai į Konvencijos taikymo sritį įtraukiamų dvigubo apmokestinimo išvengimo sutarčių.

Atsižvelgiant į tai, kas minėta pirmiau, buvo atlikta Lietuvos dvigubo apmokestinimo išvengimo sutarčių nuostatų analizė ir, įvertinus Lietuvos mokesčių administratoriaus pateiktą informaciją dėl jų nuostatų taikymo praktikoje kylančių problemų, parengtos preliminaros Lietuvos išlygos ir pranešimai. Pažymėtina, kad šiuo metu siūlytina netaikyti šių Konvencijos straipsnių: 3 straipsnio „Skaidrūs subjektai“, 4 straipsnio „Dvigubo rezidavimo subjektai“, 5 straipsnio „Dvigubo apmokestinimo panaikinimo metodų taikymas“, 8 straipsnio „Dividendų pervedimo sandoriai“, 9 straipsnio „Kapitalo prieaugio pajamos, gaunamos perleidus subjektą, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus“, 10 straipsnio „Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms“, 11 straipsnio „Mokestinių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus“, VI Konvencijos dalies „Arbitražas“.

Siekiant įgyvendinti kovos su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje minimalius standartus, Lietuvai ir kitai Konvencijos šaliai atlikus Konvencijos įsigaliojimo ir taikymo vidaus procedūras, šalia taikomų dvigubo apmokestinimo išvengimo sutarčių nuostatų būtų taikomi ir Konvencijos 6, 7, 16 straipsniai.

Konvencijos 6 straipsniu bus įtvirtinta nuostata, kad Sutartimi siekiama panaikinti dvigubą apmokestinimą kartu nesukuriant galimybių atsirasti nepagrįstam dvigubam neapmokestinimui ar mažesniai apmokestinimui dėl piktnaudžiavimo apmokestinimo taisyklėmis, tokiu būdu įgyvendinant minimalų standartą, įtvirtintą galutinėje BEPS ataskaitoje dėl 6 veiksmo „Dėl piktnaudžiavimo sutartimis prevencijos“.

Šios nuostatos į kiekvienos Lietuvos sutarties, patenkančios į Konvencijos taikymo apimtį, preambulę bus įtrauktos arba papildomai prie jau esamos sutarties preambulės, arba šia nuostata bus pakeista galiojanti preambulė, priklausomai nuo to, kaip kiekviena Konvencijos šalis praneš depozitarui apie kiekvienoje jos sutartyje, kuriai taikoma Konvencija, esančios preambulės nuostatas.

Konvencijos 7 straipsniu bus įtvirtinta bendroji kovos su mokesčių vengimu taisyklė: lengvatos pajamoms nesuteikiamos, jei yra pagrindas daryti išvadą, kad gauti tokią lengvatą buvo pagrindinis bet kurio susitarimo ar sandorio, kuris tiesiogiai ar netiesiogiai lėmė lengvatos atsiradimą, tikslas, išskyrus atvejus, jei nustatoma, kad lengvatos suteikimas tokiomis aplinkybėmis atitinka konkrečių Sutarties nuostatų tikslus. Šios nuostatos įgyvendins minimalų apsaugos nuo piktnaudžiavimo mokesčių sutartimis standartą, įtvirtintą galutinėje BEPS ataskaitoje dėl 6 veiksmo „Dėl piktnaudžiavimo sutartimis prevencijos“. Ši taisyklė į kiekvienos sutarties, patenkančios į Konvencijos taikymo apimtį, nuostatas bus įtraukta arba papildomai prie jau esamų sutarties nuostatų, arba ja bus pakeistos galiojančios sutarties nuostatos, arba bus kaip naujos nuostatos tais atvejais, kai sutartyje apskritai nėra nuostatų, skirtų piktnaudžiavimo sutartimi prevencijai. Konkretus šios taisyklės suderinamumo pagal Konvencijos ir konkrečios Lietuvos sutarties nuostatas rezultatas priklausys nuo to, kaip kiekviena Konvencijos šalis praneš depozitarui apie kiekvienoje jos sutartyje, kuriai taikoma Konvencija, esančias ar nesančias nuostatas.

Konvencijos 16 straipsniu bus įtvirtintos nuostatos, suteikiančios teisę asmenims, manantiems, kad jie buvo ar bus apmokestinti, pažeidžiant sutarties nuostatas, kreiptis į bet kurios susitariančios valstybės kompetentingą asmenį su prašymu išspręsti tokio nepagrįsto apmokestinimo klausimą. Taip pat bus įtvirtinta procedūra, pagal kurią sprendžiami sunkumai, kylantys taikant arba aiškinant sutartį. Šio straipsnio nuostatos įgyvendins minimalų standartą, įtvirtintą galutinėje BEPS ataskaitoje dėl 14 veiksmo „Dėl ginčų sprendimų gerinimo mechanizmo“, kurių tikslas didinti ginčų dėl sutarčių nuostatų sprendimo mechanizmo

efektyvumą, užtikrinant, kad iš sutarčių kylančios pareigos, susijusios su abipusio susitarimo procedūra, yra visiškai įgyvendinamos gera valia ir abipusio susitarimo procedūros metu sprendžiami atvejai yra išsprendžiami. Šios nuostatos į kiekvienos sutarties, patenkančios į Konvencijos taikymo apimtį, nuostatas bus įtrauktos, priklausomai nuo to, kaip kiekviena Konvencijos šalis praneš depozitarui apie kiekvienoje jos sutartyje, kuriai taikoma Konvencija, esančias nuostatas. Kartu atkreiptinas dėmesys, kad atsižvelgiant į tai, kad šis Konvencijos straipsnis numato galimybes pateikti išlygas dėl šio straipsnio taikymo apimties, konkretus šio straipsnio pagal Konvencijos ir konkrečios Lietuvos sutarties nuostatas suderinamumo rezultatas priklausys ir nuo kitos Lietuvos sutarties šalies pateiktų išlygų.

Konvencijos 12–15 straipsniais bus įgyvendinamos rekomendacijos, numatytos galutinėje BEPS ataskaitoje dėl 7 veiksmo „Dėl nuolatinių buveinių statuso vengimo“ siekiant užkirsti kelią situacijoms, kai faktiškai per nuolatinę buveinę veiklą vykdanči įmonė išvengia apmokestinimo nuolatinės buveinės valstybėje. Šie Konvencijos straipsniai bus taikomi kartu su Lietuvos dvigubo apmokestinimo išvengimo sutarčių tik tuo atveju, jeigu Konvencijos šalis, kita konkrečios Lietuvos dvigubo apmokestinimo išvengimo sutarties šalis taip pat bus pasirinkusi taikyti Konvencijos 12–15 straipsnius ta pačia apimtimi kaip ir Lietuva.

Konvencijos 12 straipsniu tikslinamos priklausomo ir nepriklausomo agento sąvokos, siekiant užtikrinti, kad nebūtų išvengta nuolatinės buveinės, kuri veiklą vykdo per priklausomą agentą, statuso dėl formalių neatitikimų, būtų įtvirtinamos nuostatos, kad įmonė bus laikoma veikiančia per nuolatinę buveinę, kai asmuo atstovauja įmonę sudarydamas sandorius ar atlikdamas esminį vaidmenį juos sudarant ir šie sandoriai yra sudaryti įmonės vardu. Taip pat būtų įtvirtinamos nuostatos, kad nepriklausomu agentu laikomas asmuo vis dėlto būtų pripažįstamas nuolatine buveine, jeigu toks asmuo veikia išimtinai ar beveik išimtinai vienos ar kelių įmonių vardu, su kuriomis jis yra artimai susijęs.

Konvencijos 13 straipsniu ir Lietuvos numatomomis pasirinkti taikyti atitinkamomis šio straipsnio nuostatomis siekiama užkirsti kelią tiems atvejams, kai specifinė veikla nelaikoma vykdoma per nuolatinę buveinę, nes patenka į nustatytą išimtinę veiklą sąrašą kaip pagalbinė veikla, nors savo esme ji yra savarankiška ūkinė komercinė veikla.

Konvencijos 14 straipsniu ir Lietuvos numatomomis pasirinkti taikyti atitinkamomis šio straipsnio nuostatomis bus įtvirtintos nuostatos, kad veikla gali būti laikoma vykdoma per nuolatinę buveinę ir tais atvejais, kai skaidant sandorius kiekvieno sandorio trukmę vertinant atskirai nesiekia konkrečioje Lietuvos sutartyje nustatyto laikotarpio, tačiau aišku, kad visa sandorių grandinė sudaro vientisą įmonės veiklos periodą, išskyrus atskirų Lietuvos sutarčių nuostatas, susijusias su nuolatinės buveinės apibrėžtimi, kai vykdoma veikla yra susijusi su gamtos išteklių gavyba.

Konvencijos 15 straipsniu bus įtvirtintos papildomos nuostatos dėl artimai su įmone susijusio asmens apibrėžties, kuri reikalinga taikant Konvencijos 12–14 straipsnių nuostatas.

Pažymėtina, kad taikyti Konvencijos 12–15 straipsnių nuostatas Lietuvos sutartims yra tikslinga, nes aiškiau apibrėžta nuolatinės buveinės sąvoka ir jos išimtys leis išvengti dalies ginčų tarp mokesčių mokėtojo ir mokesčių administratoriaus dėl nuolatinės buveinės buvimo fakto nustatymo, kartu apribojant piktnaudžiavimo galimybes.

Konvencijos 17 straipsniu bus įtvirtintos papildomos nuostatos, sudarančios sąlygas užtikrinti, kad būtų pasiekiamas sutarčių tikslas dėl ekonominio dvigubo apmokestinimo panaikinimo. Šio straipsnio nuostatos įgyvendins rekomendacijas dėl geriausios praktikos, įtvirtintas galutinėje BEPS ataskaitoje dėl 14 veiksmo „Dėl ginčų sprendimų gerinimo mechanizmo“, kurių tikslas didinti ginčų dėl sutarčių nuostatų sprendimo mechanizmo efektyvumą. Konkretus šių nuostatų suderinamumo pagal Konvencijos ir konkrečios Lietuvos sutarties nuostatas rezultatas priklausys nuo to, kaip kiekviena Konvencijos šalis praneš depozitarui apie kiekvienoje jos sutartyje, kuriai taikoma Konvencija, esančias ar nesančias nuostatas, taip pat kokias išlygas šiam straipsniui taikys kitos Konvencijos šalys.

**5. Numatomo teisinio reguliavimo poveikio vertinimo rezultatai, galimos neigiamos priimto įstatymo pasekmės ir kokių priemonių reikėtų imtis, kad tokių pasekmių būtų išvengta**

Ratifikavus Konvenciją, neigiamų pasekmių nenumatoma. Lietuvai ratifikavus Konvenciją, Lietuva atliktų Konvencijos nuostatų įsigaliojimo ir taikymo vidaus procedūras dėl Lietuvos dvigubo apmokestinimo išvengimo sutarčių, todėl būtų įgyvendintas Lietuvos įsipareigojimas taikyti Konvenciją maksimaliai įmanomam jos dvišalių sutarčių skaičiui ir taip efektyviausiu ir sinchronizuotu būdu būtų įgyvendinamos kovos su BEPS dvigubo apmokestinimo išvengimo sutarčių srityje rekomendacijos ir priemonės.

**6. Galima priimto įstatymo įtaka kriminogeninei situacijai, korupcijai**

Priėmus įstatymą, įtaka kriminogeninei situacijai bei korupcijai nenumatoma.

**7. Galima priimto įstatymo įtaka verslo sąlygoms ir jo plėtrai**

Priėmus įstatymą, įtaka verslo sąlygoms ir plėtrai nenumatoma. Bus sudarytos sąlygos efektyvesniam ginčų, kylančių iš Lietuvos sutarčių nuostatų taikymo ir (ar) aiškinimo, sprendimui.

**8. Įstatymo inkorporavimas į teisinę sistemą, galiojantys teisės aktai, kuriuos būtina pakeisti ar panaikinti, priėmus teikiamą įstatymo projektą**

Priėmus įstatymą, galiojančių teisės aktų keisti ar priimti naujų teisės aktų nereikės.

**9. Įstatymo projekto atitiktis Valstybinės kalbos, Teisėkūros pagrindų įstatymų ir kitų norminių teisės aktų rengimo tvarkos įstatymų reikalavimams ir bendrinės lietuvių kalbos normoms, sąvokų ir terminų įvertinimas**

Įstatymo projektas parengtas laikantis Lietuvos Respublikos valstybinės kalbos įstatymo, Lietuvos Respublikos teisėkūros pagrindų įstatymo ir kitų norminių teisės aktų rengimo tvarkos įstatymų reikalavimus ir atitinka bendrinės lietuvių kalbos normas.

**10. Įstatymo projekto atitiktis Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos nuostatomis ir Europos Sąjungos teisei**

Įstatymo projekto nuostatos neprieštarauja Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos nuostatomis bei Europos Sąjungos teisei.

**11. Įstatymui įgyvendinti reikalingi įgyvendinamieji teisės aktai, šių aktų rengėjai**

Įstatymo įgyvendinimui lydimųjų teisės aktų nereikės.

**12. Kiek valstybės, savivaldybių biudžetų ir kitų valstybės įsteigtų fondų lėšų pareikalaus ar leis sutaupyti įstatymo įgyvendinimas**

Įstatymo priėmimas papildomų biudžeto lėšų nepareikalaus.

**13. Įstatymo projekto rengimo metu gauti specialistų vertinimai ir išvados**

Įstatymo projekto rengimo metu specialistų vertinimų ir išvadų negauta. Konvencija ir Lietuvos preliminaros išlygos ir pranešimai buvo siųsti derinti asocijuotosioms verslo struktūroms; pastabų ir pasiūlymų negauta.

**14. Reikšminiai įstatymo projekto žodžiai**

„Daugiašalė konvencija“, „mokesčio bazės erozija“, „išlyga“.

**15. Kiti, iniciatorių nuomone, reikalingi pagrindimai ir paaiškinimai**

Papildomi paaiškinimai, iniciatorių nuomone, nėra reikalingi.

Finansų ministras  
Vilijus Sapoka  
2018-12-28

**EXPLANATORY STATEMENT TO THE MULTILATERAL CONVENTION TO IMPLEMENT  
TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT  
SHIFTING**

**Background**

1. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Convention) is one of the outcomes of the OECD/G20 Project to tackle Base Erosion and Profit Shifting (the "BEPS Project") i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.
2. The BEPS Action Plan was developed by the OECD Committee on Fiscal Affairs (CFA) and endorsed by the G20 Leaders in September 2013. It identified 15 actions to address base erosion and profit shifting (BEPS) in a comprehensive manner, and set out deadlines to implement those actions. Action 15 of the BEPS Action Plan provided for an analysis of the possible development of a multilateral instrument to implement tax treaty related BEPS measures "to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties".
3. After two years of work, the CFA, including all OECD and G20 countries working on an equal footing, produced the Final BEPS Package, which was endorsed by the OECD Council and the G20 Leaders in November 2015. The Final BEPS Package, in the form of reports on each of the 15 actions accompanied by an Explanatory Statement, gives countries and economies the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time giving businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements. It was agreed that a number of the BEPS measures are minimum standards, meaning that countries have agreed that the standard must be implemented.
4. Implementation of the Final BEPS Package will require changes to model tax conventions, as well as to the bilateral tax treaties based on those model conventions. The sheer number of bilateral treaties (more than 3000) would make bilateral updates to the treaty network burdensome and time-consuming, limiting the effectiveness of multilateral efforts.
5. The Action 15 Report, "Developing a Multilateral Instrument to Modify Bilateral Tax Treaties", concluded that a multilateral instrument, providing an innovative approach to enable countries to swiftly modify their bilateral tax treaties to implement measures developed in the course of the work on BEPS, is desirable and feasible, and that negotiations for such an instrument should be convened quickly. The Action 15 Report was developed with the assistance of a group of experts in public international law and international tax law.
6. In line with the Action 15 Report, a mandate for the formation of an *ad hoc* Group for the development of a multilateral instrument was approved by the CFA and endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015. The mandate provided that the *ad hoc* Group should develop a multilateral instrument to modify existing bilateral tax treaties in order to swiftly

implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. It also provided that the *ad hoc* Group should conclude its work and open the multilateral instrument for signature by 31 December 2016.

7. The *ad hoc* Group was open to all interested countries participating on an equal footing. 99 countries participated in the *ad hoc* Group as members. Four non-State jurisdictions and seven international or regional organisations participated as observers. The Chair of the *ad hoc* Group was Mr. Mike Williams of the United Kingdom.
8. The substance of the tax treaty-related BEPS measures (under BEPS Actions 2, 6, 7 and 14) was agreed as part of the Final BEPS Package. Accordingly, the negotiation in the *ad hoc* Group was focused on how the Convention would need to modify the provisions of bilateral or regional tax agreements in order to implement those measures.
9. The Action 14 Report, "Making Dispute Resolution Mechanisms More Effective", also provided that a mandatory binding mutual agreement procedure arbitration provision would be developed as part of the negotiation of the Convention. Accordingly, the *ad hoc* Group established a Sub-Group on Arbitration for this purpose in which 27 countries participated as members. The Sub-Group was chaired by Ms. Ingela Willfors of Sweden. Unlike the other BEPS measures, negotiation of the mandatory binding arbitration provision related both to developing the substance of the provision and to the modalities of its implementation in bilateral or regional tax agreements.
10. Over the course of the negotiations, the *ad hoc* Group met six times and the Sub-Group on Arbitration met five times.
11. The text of this explanatory statement to accompany the Convention ("Explanatory Statement") was prepared by the participants in the *ad hoc* Group, and in the Sub-Group on Arbitration, to provide clarification of the approach taken in the Convention and how each provision is intended to affect tax agreements covered by the Convention ("Covered Tax Agreements"). It therefore reflects the agreed understanding of the negotiators with respect to the Convention. It includes descriptions of the types of treaty provisions which are intended to be covered and the ways in which they are intended to be modified. The members of the *ad hoc* group adopted this Explanatory Statement on 24 November 2016 at the same time as adopting the text of the Convention.
12. The development of the BEPS measures that are implemented by the Convention also included development of commentary which was intended to be used in the interpretation of those provisions. While this Explanatory Statement is intended to clarify the operation of the Convention to modify Covered Tax Agreements, it is not intended to address the interpretation of the underlying BEPS measures (except with respect to the mandatory binding arbitration provision contained in Articles 18 through 26, as noted below in paragraphs 19 and 20). Accordingly, the provisions contained in Articles 3 through 17 should be interpreted in accordance with the ordinary principle of treaty interpretation, which is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. In this regard, the object and purpose of the Convention is to implement the tax treaty-related BEPS measures. The commentary that was developed during the course of the BEPS Project and reflected in the Final BEPS Package has particular relevance in this regard. It should be noted that while in some cases, as noted below, the provisions of the Convention differ in form from the model provisions that were produced through the BEPS Project, unless noted otherwise, these modifications are not intended to make substantive changes to those provisions. Instead, they are intended to implement the agreed BEPS measures in the context of a multilateral instrument that applies to a widely varied network of existing treaties.

#### Approach taken in the Convention

13. The Convention operates to modify tax treaties between two or more Parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement, instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. As a result, while for internal purposes, some Parties may develop consolidated versions of their Covered Tax Agreements as modified by the Convention, doing so is not a prerequisite for the application of the Convention. As noted below, it is possible for Contracting Jurisdictions to agree subsequently to different modifications to their Covered Tax Agreement than those foreseen in the Convention.

14. As noted above, the purpose of the Convention is to swiftly implement the tax treaty-related BEPS measures. Consistent with that purpose, the *ad hoc* Group considered that the Convention should enable all Parties to meet the treaty-related minimum standards that were agreed as part of the Final BEPS package, which are the minimum standard for the prevention of treaty abuse under Action 6 and the minimum standard for the improvement of dispute resolution under Action 14. Given, however, that each of those minimum standards can be satisfied in multiple different ways, and given the broad range of countries and jurisdictions involved in developing the Convention, the Convention needed to be flexible enough to accommodate the positions of different countries and jurisdictions while remaining consistent with its purpose. The Convention also needed to provide flexibility in relation to provisions that did not reflect minimum standards, particularly in relation to how such provisions interact with provisions in Covered Tax Agreements. The Convention provides that flexibility in the following ways:

- **Specifying the tax treaties to which the Convention applies (the “Covered Tax Agreements”).** Although it is intended that the Convention would apply to the maximum possible number of existing agreements, there may be circumstances in which a Party prefers not to include a specific agreement in the scope of application of the Convention because, for example, the agreement has been recently renegotiated to implement the outcomes of the BEPS Project, or is currently under renegotiation with the intent of implementing those outcomes in the renegotiated agreement. This is accomplished by ensuring that the Convention will apply only to an agreement specifically listed by the parties (referred to throughout the Convention as “Contracting Jurisdictions”) to that agreement.
- **Flexibility with respect to provisions that relate to a minimum standard.** Where a provision reflects a BEPS minimum standard, opting out of that provision is possible only in limited circumstances, such as where a Party’s Covered Tax Agreements already meet that minimum standard. Where a minimum standard can be satisfied in multiple alternative ways, the Convention does not give preference to a particular way of meeting the minimum standard. To ensure that the minimum standard can be met in such circumstances, however, in cases where Contracting Jurisdictions each adopt a different approach to meeting a minimum standard that requires the inclusion of a specific type of treaty provision, those Contracting Jurisdictions must endeavour to reach a mutually satisfactory solution consistent with the minimum standard. It should be noted that whether a Covered Tax Agreement (as it may be amended through bilateral negotiations) meets the minimum standard would be determined in the course of the overall review and monitoring process by the Inclusive Framework on BEPS, which brings together a large number of countries and jurisdictions to work on the implementation of the Final BEPS Package.
- **Opting out of provisions or parts of provisions with respect to all Covered Tax Agreements.** Where a substantive provision does not reflect a minimum standard, a Party is generally given the flexibility to opt out of that provision entirely (or, in some cases, out of part of that provision).

This is accomplished through the mechanism of reservations, which are specifically defined for each substantive Article of the Convention. Where a Party uses a reservation to opt out of a provision of the Convention, that provision will not apply as between the reserving Party and all other Parties to the Convention. Accordingly, the modification foreseen by that provision will not be made to any of the Covered Tax Agreements of the reserving Party.

- **Opting out of provisions or parts of provisions with respect to Covered Tax Agreements that contain existing provisions with specific, objectively defined characteristics.** The *ad hoc* Group recognised that even where a Party intends to apply a particular provision of the Convention to its treaty network, it may have policy reasons for preserving the application of specific types of existing provisions. To accommodate this, in a number of cases the Convention permits a Party to reserve the right to opt out of applying a provision to a subset of Covered Tax Agreements in order to preserve existing provisions that have specific, objectively defined characteristics. Except as otherwise provided, such reservations are not mutually exclusive. As a result, where a Party makes one or more such reservations, all such reservations will apply as between the reserving Party and all Contracting Jurisdictions to the Covered Tax Agreements that are covered by such reservations.
- **Choosing to apply optional provisions and alternative provisions.** In some cases, the output of the work on BEPS produced multiple alternative ways to address a particular BEPS issue. In other cases, the work resulted in a main provision that could be supplemented with an additional provision. The Convention incorporates a number of alternatives or optional provisions that generally will apply only if all Contracting Jurisdictions to a Covered Tax Agreement affirmatively choose to apply them.

15. The structure of each substantive provision of the Convention (with the exception of the provisions of Part VI) is as follows:

- **Agreed BEPS measure that forms the basis of the provision of the Convention.** In general, each of Articles 3 through 17 begins with one or more paragraphs reflecting one of the BEPS measures. These paragraphs generally duplicate the language of the provisions of the OECD Model Tax Convention that were developed during the course of the BEPS Project, with a number of types of modifications, including:
  - **Changes in terminology to conform the model provision to the terminology used in the Convention.** For example, to appropriately reflect the scope of the Convention, as well as the fact that individual tax treaties may have a variety of titles, the term “Covered Tax Agreement” is used in place of the term “Convention” in the OECD Model Tax Convention and the United Nations Model Double Taxation Convention between Developed and Developing Countries (“UN Model Tax Convention”). In addition, “Contracting Jurisdiction” is used in place of “Contracting State” to refer to the parties to a Covered Tax Agreement, to reflect the fact that the Convention may modify agreements in relation to which one or more party is a non-State jurisdiction.
  - **Replacement of cross-references to specific Articles and paragraphs with descriptions of those provisions.** A number of the BEPS measures interact with existing provisions of tax agreements that were not modified. Because existing tax agreements vary significantly from each other, it was not possible for the provisions of the Convention to identify those provisions by referring to specific articles and paragraph numbers. Instead, where a reference to the provisions of existing tax

agreements is necessary, the Convention uses descriptive language to identify those provisions.

- **Modifications to reflect differences in underlying provisions.** In some cases, the BEPS Project provided solutions to issues arising under specific provisions of the OECD Model Tax Convention. The model provisions required modification in the context of the Convention to ensure that they could apply appropriately in the context of agreements that do depart from the OECD Model Tax Convention. For example, the work on Action 6 produced modifications to Article 10(2) of the OECD Model Tax Convention to require that a minimum holding period be satisfied in order for a company to be entitled to a reduced rate on dividends from a subsidiary. This provision was based on the dividend withholding rates and ownership thresholds contained in the OECD Model Tax Convention, and needed to be modified in order to reflect the wide variety of similar provisions in existing agreements.
- **Compatibility clause(s) which define the relationship between the provisions of the Convention and Covered Tax Agreements in objective terms.** As noted above, many of the provisions of the Convention overlap with provisions found in Covered Tax Agreements. In some cases, they can be applied without conflict with the provisions of Covered Tax Agreements. Where the provisions of the Convention may conflict with existing provisions covering the same subject matter, however, this conflict is addressed through one or more compatibility clauses which may, for example, describe the existing provisions which the Convention is intended to supersede, as well as the effect on Covered Tax Agreements that do not contain a provision of the same type.
- **Reservation clause(s) that define the reservation(s) permitted with respect to each provision (in line with the agreement reached on the relevant BEPS measure).** In many cases, Parties are permitted to opt out of applying particular provisions to their Covered Tax Agreements, either across the board, or with respect to a subset of Covered Tax Agreements based on objective criteria (see paragraph 14 above). This is accomplished through one or more paragraphs in each Article that set out a closed list of permitted reservations. To ensure clarity, a Party making a reservation that applies to a subset of Covered Tax Agreements based on objective criteria is required to provide a list of the existing provisions in their Covered Tax Agreements that fall within the defined scope of that reservation. As noted above, where a Party has made a reservation with respect to a provision, that reservation will apply as between that Party and all other Parties to the Convention.
- **Notification clause(s) reflecting choices of optional provisions.** Each Article that permits a Party to choose among alternative provisions requires each Party making such a choice to notify the Depositary of its choice, and describes the consequences of a mismatch between the Contracting Jurisdictions to a Covered Tax Agreement, which vary depending on the provision in question.
- **Notification clause(s) to ensure clarity about existing provisions that are within the scope of compatibility clauses.** To ensure clarity and transparency about the application of the Convention, where a provision supersedes or modifies specific types of existing provisions of a Covered Tax Agreement, Parties are generally required to make a notification specifying which Covered Tax Agreements contain provisions of that type. It is expected that Parties would use their best efforts to identify all provisions that are within the objective scope of the compatibility clause. It is therefore not intended that Parties would choose to omit some relevant provisions

while listing others. The effect of these notifications varies depending on the type of compatibility clause that applies to that provision, as follows:

- **Provision of the Convention applies “in place of” an existing provision of a Covered Tax Agreement.** Where a provision of the Convention applies only “in place of” an existing provision, the provision is intended to replace an existing provision if one exists, and is not intended to apply if an existing provision does not exist. In such cases, the notification provision states that the provision of the Convention will apply only in cases where all Contracting Jurisdictions make a notification with respect to the existing provision of the Covered Tax Agreement as described in the Convention.
- **Provision of the Convention “applies to” or “modifies” an existing provision of a Covered Tax Agreement.** Where a provision of the Convention “applies to” or “modifies” an existing provision, the provision of the Convention is intended to change the application of an existing provision without replacing it, and therefore can only apply if there is an existing provision. In such cases, the notification provision states that the provision of the Convention will apply only in cases where all Contracting Jurisdictions make a notification with respect to the existing provision of the Covered Tax Agreement.
- **Provision of the Convention applies “in the absence of” an existing provision of a Covered Tax Agreement.** Where a provision of the Convention applies only “in the absence of” an existing provision, the provision of the Convention will apply only in cases where all Contracting Jurisdictions notify the absence of an existing provision of the Covered Tax Agreement.
- **Provision of the Convention applies “in place of or in the absence of” an existing provision of a Covered Tax Agreement.** Where a provision of the Convention applies “in place of or in the absence of” an existing provision, the provision of the Convention will apply in all cases. If all Contracting Jurisdictions notify the existence of an existing provision, that provision will be replaced by the provision of the Convention (to the extent described in the relevant compatibility clause). Where the Contracting Jurisdictions do not notify the existence of a provision, the provision of the Convention will still apply. If there is in fact a relevant existing provision which has not been notified by all Contracting Jurisdictions, the provision of the Convention will prevail over that existing provision, superseding it to the extent that it is incompatible with the relevant provision of the Convention. If there is no existing provision, the provision of the Convention will, in effect, be added to the Covered Tax Agreement.

16. The approach described in the last bullet of the previous paragraph is intended to reflect the ordinary rule of treaty interpretation, as reflected in Article 30(3) of the Vienna Convention on the Law of Treaties, under which an earlier treaty between parties that are also parties to a later treaty will apply only to the extent that its provisions are compatible with those of the later treaty.

17. An existing provision of a Covered Tax Agreement is considered “incompatible” with a provision of the Convention if there is a conflict between the two provisions. For example, Article 17(2) of the Convention provides that Article 17(1) will apply in place of or in the absence of existing provisions that “require a Contracting Jurisdiction to make an appropriate adjustment to the amount of the tax charged therein on the profits of an enterprise of that Contracting Jurisdiction where the other Contracting Jurisdiction includes those profits in the profits of an enterprise of that other Contracting Jurisdiction and taxes those profits accordingly, and the profits so included are profits which would have accrued to the

enterprise of that other Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises." Certain existing provisions, however, provide only that a Contracting Jurisdiction *may* make a corresponding adjustment or may consult for that purpose, but do not require corresponding adjustments to be made in any particular circumstances. Those existing provisions would be outside the scope of paragraph Article 17(2), meaning that they would therefore continue to apply unless they are incompatible. To the extent that such provisions would permit a Contracting Jurisdiction to choose not to make an appropriate adjustment even in the situation in which the adjustment made by the other Contracting Jurisdiction was justified, however, such provisions would be incompatible with 17(1). As a result, Article 17(1) would supersede such provisions, meaning that its application would replace the application of such provisions to the extent necessary to avoid the conflict between the provisions.

18. As noted above, it is expected that Parties would use their best efforts to identify all provisions that are within the objective scope of each compatibility clause. This should reduce to a minimum situations in which a relevant existing provision is not identified by the Contracting Jurisdictions to a Covered Tax Agreement. Such situations are not impossible, however, either because the Contracting Jurisdictions to a Covered Tax Agreement disagree about whether a particular provision is within the scope of a compatibility clause, or because both Contracting Jurisdictions agree that there is a relevant provision, but disagree about which provision it is. To minimise these possibilities, lists of notifications albeit provisional are required to be provided at the time of signature, so that Signatories will have the opportunity to discuss any mismatches in notification and correct them prior to finalisation of those lists. To the extent that such situations nevertheless arise, any disagreement between the Contracting Jurisdictions as to whether existing provisions are within the scope of a compatibility clause could be settled through the mutual agreement procedure provided for in the Covered Tax Agreement or, if necessary, through a Conference of the Parties convened in accordance with the procedure set out in Article 31(3). In addition, an inadvertent omission of existing provisions can be addressed by making an additional notification pursuant to Article 29(6).

#### Approach taken in Developing the Optional Provision on Mandatory Binding Arbitration of Mutual Agreement Procedure Cases

19. Part VI of the Convention (Articles 18 through 26) reflects the result of the work of the Sub-Group on Arbitration to develop provisions for the mandatory binding arbitration of mutual agreement procedure cases in which the competent authorities are unable to reach agreement within a fixed period of time. As noted above, unlike the other BEPS measures, this work includes the development of the substantive content of a mandatory binding arbitration provision. As a result, unlike Articles 3 through 17, the provisions of this Explanatory Statement related to Part VI address both the substance of those provisions and its technical application to Covered Tax Agreements.

20. Unlike the other Articles of the Convention, Part VI applies only between Parties that expressly choose to apply Part VI with respect to their Covered Tax Agreements. The structure of the Articles of Part VI also differs from the structure of the other Articles of the Convention. These differences reflect the fact that Part VI is intended to operate as a single cohesive arbitration provision. Thus, as discussed in more detail below, rather than including a compatibility clause in each Article of Part VI, rules for compatibility with existing provisions are consolidated in Article 26. In addition, while Part VI includes some defined reservations, Parties that choose to apply Part VI are also permitted to formulate their own reservations with respect to the scope of cases that will be eligible for arbitration (subject to acceptance by the other Parties), as discussed in the sections of this Explanatory Statement related to Article 28(2).

#### Preamble

21. The preamble describes the overall purpose of the Convention to implement tax treaty-related measures produced as part of the Final BEPS Package in a swift, co-ordinated and consistent manner across the network of existing tax treaties without the need to bilaterally renegotiate each such treaty.

22. The penultimate paragraph of the preamble notes that the Parties recognise the need to ensure that existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements 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 those agreements for the indirect benefit of residents of third jurisdictions). This statement relates in particular to Article 6(1), which aims to modify the preambles of Covered Tax Agreements to include the following text:

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),

23. The inclusion of this statement in the preamble to the Convention is intended to clarify the intent of the Parties to ensure that Covered Tax Agreements be interpreted in line with the preamble language foreseen in Article 6(1).

## Part I. Scope and Interpretation of Terms

### Article 1 - Scope of the Convention

24. Article 1 defines the scope of application of the Convention. The Convention modifies all Covered Tax Agreements as defined in Article 2(1)(a).

### Article 2 -- Interpretation of Terms

#### Paragraph 1

##### *Covered Tax Agreement*

25. Paragraph 1(a) defines "Covered Tax Agreement", the term used for the agreements that will be modified by the Convention. This will include agreements for the avoidance of double taxation with respect to taxes on income that are in force between two or more Parties to the Convention, or as noted below, jurisdictions for whose international relations a Party is responsible. This would include agreements that cover capital taxes, or taxes on capital gains, in addition to income taxes. The Convention is not, however, intended to apply to agreements applying solely to shipping and air transport or social security.

26. To avoid confusion or uncertainty about the scope of agreements covered, the Convention modifies only an agreement that has been specifically identified in a notification to the Depositary by each Party to the Convention that is either a Contracting Jurisdiction to that agreement or responsible for the international relations of a party to the agreement. This notification would identify the agreement along with any instruments that have amended the agreement, along with any accompanying instruments that modify the application of the agreement. This approach provides for flexibility as to which existing agreements are covered by the Convention. Although it is intended that the Convention would apply to the maximum possible number of existing agreements, there may be circumstances in which a Party prefers not to include a specific agreement in the scope of application of the Convention. For example, a Party may wish not to include an agreement in the scope of application of the Convention based on the fact that the agreement has been recently renegotiated to implement the outcomes of the BEPS Project, or is currently under renegotiation with the intent of implementing those outcomes in the renegotiated agreement.

27. Paragraph 1(a)(i)(B) enables a State that is a Party to the Convention to include in its list of Covered Tax Agreements tax agreements which have been entered into by a jurisdiction or territory for whose international relations the State Party is responsible. This is intended to cover the situation of jurisdictions or territories which, under the arrangements with the State responsible for their international relations, have the ability to conclude tax agreements in their own right.

28. Accordingly, there are two ways in which the Convention may cover tax agreements concluded by non-State jurisdictions or territories: (i) jurisdictions may become Parties to the Convention by being listed by name in the text of Article 27(1)(b) at the time of adoption of the text of the Convention or by being subsequently authorised to sign and ratify the Convention by a decision by consensus of the Parties and Signatories pursuant to Article 27(1)(c) (see paragraphs 261 and 262 of the Explanatory Statement below); or (ii) pursuant to Article 2(1)(a)(i)(B), a State Party may include in its list of Covered Tax Agreements, tax agreements concluded by a jurisdiction or territory for whose international relations it is responsible.

29. In cases where a State Party avails itself of paragraph 1(a)(i)(B), it shall make reservations and notifications in respect of the jurisdiction or territory in question, which will apply to all Covered Tax Agreements of that jurisdiction or territory. These reservations and notifications can be different from those of the State Party itself, as described in Articles 28(4) and 29(2) of the Convention.

30. The Convention may also cover tax agreements entered into by a State Party "on behalf" of a non-State jurisdiction or territory for whose international relations it is responsible. In such cases, the State Party would include those tax agreements in its list of tax agreements under paragraph 1(a)(i)(A) but has the possibility under Articles 28(4) and 29(2) to make reservations and notifications in respect of that jurisdiction or territory which may differ from the State Party's own list of reservations and notifications.

31. It is important to note that the geographical scope of a Covered Tax Agreement remains as defined in that Covered Tax Agreement and is unchanged by the Convention. Accordingly, the provisions of Covered Tax Agreements which are modified by the Convention will apply with the same geographic scope as the original Covered Tax Agreement.

32. It is possible for a Party to include in the list of agreements provided under paragraph 1(a)(ii) an agreement which has been signed but has not yet entered into force. In such cases, the Party should notify the Depositary in due course of the date of entry into force of that agreement since that is the date on which it can become a Covered Tax Agreement. Where such date is after the entry into force of the Convention with respect to such Party pursuant to Article 34(2), such a notification will be considered an extension of the list of agreements pursuant to Article 29(5).

33. In providing its list of agreements under paragraph 1(a)(ii), a Party should include not only a reference to the original agreement but also to any accompanying instruments that modify the application of the agreement, as well as any instruments which have subsequently amended the agreement. This ensures clarity about the content of the agreement in force at the time when it is modified by the Convention. However, it is important to note that the Convention is not intended to freeze in time the underlying agreement and that Contracting Jurisdictions may of course decide to further amend the underlying agreement after it has been modified by the Convention. The right of the Contracting Jurisdictions to further amend their Covered Tax Agreements is intended to remain unaffected, irrespective of whether the further modifications relate to provisions that have been modified by the application of the Convention. This is reflected in Article 30 of the Convention, which provides that subsequent modifications to Covered Tax Agreements may be agreed between the Contracting Jurisdictions.

##### *Party*

34. The term "Party" is used throughout the Convention to refer to States, as well as jurisdictions which have signed the Convention pursuant to Article 27(1)(b) or (c), for which the Convention is in force pursuant to Article 34.

##### *Contracting Jurisdiction*

35. The term "Contracting Jurisdiction" refers to the States, jurisdictions or territories that are parties to a Covered Tax Agreement. It is used instead of the more commonly used terms "Contracting State" (which is inaccurate due to the potential application of the Convention to tax agreements to which a non-State jurisdiction is a party) and "Contracting Party", which could cause confusion given that "Party" refers to a party to the Convention.

#### Signatory

36. The term “Signatory”, which is used exclusively in the final provisions of the Convention, refers to States and jurisdictions that have signed the Convention pursuant to Article 27(1) but for which the Convention is not yet in force.

#### Paragraph 2

37. This paragraph provides a general rule of interpretation for terms used in the Convention but not defined therein. Any term not defined in the Convention shall, unless the context otherwise requires, have the meaning that it has under the relevant Covered Tax Agreement at the time the Convention is being applied.

38. With respect to a term not explicitly defined in the Convention or in the relevant Covered Tax Agreement, Covered Tax Agreements generally provide that any term not defined shall, unless the context otherwise requires, have the meaning it has at the time the Covered Tax Agreement is being applied under the domestic law of the Contracting Jurisdiction applying the Covered Tax Agreement, the meaning given to that term under the tax laws of that Contracting Jurisdiction prevailing over a meaning given to the term under other laws of that Contracting Jurisdiction. Where this rule is present in a Covered Tax Agreement, it would apply for the purposes of determining the meaning of undefined terms in the Convention, unless the context requires an alternative interpretation. For this purpose, the context would include the purpose of the Convention, as described in paragraphs 1 through 14 above, and of the Covered Tax Agreement, as reflected in the preamble as modified by Article 6 (see paragraphs 21 to 23 above, related to the preamble of the Convention, and paragraph 76 below, related to Article 6).

## Part II. Hybrid Mismatches

### Article 3 – Transparent Entities

#### Paragraph 1

39. The Action 2 Report, “Neutralising the Effects of Hybrid Mismatch Arrangements”, produced new Article 1(2) of the OECD Model Tax Convention, which addresses income earned through transparent entities. The text of that new Article 1(2), which is found in paragraph 435 (page 139) of the Action 2 Report, is as follows:

*2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.*

40. Article 3(1) of the Convention replicates this text, with changes made solely to conform the terminology used in the model provision to the terminology used in the Convention.

#### Paragraph 2

41. Paragraph 2 implements changes related to the elimination of double taxation, as described in paragraph 64 of the Action 6 Report “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”, which were agreed as part of the follow-up work on Action 6. This provision is intended to modify the application of the provisions related to methods for the elimination of double taxation, such as those found in Articles 23A and 23B of the OECD and UN Model Tax Conventions.

#### Paragraph 3

42. As discussed in further detail in paragraph 154 of the explanation related to Article 11(3), paragraph 3 addresses the link between Article 3 and the saving clause in Article 11 by adding an additional sentence to the end of paragraph 1. It will apply with respect to any Covered Tax Agreement for which one or more Parties has reserved the right not to apply Article 11 pursuant to paragraph 3(a) of that Article.

#### Paragraph 4

43. A significant number of Covered Tax Agreements already include provisions addressing fiscally transparent entities, and these provisions take a variety of forms. For example, while the provision reflected in paragraph 1 is framed in terms when income is derived by a transparent entity, some provisions are framed instead as definitions of the term “resident”. Other provisions contain more detailed rules setting out particular circumstances under which income earned through an entity treated as transparent under the laws of one of the Contracting Jurisdictions will be entitled to benefits.

44. Paragraph 4 is the compatibility clause, which addresses the relationship between Article 3(1) (as it may be modified by Article 3(3)) and existing provisions of the same type. It is intended to address all of the above types of provision, by indicating that Article 3(1) (as it may be modified by Article 3(3)) would replace provisions of a Covered Tax Agreement to the extent that they address whether income derived through entities or arrangements that are treated as fiscally transparent under the tax law of a Contracting Jurisdiction will be treated as income of a resident of a Contracting Jurisdiction, or would be added where such provisions do not exist. Where an existing provision addresses both the treatment of fiscally

transparent entities and arrangements and the treatment of tax exempt entities that are not fiscally transparent, such a provision would be superseded only with respect to the treatment of fiscally transparent entities.

45. Paragraph 1 will thus replace provisions addressing whether income derived through entities or arrangements that are treated as fiscally transparent under the tax law of a Contracting Jurisdiction will be treated as income of a resident of a Contracting Jurisdiction, whether such provisions are framed in terms of a general rule along the lines of that found in the OECD Model Tax Convention, by identifying in detail the treatment of specific fact patterns, or by describing the treatment of specific types of entities or arrangements. It is not intended, however, that Article 3(1) (as it may be modified by paragraph 3) would replace provisions that contain detailed "integrity rules" clarifying how an article of a Covered Tax Agreement applies to a particular item of income derived by a resident of a Contracting Jurisdiction, such as a rule deeming a beneficiary of a business trust to have a permanent establishment and attributing to that permanent establishment the share of the business profits of the trust to which the beneficiary is beneficially entitled. Although these latter types of integrity provision may apply to income that is derived by or through an entity or arrangement that is treated as fiscally transparent under the tax law of a Contracting Jurisdiction, they do not address whether that income will be treated as income of a resident of a Contracting Jurisdiction for the purposes of Article 3(4). Rather, these latter provisions only operate where the relevant item of income is already treated as income of a resident of a Contracting Jurisdiction entitled to benefits under the relevant Covered Tax Agreement.

#### Paragraph 5

46. A provision on fiscally transparent entities is not required in order to meet a minimum standard. The reservation clauses in paragraph 5 therefore indicate that a Party may opt out of this Article entirely. In addition, Parties may reserve the right to keep existing provisions addressing this issue; where either Contracting Jurisdiction to a Covered Tax Agreement adopts such a reservation, the existing provision would be preserved.

47. It is also possible for a Party to reserve the right to retain existing provisions that would deny benefits in the case of transparent entities established in third jurisdictions. Parties may also reserve the right to retain existing provisions that provide more detail about the treatment of factual situations and entities to which the provision is intended to apply (or to reserve the right to retain such provisions only where they would deny benefits to transparent entities established in third jurisdictions). Parties may also reserve the right for paragraph 2 not to apply to their Covered Tax Agreements. Finally, Parties may reserve the right to replace such detailed provisions while leaving existing shorter provisions as they are.

#### Paragraph 6

48. To ensure clarity about which existing provisions will be superseded by paragraph 1 (as it may be modified by paragraph 3), paragraph 6 requires each Party (other than a Party that has reserved the right for the entirety of Article 3 not to apply to all of its Covered Tax Agreements or for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4) to notify the Depository of whether each of its Covered Tax Agreements contain an existing provision of the same type that is not subject to a reservation under paragraph 5(c) through (e). Where a Party has made the reservation described in paragraph 5(g), the notification would include only the provisions of the Covered Tax Agreements that are subject to that reservation. Such a provision would be replaced by paragraph 1 (as it may be modified by paragraph 3) to the extent provided in paragraph 4 where all parties to the Covered Tax Agreement have made such a notification. In all other cases, paragraph 1 (as it may be modified by paragraph 3) will apply to the Covered Tax Agreement, but the existing provisions of the Covered Tax

Agreement would be superseded only to the extent that those provisions are incompatible with paragraph 1 (as it may be modified by paragraph 3).

#### Article 4 – Dual Resident Entities

##### Paragraph 1

49. Paragraph 1 modifies the rules for determining the treaty residence of a person other than an individual that is a resident of more than one Contracting Jurisdiction, and is based on the text of Article 4(3) of the OECD Model Tax Convention produced in paragraph 48 (page 72) of the Action 6 Report, which reads as follows:

*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 determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.*

50. As with the other provisions of the Convention, Article 4(1) reflects changes to the model text to conform the terminology used therein to the terminology used in the Convention and to replace cross references to specific paragraphs with descriptions of those paragraphs.

##### Paragraph 2

51. Paragraph 2 is the compatibility clause which describes the interaction between Article 4(1) and provisions of Covered Tax Agreements. Recognising that within any given Covered Tax Agreement, it would be important to have a single tie-breaker rule with respect to the residence of entities, paragraph 2 indicates that Article 4(1) (as it may be modified by the reservation under Article 4(3)(e)) would apply in place of provisions of a Covered Tax Agreement that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions in cases in which that person would otherwise be treated as a resident of more than one Contracting Jurisdiction, or would be added where such provisions do not exist.

52. Existing "tie-breaker" provisions addressing the residence of persons other than individuals take a variety of forms. For example, some (such as Article 4(3) of the UN Model Tax Convention, and of the OECD Model Tax Convention prior to the BEPS Project) break the tie in favour of the place of effective management, some focus on the place of organisation, and others call for determination by mutual agreement but do not explicitly deny benefits in the absence of such a determination. Existing tie-breaker provisions also include provisions addressing such cases by denying treaty benefits without requiring the competent authorities to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence. The provisions of Article 4 would replace all such types of tie-breaker rules with respect to the residence of persons other than individuals. Where a single provision of a Covered Tax Agreement provides for a tie-breaker rule applicable to both individuals and persons other than individuals, paragraph 1 would apply in place of that provision only to the extent that it relates to a person other than an individual.

53. Article 4 would not replace provisions of Covered Tax Agreements specifically addressing the residence of companies participating in dual-listed company arrangements. A dual-listed company arrangement generally refers to an arrangement, adopted by certain publicly-listed companies, that reflect a

commonality of management, operations, shareholders' rights, purpose and mission through an agreement or a series of agreements between two parent companies, each with its own stock exchange listing, together with special provisions in their respective articles of association including in some cases, for example, the creation of special voting shares. Under these types of structures, while the participating companies retain their separate entity legal status, the position of the parent company shareholders is, as far as possible, the same as if they held shares in a single company, with the same dividend entitlement and same rights to participate in the assets of the dual-listed companies in the event of a winding up. Arrangements of this type occur in relatively few jurisdictions, and treaty provisions addressing them are typically customised in detail to the circumstances of those jurisdictions in order to ensure the determination of a single Contracting Jurisdiction of residence for each participating company.

#### Paragraph 3

54. Given that provisions addressing cases in which a person other than an individual is a resident of more than one Contracting Jurisdiction are not required in order to meet a minimum standard, paragraph 3(a) allows a Party to reserve the right not to apply the entirety of Article 4 to its Covered Tax Agreements, and paragraph 3(b) through (d) allow a Party to opt out of applying the entirety of Article 4 to Covered Tax Agreements that contain provisions with specific, objectively defined characteristics.

55. Under paragraph 3(b), a Party may reserve the right for the entirety of Article 4 not to apply to Covered Tax Agreements that already require the competent authorities of the Contracting Jurisdictions to endeavour to reach agreement on a single Contracting Jurisdiction of residence. Paragraph 3(c), in contrast, permits a Party to reserve the right for the entirety of Article 4 not to apply to its Covered Tax Agreements that already deny treaty benefits without requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence. Paragraph 3(d) provides a more limited version of the reservation in paragraph 3(b), permitting a Party to reserve the right for the entirety of Article 4 not to apply to Covered Tax Agreements that require competent authorities of the Contracting Jurisdictions to endeavour to reach agreement on a single Contracting Jurisdiction of residence for a person other than an individual and that set out the treatment of that person where such an agreement cannot be reached.

56. Under paragraph 3(e), a Party may also reserve the right to replace the last sentence of Article 4(1) with the following text for the purposes of its Covered Tax Agreements: "In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement." In effect, this permits a Party to ensure that the competent authorities of the Contracting Jurisdictions will not be permitted to agree to grant any relief or exemption from tax provided by the Covered Tax Agreement unless they are able to agree on the Contracting Jurisdiction of which the person described in paragraph 3(e) shall be deemed to be a resident for the purposes of the Covered Tax Agreement.

57. Recognising that the application of paragraph 3(e) may not be acceptable to all Parties, paragraph 3(f) permits a Party to reserve the right for the entirety of Article 4 not to apply to its Covered Tax Agreements with Parties that have made the reservation described in paragraph 3(e). As a result of the interaction between subparagraphs e) and f), paragraph 1 will be modified by the reservation under paragraph 3(e) where one Contracting Jurisdiction to a Covered Tax Agreement has made the reservation under paragraph 3(e), unless the other Contracting Jurisdiction has made the reservation under paragraph 3(f). As a result, all references to paragraph 1 throughout the Article would refer to paragraph 1 as it may be modified by paragraph 3(e).

58. It should be noted that because paragraph 1 explicitly denies the benefits of the Covered Tax Agreement in the absence of an agreement between the competent authorities of the Contracting Jurisdictions, the failure to grant such benefits cannot be viewed as taxation that is not in accordance with

the provisions of the Covered Tax Agreement. This would mean, for example, that cases in which benefits are denied due to a failure of the competent authorities of the Contracting Jurisdictions to reach agreement would not be eligible for arbitration under a Covered Tax Agreement that provides for arbitration of cases of taxation that is not in accordance with the provisions of the Covered Tax Agreement.

#### Paragraph 4

59. To ensure clarity about which existing provisions will be replaced by paragraph 1, paragraph 4 requires each Party (other than a Party that has reserved the right under paragraph 3(a) for the entirety of Article 4 not to apply to all of its Covered Tax Agreements) to notify the Depositary of whether each of its Covered Tax Agreements contain an existing provision that is not subject to a reservation under paragraph 3(b) through (d). Such a provision would be replaced by the provisions of paragraph 1 (as it may be modified by the reservation under paragraph 3(e)) where all parties to the Covered Tax Agreement have made such a notification. In all other cases, paragraph 1 (as it may be modified by the reservation under paragraph 3(e)) would apply to the Covered Tax Agreement, but would supersede the existing provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (as it may be modified by the reservation under paragraph 3(e)).

### Article 5 – Application of Methods for Elimination of Double Taxation

#### Paragraph 1

60. Paragraphs 442 through 444 of the Action 2 Report describe three alternative ways in which countries may address problems arising from the inclusion of the exemption method in treaties with respect to items of income that are not taxed in the State of source. These alternatives are reflected in paragraphs 2 and 3 (Option A), paragraphs 4 and 5 (Option B) and paragraphs 6 and 7 (Option C) of Article 5. A Party would be permitted to choose Option A, Option B, or Option C, or to choose to apply none of the options. Recognising that asymmetrical application is commonplace in provisions relating to elimination of double taxation, where the Contracting Jurisdictions to a Covered Tax Agreement each choose different options, then by default, each Contracting Jurisdiction would be permitted to apply its chosen Option with respect to its own residents (subject to paragraphs 8 and 9).

#### Option A

#### Paragraph 2

61. Paragraph 2 is based on Article 23A(4) of the OECD Model Tax Convention, as described in paragraph 444 (pages 146-147) and Note 1 (page 149) of the Action 2 Report, which reads as follows:

*4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such income.*

62. Changes were made to the model text of Article 23A(4) to conform the terminology used therein to the terminology used in the Convention and to replace the reference to the provisions of paragraph 1 of Article 23A with a more general reference to provisions for the elimination of double taxation. Changes were also made to replace the references to "paragraph 2 of Article 10 or 11" of the OECD Model Tax Convention with a more general reference to income taxed at a reduced rate, to accommodate Covered Tax Agreements that allow for the application of withholding taxes to income other than dividends and interest, such as income from royalties.

63. Two sentences are also added to the end of the model provision to ensure that the addition of Option A does not result in double taxation in the case of Covered Tax Agreements that do not already provide for the credit method in the case of income subject to a reduced rate of tax at source.

#### Paragraph 3

64. Paragraph 3 is the compatibility clause, which describes the interaction between Option A and the provisions of Covered Tax Agreements. The compatibility clause indicates that Option A would apply to Covered Tax Agreements that would otherwise require a Contracting Jurisdiction to exempt income that the other Contracting Jurisdiction subjects to a reduced rate of tax or exempts based on its application of the Covered Tax Agreement. This would apply, for example, to provisions of the type found in Article 23A of the OECD and UN Model Tax Conventions, as well as provisions of Covered Tax Agreements implementing the exemption method for the elimination of double taxation.

65. Paragraph 3 of Option A should not be read to apply to provisions that grant exclusive taxing rights to the Contracting Jurisdiction of residence with respect to specific types of income, such as provisions that exempt dividends from source taxation.

#### Option B

##### Paragraph 4

66. Option B allows Contracting Jurisdictions not to apply the exemption method with respect to dividends that are deductible in the Contracting Jurisdiction of the payer, as described in paragraph 444 (pages 146-147) of the Action 2 Report. Option B reflects new drafting, as no provision implementing this Option was drafted during the course of the work under Action 2. Option B is intended to address a situation in which income derived by a resident of a Contracting Jurisdiction that would otherwise be treated under the Covered Tax Agreement as exempt dividend income in that Contracting Jurisdiction is treated as a deductible payment by the other Contracting Jurisdiction.

##### Paragraph 5

67. Paragraph 5 is the compatibility clause, which describes the interaction between Option B and the provisions of Covered Tax Agreements. The compatibility clause indicates that Option B would apply to Covered Tax Agreements that would otherwise require a Contracting Jurisdiction to exempt income derived by its residents from dividends that are deductible in the Contracting Jurisdiction of the payer.

#### Option C

##### Paragraph 6

68. Option C reflects the credit method for the elimination of double taxation and is based on Article 23B of the OECD Model Tax Convention, as updated by the BEPS Project, which reads as follows:

*1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State), the first-mentioned State shall allow:*

- a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;*

- b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.*

*Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, 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 that other State.*

*2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.*

69. The sole changes to the model text are made to conform the terminology used therein to the terminology used in the Convention.

##### Paragraph 7

70. Paragraph 7 is the compatibility clause, which describes the interaction between Option C and the provisions of Covered Tax Agreements. The compatibility clause indicates that Option C would apply in place of provisions of a Covered Tax Agreement that, for the purposes of eliminating double taxation, require a Contracting Jurisdiction to exempt from tax in that Contracting Jurisdiction income derived or capital owned by a resident of that Contracting Jurisdiction which, in accordance with the provisions of the Covered Tax Agreement, may be taxed in the other Contracting Jurisdiction.

71. Paragraph 7 should not be read to replace existing provisions intended to clarify that dividends that would be exempt from tax under the domestic law of the Contracting Jurisdiction of residence would be exempt under the Covered Tax Agreement as well.

##### Paragraphs 8 and 9

72. As noted above, by default, where one Party chooses to apply Option A, B, or C to its Covered Tax Agreements, and the other Party chooses a different Option (or chooses not to apply an Option), each Party's choice would apply with respect to its own residents. Some members of the *ad hoc* Group have expressed the concern, however, that accepting asymmetrical application across the board could disrupt the balance of certain bilateral tax treaties where the provision on the elimination of double taxation was the subject of bilateral compromise. To address these concerns, paragraph 8 allows a Party that does not choose to apply an Option under paragraph 1 of this Article to reserve the right for the entirety of Article 5 not to apply with respect to one or more identified Covered Tax Agreements, or with respect to all of its Covered Tax Agreements.

73. Some Parties may be comfortable with asymmetrical application of Option A or B, which represent incremental changes to deal with cases of conflict of qualifications, but may prefer to address more significant changes, such as those reflected in Option C, through bilateral negotiation. To permit that approach, paragraph 9 allows a Party that does not choose to apply Option C to choose, with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements), not to permit the other Contracting Jurisdiction to apply Option C.

**Paragraph 10**

74. Paragraph 10 requires each Party that has chosen to apply an Option under paragraph 1 to notify the Depository of 1) its choice of Option, 2) each Covered Tax Agreement containing a provision within the scope of the compatibility clause for that Option; and 3) the article and paragraph number of each such provision. To ensure clarity, an Option will only apply with respect to a provision of a Covered Tax Agreement if the Party that chose to apply the Option makes such a notification with respect to that provision.

**Part III. Treaty Abuse**

**Article 6 – Purpose of a Covered Tax Agreement**

75. The minimum standard for protection against the abuse of tax treaties under Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) requires countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements. This could be done by including such a statement in the preambles of tax treaties. For this purpose, model preamble text was produced in paragraph 72 (page 92) of the Action 6 Report, which reads:

*(State A) and (State B),*

*Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,*

*Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital 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 States)*

*Have agreed as follows:*

76. While this text is added to the preamble of a Covered Tax Agreement after the original conclusion, the intent of the Contracting Jurisdictions is that the Covered Tax Agreement would be interpreted in line with the purpose of the Covered Tax Agreement described in the preamble text. In this regard, the penultimate paragraph of the preamble of the Convention also confirms the need to ensure that existing agreements for the avoidance of double taxation on income (whether or not other taxes are also covered) are interpreted to eliminate double taxation with respect to the taxes covered by those agreements 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 those agreements for the indirect benefit of residents of third jurisdictions).

**Paragraph 1**

77. Paragraph 1 provides that the Convention modifies a Covered Tax Agreement to include preamble language stating that the purpose of the Covered Tax Agreement is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements.

78. Reflecting the fact that the statement will be incorporated into Covered Tax Agreements after their original conclusion, the model language “Intending to conclude a Convention for the elimination of double taxation” has been replaced with “Intending to eliminate double taxation”. In addition, the phrase “taxes on income and on capital” has been replaced with “taxes covered by this agreement” to address Covered Tax Agreements that cover additional taxes or use different phrasing for the taxes covered.

79. With respect to the title of tax treaties, some Covered Tax Agreements use the term “Convention”, while others use “Agreement”. In this regard, the term “Convention” in the model text has been replaced

with the broader term “agreement” to ensure that a Covered Tax Agreement would be covered regardless of its title.

80. In addition, the French version of the preamble text that will be included in Covered Tax Agreements has been modified to take into account different French equivalents of the English term “tax avoidance”. To accommodate jurisdictions for which the term “tax avoidance” is translated into French as “*évitement fiscal*”, the French version of Article 6 includes in paragraphs 1 and 4 the term “*évitement fiscal*” immediately after the term “*fraude fiscale*”. To make the reason for this addition clear, the preamble text that will be included in Covered Tax Agreements in French also includes a footnote stating that certain jurisdictions translate the English term “tax avoidance” as “*évitement fiscal*”.

#### **Paragraph 2**

81. Paragraph 2 is a compatibility clause which describes the interaction between paragraph 1 and the preamble language of Covered Tax Agreements. This paragraph clarifies that the preamble text in paragraph 1 replaces existing preamble language of Covered Tax Agreements that refers to an intent to eliminate double taxation (whether or not that language also refers to an intent not to create opportunities for non-taxation or reduced taxation), or is added to the preamble of Covered Tax Agreements where such language does not exist in the preamble of the Covered Tax Agreements.

82. Some Covered Tax Agreements may contain preamble language that refers to an intent to eliminate double taxation without creating opportunities for non-taxation or reduced taxation but does not include a reference to tax evasion or avoidance or to treaty shopping. Paragraph 1 is intended to cover these examples and replace them with the preamble language in paragraph 1, though such language may be preserved through the reservation set out in paragraph 4.

#### **Paragraph 3**

83. Some Parties may prefer to include the full preamble language produced in the Action 6 Report rather than only the portion related to the elimination of double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Paragraph 3 allows the possibility to include the other part of the preamble of the OECD Model Tax Convention:

*Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,*

84. Paragraph 3 provides that this preamble language is included only with respect to Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters. Also, given that including this portion of the preamble of the OECD Model Tax Convention is not required in order to meet a minimum standard, this paragraph is an optional provision, and, as provided in paragraph 6, will modify a Covered Tax Agreement only where all Contracting Jurisdictions agree to such modification by choosing to apply paragraph 3.

#### **Paragraph 4**

85. Because paragraph 1 reflects the minimum standard for protection against the abuse of tax treaties under Action 6, paragraph 4 permits a Party to opt out of applying paragraph 1 only with respect to Covered Tax Agreements that already satisfy the minimum standard. Paragraph 4 is intended to permit Parties to preserve preamble language in their Covered Tax Agreements that already refers to the intent to eliminate double taxation without creating opportunities for non-taxation or reduced taxation, whether or

not such language is limited to cases of tax evasion or avoidance (including cases of treaty shopping) or applies more broadly.

#### **Paragraph 5**

86. To ensure clarity about which existing preamble language will be replaced by the text described in paragraph 1, paragraph 5 requires each Party to notify the Depositary of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains preamble language referring to an intent to eliminate double taxation, and if so, the text of the relevant preambular paragraph. Existing preamble language would be replaced by the text described in paragraph 1 where all Contracting Jurisdictions have made such a notification with respect to the existing preamble language. In other cases, the text described in paragraph 1 would be included in addition to the existing preamble language. To avoid unexpected mismatches in notification, each Party making a notification with respect to a preambular paragraph may also clarify whether the relevant preambular paragraph also includes text that is not described in paragraph 2 (with the exception of minor variations). Such text would not be modified by paragraph 1.

#### **Paragraph 6**

87. Paragraph 6 requires each Party that chooses to apply paragraph 3 to notify the Depositary of its choice. To ensure clarity about whether the text described in paragraph 3 will be included in a particular Covered Tax Agreement, such notification shall also include the list of its Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters. The text described in paragraph 3 will be included in a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply that paragraph and have made such a notification with respect to the Covered Tax Agreement.

#### **Article 7 – Prevention of Treaty Abuse**

88. The Action 6 Report includes three alternative rules to address situations of treaty abuse. The first of these alternatives is a general anti-abuse rule based on the principal purpose of transactions or arrangements. In addition to this principal purpose test (PPT), the Action 6 Report provides two versions (a simplified and detailed version) of a specific anti-abuse rule, the limitation on benefits (LOB) provision, which limits the availability of treaty benefits to persons that meet certain conditions.

89. Paragraph 22 (page 19) of the Action 6 Report states that countries, at a minimum, should implement: (i) a PPT only; (ii) a PPT and either a simplified or detailed LOB provision, or (iii) a detailed LOB provision, supplemented by a mechanism that would deal with conduit arrangements not already dealt with in tax treaties.

90. Because a PPT is the only approach that can satisfy the minimum standard on its own, it is presented as the default option in paragraph 1. Parties are then permitted pursuant to paragraph 6 to supplement the PPT by choosing to apply a simplified LOB provision. Given that the detailed LOB provision requires substantial bilateral customisation, which would be challenging in the context of a multilateral instrument, the Convention does not include a detailed LOB provision. Instead, Parties that prefer to address treaty abuse by adopting a detailed LOB provision are permitted to opt out of the PPT and agree instead to endeavour to reach a bilateral agreement that satisfies the minimum standard. Also, given that Parties preferring a detailed LOB provision may accept the PPT in paragraph 1 as an interim measure, paragraph 17(a) allows such Parties to express the intent in the notification under that paragraph.

#### Paragraph 1

91. Paragraph 1 includes the PPT, which is based on paragraph 7 of Article X (Entitlement to Benefits) of the OECD Model Tax Convention produced in paragraph 26 (page 55) of the Action 6 Report. The model provision reads as follows:

*7. Notwithstanding the other 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.*

92. The sole changes to the model provision are to conform the terminology used in the model provision to the terminology used in the Convention.

#### Paragraph 2

93. Paragraph 2 is a compatibility clause which describes the interaction between paragraph 1 and provisions of Covered Tax Agreements. This paragraph clarifies that the PPT in paragraph 1 replaces existing provisions of Covered Tax Agreements that deny all or part of the benefits otherwise provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of the parties to an arrangement or transaction, was to obtain those benefits, or is added where such provisions do not exist in Covered Tax Agreements.

94. Existing PPTs vary in terms of whether they cover all benefits of Covered Tax Agreements or only the benefits under specific articles such as dividends, interest, royalties, income from employment, other income and elimination of double taxation. In this regard, the reference in paragraph 2 to provisions that deny "all or part of the benefits" is intended to ensure that narrower provisions will also be replaced with the broader provision in paragraph 1.

95. Existing PPTs that use similar terms, such as "main purpose" or "primary purpose" are also intended to be covered by the phrase "principal purpose" in this paragraph. While Covered Tax Agreements may already contain various types of anti-abuse rules other than a PPT, the PPT in paragraph 1 is not intended to restrict the scope or application of such existing anti-abuse rules.

96. Some existing PPTs may include existing procedural requirements such as notification or consultation between the competent authorities when the PPTs are applied. The compatibility clause in paragraph 2 would replace the existing PPTs including such notification or consultation provisions.

#### Paragraphs 3 and 4

97. Paragraph 16 of the Commentary on the PPT in the Action 6 Report (pages 64 and 65) noted that countries are free to include in their bilateral tax treaties the following additional paragraph:

*8. Where a benefit under this Convention is denied to a person under paragraph 7, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon*

*request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 7. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.*

98. Paragraph 3 permits Parties that have not opted out of the PPT under paragraph 15(a) to choose to include the additional provision in Covered Tax Agreements. Paragraph 4 reflects the additional provision with minor changes (to conform terminology and to avoid cross-references to a particular article by number). Paragraph 4 is an optional provision, and, as provided in paragraph 17(b), will apply to a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it by making a notification under paragraph 17(b).

#### Paragraph 5

99. Paragraph 5 is a compatibility clause which describes the interaction between paragraph 4 and provisions of Covered Tax Agreements. This paragraph clarifies that when the Contracting Jurisdictions to a Covered Tax Agreement have chosen to apply paragraph 4, it will be applied to a PPT of a Covered Tax Agreement (as it may be modified by the Convention). In general, an existing PPT will be modified by paragraph 1, with the result that in practice, paragraph 4 will apply in conjunction with paragraph 1.

#### Paragraph 6

100. Paragraph 6 allows Parties to choose to apply the simplified LOB provision contained in paragraphs 8 through 13 (the "Simplified Limitation on Benefits Provision") as a supplement to the PPT in paragraph 1 by making the notification described in paragraph 17(c). The Simplified Limitation on Benefits Provision is an optional provision, and applies with respect to a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it. As exceptions to the rule, the Simplified Limitation on Benefits Provision could still apply with respect to a Covered Tax Agreement for which some but not all of the Contracting Jurisdictions have chosen pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision, provided that there is agreement under paragraph 7(a) or (b).

#### Paragraph 7

101. Where one Party chooses to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6 and the other does not, the Simplified Limitation on Benefits Provision would not apply, and by default, the PPT in paragraph 1 would apply symmetrically. Parties that choose to apply the Simplified Limitation on Benefits Provision are, however, permitted under paragraph 16 to opt out of the entirety of Article 7 in the cases in which the other Party chooses not to apply the Simplified Limitation on Benefits Provision. Paragraph 7 provides two optional ways for Parties that do not choose to apply the Simplified Limitation on Benefits Provision to remove the risk that this interaction would result in Article 7 not applying with respect to a given bilateral relationship.

102. Subparagraph a) allows Parties that choose to apply the PPT alone to agree that the Simplified Limitation on Benefits Provision would apply symmetrically for the purposes of granting benefits in the case of Covered Tax Agreements with Parties that choose to apply the Simplified Limitation on Benefits Provision. Subparagraph b), in contrast, allows Parties that choose to apply the PPT alone to permit the Simplified Limitation on Benefits Provision to be applied asymmetrically with respect to a Covered Tax Agreement. Under subparagraph b), a Contracting Jurisdiction to a Covered Tax Agreement that chooses to apply the Simplified Limitation on Benefits Provision would apply the PPT and the Simplified

Limitation on Benefits Provision in determining whether to grant the benefits of the Covered Tax Agreement, while the other Contracting Jurisdiction that does not choose to apply the Simplified Limitation on Benefits Provision would apply the PPT alone in determining whether to grant treaty benefits. This agreement on the application of the Simplified Limitation on Benefits Provision is done by choosing to apply subparagraph a) or b) and notifying the Depositary accordingly under paragraph 17(d).

103. If a Contracting Jurisdiction to a Covered Tax Agreement that prefers to apply the PPT alone does not affirmatively agree to the application of the Simplified Limitation on Benefits Provision under subparagraph a) or b), the exceptions under this paragraph would not apply with respect to the Covered Tax Agreement. In such a case, the PPT alone would apply, subject to paragraph 16.

**Paragraphs 8 through 13 – Simplified Limitation on Benefits Provision**

104. Paragraphs 8 through 13 contain a simplified LOB provision, based on paragraphs 1 through 6 of Article X (Entitlement to Benefits) of the OECD Model Tax Convention produced in paragraph 25 (page 21) of the Action 6 Report and finalised in the course of follow-up work by OECD CFA Working Party No 1 on Tax Conventions and Related Questions (WP1). The version of the provision produced by WP1 as it stood when the Convention was developed reads as follows:

1. *Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 25), unless such resident is a "qualified person", as defined in paragraph 2 at the time that the benefit would be accorded.*

2. *A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:*

- a) *an individual;*
- b) *that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting State, political subdivision or local authority;*
- c) *a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;*
- d) *a person, other than an individual, that*
  - i) *is a [agreed description of the relevant non-profit organisations found in each Contracting State]; or*
  - ii) *is a recognised pension fund*
- e) *a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit otherwise would be accorded, persons who are residents of that Contracting State and that are entitled to benefits of this Convention under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person*

3. a) *A resident of a Contracting State will be entitled to benefits of this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State, and the income derived from the other Contracting State emanates from or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" shall not include the following activities or any combination thereof:*

- i) *operating as a holding company;*
- ii) *providing overall supervision or administration of a group of companies;*
- iii) *providing group financing (including cash pooling); or*
- iv) *making or managing investments, unless these activities are carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business as such.*

b) *If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.*

c) *For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.*

4. *A resident of a Contracting State that is not a qualified person shall also be entitled to a benefit that would otherwise be accorded by this Convention with respect to an item of income if, on at least half of the days of any twelve-month period that includes the time when the benefit otherwise would be accorded, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the beneficial interests of the resident.*

5. *If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4 of this Article, the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment,*

acquisition or maintenance, nor the conduct of its operations had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made shall consult with the competent authority of the other State before either granting or denying the request made under this paragraph by a resident of that other State.

6. For the purposes of this Article:

- a) the term "recognised stock exchange" means:
  - i) any stock exchange established and regulated as such under the laws of either Contracting State; and
  - ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;
- b) the term "principal class of shares" means the class or classes of shares of a company which represents the majority of the aggregate vote and value of the company or the class or classes of beneficial interests of an entity which represents in the aggregate a majority of the aggregate vote and value of the entity;
- c) the term "equivalent beneficiary" means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, this Convention or any other international instrument which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Convention. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;
- d) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares;
- e) two persons shall be "connected persons" if one owns, directly or indirectly, at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

105. Like other provisions produced as part of the BEPS work for inclusion in the OECD Model Tax Convention, the model provision has been modified for inclusion in the Convention. In particular, the terminology has been adjusted to match the terminology used in the Convention, and the references to particular paragraphs and articles by number have been replaced with descriptive language.

106. In addition, the model provision contemplates bilateral negotiation of the non-profit organisations to be treated as qualified persons in paragraph 2(d)(i). While it was considered that in general, requiring bilateral negotiation would not be appropriate in the context of a multilateral instrument, given that it was not anticipated that the Simplified Limitation on Benefits Provision would be adopted by all Parties to the Convention, paragraph 9(d)(i) permits Parties to agree bilaterally on the non-profit organisations to be covered through an exchange of diplomatic notes.

107. The model provision also refers to the defined term "recognised pension funds" in paragraph 2(d)(ii). Rather than using this defined term, paragraph 9(d)(ii) has incorporated the content of the definition.

#### Paragraph 14

108. Paragraph 14 is a compatibility clause which describes the interaction between the Simplified Limitation on Benefits Provision and provisions of Covered Tax Agreements. The Simplified Limitation on Benefits Provision would replace existing provisions of Covered Tax Agreements that would limit the benefits of the Covered Tax Agreements (or that would limit benefits other than a benefit under the articles relating to residence, associated enterprises or non-discrimination or a benefit that is not restricted solely to residents of a Contracting Jurisdiction) only to a resident that qualifies for such benefits by meeting one or more categorical tests, or would be added where such provisions do not exist in Covered Tax Agreements. Thus, it is intended to apply in place of or in the absence of existing LOB provisions. It is not, however, intended to restrict the scope or application of other types of anti-abuse rules in Covered Tax Agreements.

#### Paragraph 15

109. Paragraph 15 defines the reservations that are permitted from Article 7. Subparagraph a) allows Parties that intend to satisfy the minimum standard by adopting a combination of a detailed LOB provision and either rules to address conduit financing structures or a PPT to opt out of including the PPT in paragraph 1 in their Covered Tax Agreements. To ensure that Parties that opt out of the PPT under this paragraph will still have an avenue to meet the minimum standard, this subparagraph requires the Contracting Jurisdictions to endeavour to reach a mutually satisfactory solution which is in line with the minimum standard. Given that there are multiple measures to meet the minimum standard under Action 6, and that reaching a mutually satisfactory solution solely through the efforts of one Contracting Jurisdiction would not be possible, this paragraph requires not only the reserving Party but also the other Contracting Jurisdiction to the relevant Covered Tax Agreement to endeavour to reach a mutually satisfactory solution that is in line with the minimum standard.

110. While subparagraph a) refers to "the OECD/G20 BEPS package" in order to identify the minimum standard for preventing treaty abuse, the obligation imposed on the Contracting Jurisdictions is to use their best efforts to reach bilateral agreement on a provision that is consistent with the agreed minimum standard. It is not meant to suggest that any legal obligations are imposed by the BEPS package. The term "a detailed limitation on benefits provision" in paragraph 15(a) refers to a detailed provision of the type appearing in paragraphs 1 through 6 of Article X (Entitlement to Benefits) of the OECD Model Tax Convention produced in paragraph 25 (page 21) of the Action 6 Report, which will be further developed in the course of the follow-up work on BEPS. The term "a principal purpose test" means a provision of the type described in paragraph 1.

111. Subparagraph b) allows Parties to opt out of paragraph 1 (and paragraph 4, where the Parties have chosen to apply it) with respect to Covered Tax Agreements that already contain a PPT. This would apply only with respect to a comprehensive PPT denying all treaty benefits, and would not apply to a PPT-type test that applies only with respect to benefits under specific articles such as dividends, interest, royalties, income from employment, other income and elimination of double taxation.

112. Subparagraph c) allows Parties to opt out of the Simplified Limitation on Benefits Provision with respect to Covered Tax Agreements that already contain an LOB provision described in paragraph 14. Parties that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision but accept its symmetrical or asymmetrical application pursuant to paragraph 7 may prefer to opt out of the Simplified Limitation on Benefits Provision with respect to Covered Tax Agreements that already contain an LOB provision. Therefore, paragraph 15(c) would be available to such Parties as well as Parties that choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision.

#### Paragraph 16

113. As described above with respect to paragraphs 6 and 7, where one Contracting Jurisdiction to a Covered Tax Agreement prefers to apply the PPT in paragraph 1 alone and the other Contracting Jurisdiction prefers to apply the PPT combined with the Simplified Limitation on Benefits Provision, the Simplified Limitation on Benefits Provision would not apply (unless there is agreement under paragraph 7(a) or (b)). In such cases, Parties that prefer to apply the Simplified Limitation on Benefits Provision may prefer to apply nothing under Article 7 and leave the issue to bilateral negotiations. Where the Contracting Jurisdiction preferring the PPT alone has not chosen to apply paragraph 7(a) or (b), paragraph 16 therefore allows Parties that choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision to opt out of Article 7 entirely with respect to their Covered Tax Agreements. To ensure that the Contracting Jurisdictions to Covered Tax Agreements for which the entirety of Article 7 is opted out of under this paragraph will still have an avenue to meet the minimum standard, this paragraph, like paragraph 15(a), requires them to endeavour to reach a mutually satisfactory solution which is in line with the minimum standard.

#### Paragraph 17

114. Paragraph 17 describes notifications that are required in order to ensure clarity as to the application of Article 7. Subparagraph a) requires Parties that have not opted out of the application of paragraph 1 under paragraph 15(a) to notify the Depositary of each of its Covered Tax Agreements that is not subject to a reservation under paragraph 15(b) and that contains an existing PPT, along with the article and paragraph number of each such provision. An existing provision of a Covered Tax Agreement would be replaced by the provisions of paragraph 1 (and paragraph 4, where applicable) where all Contracting Jurisdictions to that Covered Tax Agreement have made such a notification with respect to the existing provision. In other cases, paragraph 1 (and paragraph 4, where applicable) would apply to the Covered Tax Agreement, but would supersede the existing provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (and where applicable, paragraph 4).

115. Given the fact that not all of the possible ways to meet the minimum standard under Action 6 are provided by the Convention, some Parties may choose to apply the PPT provided in paragraph 1 alone as an interim measure, with the intent, where possible, of adopting other measures to satisfy the minimum standard through bilateral negotiations. To ensure clarity, a Party making a notification under subparagraph a) may also express such intent. Such Parties may then seek, through bilateral negotiation, to adopt a simplified or detailed LOB provision to supplement paragraph 1, or to replace paragraph 1 with a detailed LOB provision supplemented by rules to address conduit financing structures.

116. Subparagraphs b) through d) require Parties that choose to apply optional provisions of Article 7 (i.e. paragraph 4, paragraph 6, and paragraph 7(a) or (b)) to notify the Depositary of their choices in order to clarify which Parties choose those optional provisions.

117. With respect to subparagraphs c) and d), unless the Party that makes a notification of its choice for the application of the Simplified Limitation on Benefits Provision under those subparagraphs has made the reservation described in paragraph 15(c), such Party shall also notify of the list of its Covered Tax Agreements that contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision. Subparagraph e) ensures clarity about which existing provisions will be replaced by the Simplified Limitation on Benefits Provision. An existing provision of a Covered Tax Agreement would be replaced by the Simplified Limitation on Benefits Provision where all Contracting Jurisdictions have made such a notification under subparagraph c) or d) with respect to the existing provision. In other cases, the Simplified Limitation on Benefits Provision would apply to the Covered Tax Agreement, but would supersede the existing provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the Simplified Limitation on Benefits Provision. In the case where paragraph 7(b) applies, such modification would be made asymmetrically only with respect to the application of the Simplified Limitation on Benefits Provision by the Contracting Jurisdiction that has chosen pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision.

#### Article 8 – Dividend Transfer Transactions

##### Paragraph 1

118. Paragraph 1 requires that a minimum shareholding period be satisfied in order for a company to be entitled to a reduced rate on dividends from a subsidiary, based on Article 10(2) of the OECD Model Tax Convention as revised in paragraph 36 (pages 70 and 71) of the Action 6 Report. The model provision reads:

- 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 throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);*

119. The provision of paragraph 1 has been modified to add language describing the situation in which a minimum shareholding period needs to be introduced. Specifically, a minimum shareholding period is added to provisions of a Covered Tax Agreement that exempt or limit taxation in one Contracting Jurisdiction of dividends paid to a company which is a resident of the other Contracting Jurisdiction and which holds more than a certain amount of the capital or voting power of the company paying the dividends. Therefore, this paragraph does not affect existing provisions that give a preferential rate for dividends without the condition on holding a certain amount of the capital of the company paying the dividends.

120. Also, recognising that the purpose of this provision is solely to introduce a minimum shareholding period and not to change the substantive allocation of taxation rights between the Contracting Jurisdictions to Covered Tax Agreements, language relating to the specific tax rate and ownership threshold provided by the model provision has been deleted.

121. In addition, given the variations of existing dividends provisions of Covered Tax Agreements, the following changes have been made to the provision in paragraph 1. The terms "own" and "control" have been added to address existing provisions that use those terms instead of "hold".

- (i) The phrase "more than a certain amount" has been used to cover existing provisions regardless of whether they use the phrase "at least [X] percent" or "more than [X] percent".
- (ii) The term "recipient" has been added to address existing provisions that use that term instead of "beneficial owner". There may be a variety of examples other than "beneficial owner" or "recipient". Some existing provisions may use the terms "beneficiary", "owner" or "receiving company", and others may refer to dividends "beneficially owned by", "paid to", "distributed to" or "received by" a parent company, or a parent company "beneficially entitled" to dividends. In this regard, it is intended that all of these examples would be covered by "beneficial owner" or "recipient".
- (iii) The term "capital" also has a lot of variations such as "equity capital", "authorised capital", "share capital", "statutory capital", "shares", "shares representing ... per cent of the capital/voting power", "outstanding shares of the voting stock", "voting shares", "capital stock", "voting stock", "voting power", "voting rights", "control" and "participation substantielle". To address all of these variations, the phrase "capital, shares, stock, voting power, voting rights or similar ownership interests" has been used in the provisions of paragraph 1.

122. Paragraph 1 is intended to add a minimum shareholding period to existing provisions of Covered Tax Agreements without modifying the other elements of such provisions, such as tax rates, ownership thresholds and form of ownership (e.g. directly and/or indirectly). This paragraph also would not modify any other conditions, such as provisions requiring that:

- the amount of investment is more than a certain monetary value;
- profits out of which dividends are paid are subject to tax in the residence jurisdiction; or
- not more than a certain amount of the gross income of the paying company consists of interest or dividends.

123. Some Covered Tax Agreements between EU members may contain a compatibility clause providing that the EU Parent/Subsidiary Directive shall prevail over existing dividends provisions. The Directive is designed to eliminate tax obstacles in the area of profit distributions between associated companies of different EU members, and eliminates withholding taxes on dividends paid by the subsidiary company to the parent company under some conditions. As described above, this paragraph just adds a minimum shareholding period to existing dividends provisions, and would not repeal the provisions of Covered Tax Agreements addressing compatibility with the Directive.

#### Paragraph 2

124. Paragraph 2 describes the interaction between paragraph 1 and provisions of Covered Tax Agreements. This paragraph clarifies that the 365 day minimum shareholding period in paragraph 1 replaces the minimum shareholding periods already contained in provisions of Covered Tax Agreements, or is added where such periods do not exist in provisions of Covered Tax Agreements. If Parties prefer to preserve existing minimum shareholding periods, paragraph 3(b) allows the possibility to opt out of Article

8 with respect to provisions of Covered Tax Agreements that already include a minimum shareholding period.

#### Paragraph 3

125. Given that a provision addressing dividend transfer transactions is not required in order to meet a minimum standard, paragraph 3(a) allows Parties to opt out of Article 8 entirely.

126. Subparagraph b(i) allows Parties to opt out of Article 8 entirely with respect to Covered Tax Agreements to the extent that the provisions described in paragraph 1 already include a minimum shareholding period. This reservation is intended to apply on a provision basis instead of on an agreement basis. As a result, if a Covered Tax Agreement contains the provisions described in paragraph 1 that provide two split rates, and one includes a minimum shareholding period and the other does not, this clause would preserve the first provisions alone, while paragraph 1 would add a minimum shareholding period to the latter provisions. In addition, subparagraph b(ii) and (iii) allow a Party to choose to preserve a minimum shareholding period included in provisions of a Covered Tax Agreement that is shorter or longer than 365 days.

#### Paragraph 4

127. To ensure clarity about the application of Article 8, paragraph 4 requires each Party (other than a Party that has reserved the right under paragraph 3(a) for the entirety of Article 8 not to apply to all of its Covered Tax Agreements) to notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 1 that is not subject to a reservation described in paragraph 3 (b), and if so, the article and paragraph number of each such provision. Paragraph 1 would apply with respect to an existing provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to the existing provision.

### Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

#### Paragraph 1

128. Paragraph 1 addresses situations in which assets are contributed to an entity shortly before the sale of shares or comparable interests (such as interests in a partnership or trust) in that entity in order to dilute the proportion of the value of the entity that is derived from immovable property, based on Article 13(4) of the OECD Model Tax Convention as revised in paragraph 44 (page 72) of the Action 6 Report. The model provision reads:

*4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.*

129. The Action 6 Report provides two changes with respect to Article 13(4) of the 2014 version of the OECD Model Tax Convention: (i) to introduce a testing period for determining whether the condition on the value threshold is met; and (ii) to expand the scope of interests covered by that paragraph to include interests comparable to shares, such as interests in a partnership or trust. The provision in paragraph 1 has been divided into two subparagraphs. Subparagraph a) reflects the introduction of the testing period, and subparagraph b) reflects the expansion of the interests covered.

130. In addition, the following changes have been made to the text of the above model provision to address variations among existing capital gains provisions of Covered Tax Agreements.

- (i) The term "comparable interests" has been replaced with "other rights of participation in an entity" in the chapeau of this paragraph to make sure that paragraph 1 applies with respect to existing provisions that may describe the ownership interests more broadly than "comparable interests". This change is intended to broadly capture existing provisions to be modified by this paragraph, but (except to the extent provided in subparagraph b)) not to expand the scope of the interests covered.
- (ii) The phrase "more than 50 percent" has been replaced with "more than a certain part" to capture existing provisions using any thresholds, including not only a specified percentage (i.e. "more than [x] percent" or "at least [x] percent") but also more general terms such as "the principal part", "the greater part", "mainly", "wholly", "principally" and "primarily".
- (iii) The term "real property" has been added to address existing provisions using the term instead of "immovable property". In addition, the phrase "as defined in Article 6" has been deleted to avoid cross-references to a particular article by number.
- (iv) The phrase "more than a certain part of the property of the entity consists of such immovable property (real property)" has been added to address existing provisions based on Article 13(4) of the UN Model Tax Convention.

131. Since the purpose of this provision is to introduce a testing period and to ensure that the provision addresses interests comparable to shares (such as interest in a partnership or trust), the threshold provided in existing provisions would be preserved, and where Covered Tax Agreements contain exceptions to the application of the existing provisions (for example, some Covered Tax Agreements may exclude gains derived from the alienation of shares of companies that are listed on an approved stock exchange of one of the Contracting Jurisdictions), those exceptions would continue to apply. Also, some existing provisions may use the terms "income" and "profits" in addition to or instead of "gains", such provisions would also be within the scope of the application of paragraph 1.

#### Paragraph 2

132. Paragraph 2 is a compatibility clause which describes the interaction between paragraph 1(a) and provisions of Covered Tax Agreements. This paragraph clarifies that the 365 day testing period in paragraph 1(a) replaces the testing periods already contained in existing provisions, or is added where such testing periods do not exist in existing provisions. If Parties prefer to preserve existing testing periods, paragraph 6(d) allows the possibility to opt out of paragraph 1(a) with respect to provisions of Covered Tax Agreements that already include a testing period. Since paragraph 1(b) already describes the relationship with shares or rights covered by existing provisions, paragraph 2 does not describe the compatibility of paragraph 1(b) with existing provisions.

#### Paragraphs 3 and 4

133. Some Parties may prefer to apply Article 13(4) of the OECD Model Tax Convention, as produced in the Action 6 Report, to their Covered Tax Agreements, rather than incorporating a testing period and expanding types of interest covered by existing capital gains provisions. Paragraph 3 allows such Parties to do so. As noted below in the explanation regarding paragraph 5, paragraph 3 also allows a Party to introduce a provision addressing gains derived from alienation of shares in entities deriving their value principally from immovable property (real property) into a Covered Tax Agreement that does not have such a rule. Paragraph 4 is an optional provision, and, as provided in paragraph 8, will apply to a

Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it by making a notification under paragraph 8. Then, where paragraph 4 applies to a Covered Tax Agreement, paragraph 1 would not apply. In contrast, if one Contracting Jurisdiction chooses to apply paragraph 4 and one or more of the other Contracting Jurisdictions do not (or neither Contracting Jurisdiction chooses to apply it), paragraph 4 would not apply to that Covered Tax Agreement, and paragraph 1 would apply.

#### Paragraph 5

134. Paragraph 5 is a compatibility clause which describes the interaction between paragraph 4 and provisions of Covered Tax Agreements. This paragraph clarifies that the provision in paragraph 4 replaces existing provisions of Covered Tax Agreements addressing capital gains from the alienation of shares or interests in entities deriving their value principally from immovable property, or is added where such provisions do not exist in Covered Tax Agreements. If Parties prefer to preserve existing provisions of their Covered Tax Agreements, paragraph 6(f) allows the possibility to opt out of paragraph 4 with respect to the Covered Tax Agreements.

135. The phrase "more than a certain part of the property of the entity consists of such immovable property (real property)" is intended to ensure that the provision will also modify existing provisions based on Article 13(4) of the UN Model Tax Convention.

#### Paragraph 6

136. Given that a provision addressing capital gains from the alienation of shares or interests in entities deriving their value principally from immovable property is not required in order to meet a minimum standard, subparagraph a) allows Parties to opt out of paragraph 1 entirely. In addition, subparagraphs b) and c) permit Parties to opt out of either paragraph 1(a) or (b) separately.

137. Subparagraph d) allows Parties to opt out of paragraph 1(a) with respect to their Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that includes a testing period.

138. Subparagraph e) allows Parties to opt out of paragraph 1(b) with respect to their Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that applies to the alienation of interests other than shares.

139. Subparagraph f) allows Parties to opt out of paragraph 4 with respect to their Covered Tax Agreements that already contain provisions described in paragraph 5. As a result, such existing provisions would be preserved, and paragraph 4 would apply only with respect to Covered Tax Agreements that do not contain provisions described in paragraph 5. Since this reservation is intended to work in the situation where paragraph 4 applies (in other words, paragraph 1 does not apply), it would have no effect on the application of paragraph 1. On the other hand, Parties that choose to apply paragraph 4 would be able to make the reservations described in subparagraphs a) through e) in addition to subparagraph f) with respect to cases where paragraph 1, and not paragraph 4, applies.

#### Paragraph 7

140. Paragraph 7 requires each Party (other than a Party that has reserved the right under paragraph 6(a) for paragraph 1 not to apply to all of its Covered Tax Agreements) to notify the Depositary of whether each of its Covered Tax Agreements contains an existing provision described in paragraph 1, and if so, the article and paragraph number of each such provision. Given that paragraph 1(a) or (b) could apply even in the case where the other paragraph is opted out of under the reservations described in paragraph 6(b) through (e), paragraph 7 does not exclude Parties that have made those reservations from the notification

requirement. Paragraph 1 would apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to the existing provision.

#### Paragraph 8

141. Paragraph 8 requires each Party that chooses to apply paragraph 4 to notify the Depositary of its choice. A Party that has not reserved the right under paragraph 6(a) for paragraph 1 not to apply to its Covered Tax Agreements will have included in its notifications under paragraph 7 a list of Covered Tax Agreements containing a relevant existing provision. A Party that has made such a reservation, however, will be required to include such a list in its notification under paragraph 8, except where such Party has reserved the right under paragraph 6(f) to preserve existing provisions. It then describes the relationship between paragraph 4 and paragraph 1. Where all Contracting Jurisdictions have chosen to apply paragraph 4 by making a notification under this paragraph, paragraph 1 would not apply with respect to that Covered Tax Agreement, and instead paragraph 4 would apply. An existing provision of a Covered Tax Agreement would be replaced by the provisions of paragraph 4 where all Contracting Jurisdictions have made a notification under paragraph 7 or 8 with respect to the existing provision. In other cases, paragraph 4 would supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 4.

#### Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

##### Paragraphs 1 through 3

142. Paragraphs 1 through 3 contain a provision addressing permanent establishments situated in third jurisdictions, based on the text of the OECD Model Tax Convention produced in paragraph 52 (page 76) of the Action 6 Report and finalised in the course of follow-up work by WP1. The version of the provision produced by WP1 as it stood at the time of the development of the Convention reads:

##### Where

- a) *an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and*
- b) *the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State,*

*the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of [rate to be determined bilaterally] and 60 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other State, notwithstanding any other provisions of the Convention.*

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

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

143. The model provision includes a reference to a tax rate to be determined bilaterally. This relates to the conditions for denial of benefits of a tax treaty, and provides that the benefits of the treaty will not apply to any item of income on which the tax rate in the third jurisdiction in which an exempt permanent establishment is located is less than "the lower of [rate to be determined bilaterally] and 60 percent of the tax that would be imposed in" the residence jurisdiction of the enterprise. To avoid requiring bilateral negotiation of a tax rate, the provision in paragraph 1 relies solely on the 60 percent test.

#### Paragraph 4

144. Paragraph 4 is a compatibility clause which describes the interaction between paragraphs 1 through 3 and provisions of Covered Tax Agreements. This paragraph provides that the provisions in paragraphs 1 through 3 replace existing provisions of Covered Tax Agreements that deny or limit benefits available to an enterprise of a Contracting Jurisdiction which derives income from the other Contracting Jurisdiction that is attributable to a permanent establishment of the enterprise situated in a third jurisdiction, or is added where such provisions do not exist in Covered Tax Agreements.

#### Paragraph 5

145. Given that a provision addressing permanent establishments situated in third jurisdictions is not required in order to meet a minimum standard, subparagraph a) allows Parties to opt out of Article 10 entirely. In addition, subparagraph b) allows Parties to opt out of Article 10 entirely with respect to their Covered Tax Agreements that already contain provisions described in paragraph 4. In contrast, subparagraph c) allows Parties to opt out of Article 10 entirely with respect to their Covered Tax Agreements that do not already contain the provisions described in paragraph 4.

#### Paragraph 6

146. Paragraph 6 requires each Party (other than a Party that has reserved the right under paragraph 5(a) or (b) for the entirety of Article 10 not to apply to all of its Covered Tax Agreements, or to its Covered Tax Agreements that already contain a provision of the same type) to notify the Depositary of whether each of its Covered Tax Agreements contains an existing provision described in paragraph 4, and if so, the article and paragraph number of each such provision. An existing provision of a Covered Tax Agreement would be replaced by the provisions of paragraphs 1 through 3 where all Contracting Jurisdictions have made such a notification with respect to the existing provision. In other cases, paragraphs 1 through 3 would supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with those paragraphs.

## Article 11 – Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents

### Paragraph 1

147 The provision in paragraph 1 provides a so-called “saving clause” which preserves the right of a Contracting Jurisdiction to tax its own residents. The provision is based on Article 1(3) of the OECD Model Tax Convention as set out in paragraph 63 (page 86) of the Action 6 Report, which reads

*3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23 A [23 B], 24 and 25 and 28.*

148 The main changes to the provision in paragraph 1 are to replace references to specific paragraphs and articles by number with descriptive language based on paragraph 26.19 of the Commentary on Article 1 (Persons covered) of the OECD Model Tax Convention in the Action 6 Report (page 87), which was developed during the BEPS Project. The references to paragraph 3 of Article 7 (Business profits) and paragraph 2 of Article 9 (Associated enterprises) in the model provision have been replaced with subparagraph a), Article 19 (Government service) with subparagraph b), Article 20 (Students) with subparagraph c), Articles 23A (Exemption method) and 23B (Credit method) with subparagraph d), Article 24 (Non-discrimination) with subparagraph e), Article 25 (Mutual agreement procedure) with subparagraph f) and Article 28 (Members of diplomatic missions and consular posts) with subparagraph g).

149 In addition, subparagraphs h) and i) have been included as additional exceptions to the saving clause, to reflect additional provisions that commonly appear in tax treaties. Subparagraph h) describes provisions of a Covered Tax Agreement which provide that pensions or other payments made to a resident of a Contracting Jurisdiction under the social security legislation of the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction. This is referred to in paragraph 26.20 of the Commentary on Article 1 of the OECD Model Tax Convention in the Action 6 Report (page 87) as an example of provisions that could be included in the list of exceptions. Subparagraph i) covers provisions that provide for exclusive taxation at source of pensions and similar payments (irrespective of whether or not they are made under the social security legislation), as well as annuities, alimony payments or other maintenance payments.

150 Subparagraph j) is intended to broadly cover provisions that expressly limit taxation rights of the residence jurisdiction or expressly allow taxation rights exclusively to the source jurisdiction. That subparagraph would also cover provisions that provide for exemption of income in both jurisdictions (for example, in the case of child support payments under some existing treaties). It would also cover, for example, the following types of provisions:

- provisions which allow the competent authority of a Contracting Jurisdiction that has made or is to make an initial adjustment to the profits of an enterprise of that Contracting Jurisdiction to provide relief from double taxation;
- provisions which require a Contracting Jurisdiction to consider the acquisition value of a property owned by its resident to be its fair market value at the time when he ceases to be a resident of the other Contracting Jurisdiction and becomes a resident of the first-mentioned Contracting Jurisdiction; or
- provisions which grant deductions for contributions made by a resident of a Contracting Jurisdiction to a retirement plan in the other Contracting Jurisdiction in computing income in the first-mentioned Contracting Jurisdiction.

151 Given the variations of existing provisions of Covered Tax Agreements, the following additional changes have been made to the language of paragraph 1.

- (i) With respect to the phrase “Contracting Jurisdiction, or a political subdivision or local authority” in the description of the Commentary corresponding to subparagraph b), some Covered Tax Agreements may use other formulations, including “State power or administrative authority”, “regional authority”, “public body”, “public entities”, “statutory body”, “political or administrative subdivision”, “administrative-territorial subdivision/unit”, “Land”, “legal person organised under public law” or “legal entity under public law”. To cover these variations, the more general term “other comparable body” has been added in that subparagraph.
- (ii) While Article 20 of the OECD Model Tax Convention addresses taxation of a “student”, some existing provisions of Covered Tax Agreements may cover a “business apprentice” or “trainee” in addition to a student. Also, some Covered Tax Agreements may contain the provisions concerning taxation of a “teacher”, “professor”, “lecturer”, “instructor”, “researcher” or “research scholar”. These terms have been added in subparagraph c) to ensure that these types of provisions are covered.
- (iii) The phrase “relief of double taxation” in the description of the Commentary corresponding to subparagraph d) has been replaced with “tax credit or tax exemption” to ensure that provisions applying the credit method or exemption method would continue to apply as intended even where a Covered Tax Agreement provides for tax sparing.
- (iv) The term “government mission” has been added to subparagraph g) to reflect certain Covered Tax Agreements concluded by non-state jurisdictions.

### Paragraph 2

152 Paragraph 2 is a compatibility clause which describes the interaction between paragraph 1 and provisions of Covered Tax Agreements. This paragraph clarifies that the provision in paragraph 1 replaces existing provisions of Covered Tax Agreements stating that the Covered Tax Agreements would not affect the taxation by a Contracting Jurisdiction of its residents, or is added where such provisions do not exist in Covered Tax Agreements.

### Paragraph 3

153 Given that a saving clause is not required in order to meet a minimum standard, subparagraph a) allows Parties to opt out of Article 11 entirely. In addition, recognising that where Covered Tax Agreements include a saving clause provision, it is usually customised based on the content of the Covered Tax Agreements, subparagraph b) allows the Parties to opt out of Article 11 entirely with respect to Covered Tax Agreements that already contain a saving clause.

154 Paragraph 26.16 of the Commentary on Article 1 of the OECD Model Tax Convention in the Action 2 Report (page 143) notes that a saving clause would supplement the fiscally transparent entities provision. Therefore, it is expected that a Party that adopts the provision on transparent entities contained in Article 3(1) would also adopt a provision ensuring that its application will not interfere with the taxation by a Contracting Jurisdiction of its residents, such as the saving clause provided in Article 11. Recognising, however, that some Parties may prefer a more targeted solution, subparagraph a) allows Parties to opt out of Article 11. In such a case, Article 3(3) applies to introduce a saving clause that relates solely to the provision in Article 3(1).

#### Paragraph 4

155. Paragraph 4 requires each Party (other than a Party that has reserved the right under paragraph 3(a) or (b) for the entirety of Article 11 not to apply to all of its Covered Tax Agreements, or to its Covered Tax Agreements that already contain a provision of the same type) to notify the Depositary of whether each of its Covered Tax Agreements contains an existing saving clause, and if so, the article and paragraph number of each such provision. An existing provision of a Covered Tax Agreement would be replaced by the provisions of paragraph 1 where all Contracting Jurisdictions have made such a notification with respect to the existing provision. In other cases, paragraph 1 would supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

#### Part IV. Avoidance of Permanent Establishment Status

156. The work on Action 7 led to changes to the definition of permanent establishment to prevent the artificial avoidance of permanent establishment status in relation to BEPS, including through the use of *commissionnaire* arrangements and the specific activity exemptions. Part IV of the Convention contains 4 Articles arising from the work on Action 7. These Articles seek to amend existing tax treaties to counter the artificial avoidance of permanent establishment status through: (i) *commissionnaire* arrangements and similar strategies (Article 12 of the Convention); (ii) the specific activity exemptions (Article 13 of the Convention); and (iii) the splitting-up of contracts (Article 14 of the Convention). Article 15 of the Convention provides the definition of the term "closely related to an enterprise," which is used in Articles 12 through 14.

#### Article 12 - Artificial Avoidance of Permanent Establishment Status through *Commissionnaire* Arrangements and Similar Strategies

157. The work on Action 7 led to changes to the wording of Article 5(5) and (6) of the 2014 version of the OECD Model Tax Convention to address the artificial avoidance of permanent establishment status through *commissionnaire* arrangements and similar strategies. Article 12 of the Convention, which consists of 6 paragraphs, sets out the interaction between incorporating this aspect of the work on Action 7 and Covered Tax Agreements.

#### Paragraph 1

158. Paragraph 1 is based on the text of Article 5(5) of the OECD Model Tax Convention produced on page 16 of the Action 7 Report (Preventing the Artificial Avoidance of Permanent Establishment Status), which reads as follows:

5. *Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are*

- a) *in the name of the enterprise, or*
- b) *for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or*
- c) *for the provision of services by that 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.*

159. The provision in paragraph 1 reflects changes to the model text of Article 5(5) to conform the terminology used therein to the terminology used in the Convention, and to replace cross-references to paragraphs of the OECD Model Tax Convention with a description of those provisions. Furthermore, given that the Action 7 work has also resulted in modifications to Article 5(4) and (6) of the 2014 version of the OECD Model Tax Convention, changes are also made to the model text of Article 5(5) to take into account that the equivalent of Article 5(4) and (6) of Covered Tax Agreements might have been modified by the provisions of the Convention.

#### Paragraph 2

160. Paragraph 2 is based on Article 5(6)(a) of the OECD Model Tax Convention produced on page 16 of the Action 7 Report, which reads as follows:

*Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.*

161. Changes are made in paragraph 2 to the text of Article 5(6)(a) of the OECD Model Tax Convention to conform the terminology used therein to the terminology used in the Convention and to replace the reference to Article 5(5) of the OECD Model Tax Convention with a reference to Article 12(1) of the Convention.

#### Paragraph 3

162. Paragraph 3 is a compatibility clause which describes the interaction between paragraphs 1 and 2 and provisions of Covered Tax Agreements. Existing tax treaties may include a wide variety of such provisions. Although many will be modelled after Article 5(5) of the 2014 version of the OECD Model Tax Convention, existing tax treaties frequently contain variations based on Article 5(5)(b) of the 2011 version of the UN Model Tax Convention or provisions that have been bilaterally customised.

163. Paragraph 3(a) provides that paragraph 1 would replace provisions of a Covered Tax Agreement to the extent that the provisions describe the conditions under which an enterprise shall be deemed to have a dependent agent permanent establishment, but only to the extent that such variations address the situation in which a person has, and habitually exercises, an authority to conclude contracts in the name of an enterprise. The reference to contracts "in the name of" is intended to cover other common variations of language, including "on behalf of", "that are binding on" or other variations that are commonly used. Article 12(1) is not, however, intended to apply to a provision or part of a provision under which an enterprise can be deemed to have a permanent establishment for a reason other than an authority to conclude contracts that are binding on another enterprise. For example, Article 12(1) would not apply to a provision modelled after Article 5(5)(b) of the 2011 version of the UN Model Tax Convention and a provision that provides that a person shall be deemed to have a permanent establishment where the person secures orders for the enterprise. Such provisions would not be affected by the application of Article 12.

164. Paragraph 3(b) provides that paragraph 2 would replace provisions of a Covered Tax Agreement that provide that an enterprise shall not be deemed to have a permanent establishment in a Contracting Jurisdiction in respect of an activity which an agent of an independent status undertakes for the enterprise. Such provisions of a Covered Tax Agreement would include those modelled after, for example, Article 5(6) of the 2014 version of the OECD Model Tax Convention or Article 5(7) of the 2011 version of the UN Model Tax Convention, as well as bilaterally negotiated provisions of the same type.

#### Paragraph 4

165. Given that provisions addressing artificial avoidance of permanent establishment status through *commissionaire* arrangements and similar strategies are not required in order to meet a minimum standard, paragraph 4 allows a Party to reserve the right not to apply the entirety of Article 12 to its Covered Tax Agreements.

#### Paragraph 5

166. Paragraph 5 requires each Party (other than a Party that has opted out of the entirety of Article 12) to notify the Depositary of each of its Covered Tax Agreements that contains an existing provision of the same type as the provision in paragraph 1, and the article and paragraph number of each such provision. Paragraph 1 would apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions to the Covered Tax Agreement have made such a notification.

#### Paragraph 6

167. Paragraph 6 requires each Party (other than a Party that has opted out of the entirety of Article 12) to notify the Depositary of each of its Covered Tax Agreements that contains an existing provision of the same type as the provision in paragraph 2, and the article and paragraph number of each such provision. Paragraph 2 would apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions to the Covered Tax Agreement have made such a notification.

#### Article 13 - Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

168. Article 5(4) of the 2014 version of the OECD Model Tax Convention includes a list of exceptions (the "specific activity exemptions") to permanent establishment status where a place of business is used solely for specifically listed activities. The work on Action 7 led to changes to the wording of Article 5(4) of the OECD Model Tax Convention to address situations in which the specific activity exemptions give rise to BEPS concerns. Article 13 of the Convention implements this part of the work on Action 7.

#### Paragraph 1

169. The work on Action 7 led to changes in the text of Article 5(4) of the OECD Model Tax Convention as shown in pages 28 and 29 of the Action 7 Report, to explicitly state that the activities listed therein will be deemed not to constitute a permanent establishment only if they are of a preparatory or auxiliary character. Paragraph 30.1 of the Commentary on Article 5 (see page 38 of the Action 7 Report) notes, however, that some States consider that some of the activities referred to in Article 5(4) of the 2014 version of the OECD Model Tax Convention are intrinsically preparatory or auxiliary and, in order to provide greater certainty for both tax administrations and taxpayers, take the view that these activities should not be subject to the condition that they be of a preparatory or auxiliary character, and that concern about inappropriate use of the specific activity exemptions can be addressed through anti-fragmentation rules. An alternative provision reflecting this view was therefore included in paragraph 30.1. Article 5(4), as produced on pages 28 and 29 of the Action 7 Report, is reflected in Article 13(2) (Option A) and the

provision contained in paragraph 30.1 of the Commentary on Article 5 is reflected in Article 13(3) (Option B). Article 13(1) provides that a Party may choose to apply Option A or Option B or not to apply either of these options.

#### Paragraph 2 – Option A

170. Option A is based on the principles reflected in the text of Article 5(4) of the OECD Model Tax Convention produced on pages 28 and 29 of the Action 7 Report to address concerns of artificial avoidance of permanent establishment status through the specific activity exemptions. The model text of Article 5(4) reads:

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;*
- f) *the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),*

*provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.*

171. Recognising that the specific activity exemptions listed in existing tax treaties frequently contain activities which vary from the model text of Article 5(4) (including variations based on Article 5(4) of the 2011 version of the UN Model Tax Convention and in some instances, bilaterally negotiated qualifying activities), Article 13(2) of the Convention is drafted to apply the principles contained in the model text of Article 5(4) to the specific activities that are already listed in Covered Tax Agreements, rather than replacing those with the list of specific activities contained in the OECD Model Tax Convention. That is, in the case of a Covered Tax Agreement with text identical to that of Article 5 of the 2014 version of the OECD Model Tax Convention or the 2011 version of the UN Model Tax Convention, Article 13(2)(a) would correspond to Article 5(4)(a) through (d) of the Covered Tax Agreement. Article 13(2)(b) of the Convention and Article 13(2)(c) would correspond to Article 5(4)(e) and (f) of the Covered Tax Agreement, respectively. The effect of applying Article 13(2) of the Convention would be to preserve the exceptions for activities described in Article 5(4)(a) through (d) of the Covered Tax Agreement, but to make those activities subject to the condition that the activity be of a preparatory or auxiliary character. This would be true whether that Contracting Jurisdiction takes the position that the exceptions in Article 5(4)(a) through (d) of that Covered Tax Agreement are considered per se exceptions to permanent

establishment status, or the position that they are already contingent on the activity being of a preparatory or auxiliary character.

#### Paragraph 3 – Option B

172. Option B is based on the provision contained in paragraph 30.1 of the Commentary on Article 5 (see page 38 of the Action 7 Report) which reads:

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 activity not listed in subparagraphs a) to d), provided that this activity has a preparatory or auxiliary character, or
  - 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.

173. As in the case of Option A, the text in Option B has been revised to take into account the fact that the specific activity exemptions listed in Covered Tax Agreements could vary from the provision contained in paragraph 30.1 of the Commentary on Article 5. That is, in the case of a Covered Tax Agreement with text identical to that of Article 5 of the 2014 version of the OECD Model Tax Convention or the 2011 version of the UN Model Tax Convention, Article 13(3)(a) would correspond to Article 5(4)(a) through (d) of the Covered Tax Agreement. Article 13(3)(b) and Article 13(3)(c) of the Convention would correspond to Article 5(4)(e) and (f) of the Covered Tax Agreement, respectively. The effect of applying Article 13(3) of the Convention would be to preserve the exceptions for activities described in Article 5(4)(a) through (d) of the Covered Tax Agreement, but to ensure that those exceptions will apply irrespective of whether the activity is of a preparatory or auxiliary character. This would be true whether that Contracting Jurisdiction takes the position that the exceptions in Article 5(4)(a) through (d) of that Covered Tax Agreement are considered per se exceptions to permanent establishment status, or the position that they are already contingent on the activity being of a preparatory or auxiliary character. An exception is provided in Article 13(3)(a) of the Convention, however, in order to preserve existing provisions of a Covered Tax Agreement that explicitly provide that a specific activity shall be deemed not to constitute a permanent establishment provided that the activity is of a preparatory or auxiliary character.

#### Paragraph 4

174. Paragraph 4 is based on the text of the new Article 5(4.1) of the OECD Model Tax Convention produced in page 39 of the Action 7 Report to address the fragmentation of activities between closely related parties. Paragraph 4.1 reads:

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

175. Changes are made to the model text of Article 5(4.1) in Article 13(4) to conform the terminology used therein to the terminology used in the Convention. In addition, the reference to Article 5(4) of the OECD Model Tax Convention has been replaced with a description of that provision instead (as it may be modified by Article 13(2) or (3)).

#### Paragraph 5

176. Paragraph 5 contains compatibility clauses which describe the relationship between Article 13(2) through (4) and provisions of Covered Tax Agreements.

177. Paragraph 5(a) provides that Article 13(2) or (3) shall apply in place of the relevant parts of provisions of a Covered Tax Agreement that describe a list of specific activities deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business. Such provisions of a Covered Tax Agreement would include, for example, those modelled after Article 5(4) of the 2014 version of the OECD Model Tax Convention or of the 2011 version of the UN Model Tax Convention, as well as bilaterally negotiated provisions of the same type. The phrase “provisions of a Covered Tax Agreement that operate in a comparable manner” contained in paragraph 5(a) and (b), would include, for example, provisions of a Covered Tax Agreement that describe specific activities which are deemed not to constitute a permanent establishment in a single sentence, rather than by listing those activities, but would not include, for example, specific provisions that provide that a project or activity constitutes a permanent establishment only if a time period test is met.

178. Paragraph 5(b) provides that Article 13(4) shall apply to provisions of a Covered Tax Agreement (as they may be modified by paragraph 2 or 3) that describe a list of specific activities deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business. Such provisions of a Covered Tax Agreement would include those modelled after, for example, Article 5(4) of the 2014 version of the OECD Model Tax Convention or of the 2011 version of the UN Model Tax Convention, as well as bilaterally negotiated provisions of the same type.

#### Paragraph 6

179 Given that the provisions addressing artificial avoidance of permanent establishment status through the specific activity exemptions and fragmentation of activities between closely related parties are not required in order to meet a minimum standard, a Party may reserve the right for the entirety of Article 13 not to apply to its Covered Tax Agreements. A Party that chooses to apply Option A under Article 13(1) may also reserve the right for Article 13(2) (Option A) not to apply to provisions of a Covered Tax Agreement that already explicitly state that the activities listed therein shall be deemed not to constitute a permanent establishment only if they are of a preparatory or auxiliary character. Finally, a Party may reserve the right not to apply Article 13(4).

#### Paragraph 7

180 Paragraph 7 requires that Parties that opted for Option A (Article 13(2)) or Option B (Article 13(3)) shall notify the Depositary of their choice of Option. That notification would also include a list of each of its Covered Tax Agreements that includes specific activity exemptions, including those that are subject to a reservation under paragraph 6(b), as well as the article and paragraph number of each such provision. An Option would apply to a provision only where all Contracting Jurisdictions have chosen to apply the same Option and have made such a notification with respect to that provision.

#### Paragraph 8

181 Paragraph 8 requires each Party that has not opted out of applying paragraph 4 (or the entirety of Article 13) to notify the Depositary of each of its Covered Tax Agreements that includes specific activity exemptions, as well as the article and paragraph number of each such provision. To avoid duplication, this notification is not required of Parties that have chosen to apply an Option under paragraph 1, as they are required to make a notification under paragraph 7 which would include a list of each of its Covered Tax Agreements that includes specific activity exemptions even if they have made a reservation under paragraph 6(b). Paragraph 4 will apply to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision pursuant to either paragraph 7 or paragraph 8.

#### Article 14 – Splitting-up of Contracts

182 The Action 7 Report noted that the splitting-up of contracts is a potential strategy for the artificial avoidance of permanent establishment status through abuse of the exception in Article 5(3) of the OECD Model Tax Convention. The Action 7 Report further noted that the PPT provision will address such BEPS concerns related to the abusive splitting-up of contracts. The Action 7 Report includes a draft provision specifically addressing the splitting-up of contracts for use in treaties that would not include the PPT, or for Contracting Jurisdictions that wish to address such abuses explicitly. Article 14 of the Convention provides for the implementation of that provision.

#### Paragraph 1

183 Paragraph 1 is based on the text in revised paragraph 18.1 of the Commentary on Article 5 which is produced on page 43 of the Action 7 Report as amended in the course of the follow-up work carried out by WP1. The version of the provision produced by WP1 as it stood at the time of the development of the Convention reads as follows:

*For the sole purpose of determining whether the twelve month period referred to in paragraph 3 has been exceeded,*

a) *where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months, and*

b) *connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,*

*these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.*

184 Changes have been made to the text above to conform the terminology used therein to the terminology used in the Convention. In addition, consistent with other provisions of the Convention, the reference to “the twelve month period referred to in paragraph 3 [of Article 5 of the OECD Model Tax Convention]” has been replaced with a description of that provision instead. Furthermore, given that the descriptions of activities and places covered by existing provisions may differ from those covered by the OECD Model Tax Convention (for example, because they are modelled after Article 5(3)(a) of the 2011 version of the UN Model Tax Convention or reflect bilateral negotiation), Article 14(1)(a) and (b) of the Convention have been drafted to reflect these existing variations.

#### Paragraph 2

185 Paragraph 2 is the compatibility clause which describes the relationship between Article 14(1) of the Convention and provisions of Covered Tax Agreements. The compatibility clause provides that the splitting-up of contracts rule shall apply in place of or in the absence of provisions in Covered Tax Agreements to the extent that such provisions address the division of contracts into multiple parts to avoid the application of a time period in relation to the existence of a permanent establishment for specific projects or activities. Many treaties feature anti-splitting rules that apply to a wide variety of activities, only some of which may be covered by the provision in Article 14. Paragraph 2 is intended to replace those existing rules only to the extent that they relate to the activities described in paragraph 1, and to leave those rules intact with respect to activities that are not within the scope of paragraph 1. This would be the case, for example, where the same anti-splitting rule is used for a provision relating to construction activities carried on through a fixed place of business and for a provision deeming a permanent establishment to exist in the case of provision of services that are not tied to a specific place of business.

#### Paragraph 3

186 Given that the provisions addressing artificial avoidance of permanent establishment status through splitting-up of contracts are not required in order to meet a minimum standard, paragraph 3(a) permits a Party to reserve the right for the entirety of Article 14 not to apply with respect to its Covered Tax Agreements. Furthermore, recognising that a Covered Tax Agreement could contain anti-contract splitting rules that are specifically addressed to the exploration for or exploitation of natural resources, and that these provisions are frequently carefully negotiated, paragraph 3(b) allows a Party to reserve on the application of Article 14(1) only with respect to the existence of a permanent establishment relating to the exploration for or exploitation of natural resources.

#### Paragraph 4

187. Paragraph 4 requires each Party (other than a Party that has opted out of the entirety of the Article) to notify the Depository of whether each of its Covered Tax Agreements contains an existing anti-contract splitting provision that is not subject to a reservation under paragraph 3(b), and if so, the article and paragraph number of each such provision. Paragraph 1 will replace such provisions to the extent provided in paragraph 2 where all Contracting Jurisdictions to the Covered Tax Agreement have made such a notification. In other cases, paragraph 1 will apply to the Covered Tax Agreement, but will supersede the existing provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

#### Article 15 – Definition of a Person Closely Related to an Enterprise

##### Paragraph 1

188. Paragraph 1 describes the conditions under which a person will be considered to be “closely related” to an enterprise for the purposes of Articles 12, 13 and 14. The definition is based on the text of Article 5(6)(b) of the OECD Model Tax Convention as set out on pages 16 and 17 of the Action 7 Report, which reads as follows:

- b) *For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.*

189. To reflect the structure of the Convention, the reference to “this Article” has been replaced with references to the provisions of the Covered Tax Agreement that have been modified by Articles 12, 13 and 14 of the Convention, to ensure that it applies only to provisions of the Covered Tax Agreement that have been modified by those Articles to include the concept of a “closely related” enterprise.

##### Paragraph 2

190. Given that Article 15(1) is intended to apply to provisions of a Covered Tax Agreement that have been modified by a provision of the Convention that uses the term “closely related to an enterprise” (specifically Article 12(2), Article 13(4), and Article 14(1) of the Convention), Parties can opt out of Article 15 only if they have made the reservations described in Article 12(4), Article 13(6)(a) or (c), and Article 14(3)(a).

#### Part V. Improving Dispute Resolution

191. The Action 14 Report contains a commitment by the jurisdictions engaged in the work to implement a minimum standard for improving dispute resolution (“the Action 14 minimum standard”). The Action 14 minimum standard is complemented by a set of best practices, and some elements of the Action 14 minimum standard can be satisfied and some best practices can be implemented by incorporating specific provisions into tax treaties. Part V of the Convention provides ways to incorporate these provisions into Covered Tax Agreements.

#### Article 16 – Mutual Agreement Procedure

192. Element 1.1 of the Action 14 minimum standard requires jurisdictions to include Article 25(1) through (3) of the OECD Model Tax Convention in their tax treaties, as interpreted in the Commentary to the OECD Model Tax Convention and subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the Action 14 minimum standard. Article 16 would allow Parties to modify their Covered Tax Agreements, to incorporate the contents of Article 25(1) through (3) of the OECD Model Tax Convention.

##### Paragraphs 1 through 3

193. Article 16(1) through (3) are based on the text of Article 25(1) through (3) of the OECD Model Tax Convention, which incorporate the changes made to Article 25(1) of the 2014 version of the OECD Model Tax Convention under the work of Action 14 to reflect the treaty obligation under element 3.1 of the Action 14 minimum standard to allow a taxpayer to present a case to the competent authority of either Contracting Jurisdiction. The model text of Article 25(1) through (3) reads:

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 either Contracting State. 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.*

194. Changes have been made to the text of the model provisions to conform the terminology used therein to the terminology used in the Convention.

##### Paragraph 4

195. Paragraph 4 is a compatibility clause which describes the interaction between Article 16(1) through (3) and the provisions of Covered Tax Agreements. In general, these compatibility clauses reflect

that members of the *ad hoc* Group preferred to retain existing provisions relating to dispute resolution to the extent that those provisions are consistent in content with the provisions of paragraphs 1, 2 and 3 (and subject to any reservations provided in paragraph 5). As with other Articles, minor variations in language will not prevent a provision from falling within the scope of the compatibility clauses in paragraph 4.

196. Paragraph 4(a) contains 2 clauses which set out the interaction between Article 16(1) and provisions of Covered Tax Agreements as follows:

- (i) Paragraph 4(a)(i) provides that the first sentence of Article 16(1) of the Convention would replace provisions of a Covered Tax Agreement that provide that where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of the Contracting Jurisdiction of which that person is a resident, including provisions under which, if the case presented by that person comes under the Article of the Covered Tax Agreement relating to non-discrimination based on nationality, the case may be presented to the competent authority of the Contracting Jurisdiction of which that person is a national. Such provisions of a Covered Tax Agreement would include those modelled after, for example, the first sentence of Article 25(1) of the 2014 version of the OECD Model Tax Convention or of the 2011 version of the UN Model Tax Convention. Paragraph 4(a)(i) would also apply in the absence of such a provision in a tax treaty.
- (ii) Paragraph 4(a)(ii) provides that the second sentence of Article 16(1) of the Convention would replace provisions of a Covered Tax Agreement that provide that the mutual agreement procedure case must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a Covered Tax Agreement. This would preserve longer time periods provided in Covered Tax Agreements without necessitating a reservation not to apply the second sentence of Article 25(1) to these Covered Tax Agreements. Paragraph 4(a)(ii) would also add the second sentence of Article 16(1) to Covered Tax Agreements in the absence of a provision describing a time period within which a case must be presented.

197. Paragraph 4(b) contains 2 subparagraphs which set out the interaction between Article 16(2) and provisions of Covered Tax Agreements as follows:

- (i) Paragraph 4(b)(i) provides that the first sentence of Article 16(2) would apply to Covered Tax Agreements that do not contain a provision that provides that the competent authority that is presented with the case by the person referred to in Article 16(1) 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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement. Such provisions of a Covered Tax Agreement would include, for example, those modelled after the first sentence of Article 25(2) of the OECD Model Tax Convention or of the UN Model Tax Convention.
- (ii) Paragraph 4(b)(ii) provides that the second sentence of Article 16(2) would apply to Covered Tax Agreements that do not contain a provision that provides that any agreement reached via the mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions. Such provisions of a Covered Tax Agreement would include, for example, those modelled after the second sentence of Article 25(2) of the

2014 version of the OECD Model Tax Convention or of the 2011 version of the UN Model Tax Convention.

198. Paragraph 4(c) contains 2 subparagraphs which set out the interaction between Article 16(3) and provisions of Covered Tax Agreements as follows:

- (i) Paragraph 4(c)(i) provides that the first sentence of Article 16(3) would apply to Covered Tax Agreements that do not contain a provision that provides that the competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement. Such provisions of a Covered Tax Agreement would include, for example, those modelled after the first sentence of Article 25(3) of the 2014 version of the OECD Model Tax Convention or of the 2011 version of the UN Model Tax Convention.
- (ii) Paragraph 4(c)(ii) provides that the second sentence of Article 16(3) would apply to Covered Tax Agreements that do not contain a provision which provides that the competent authorities of the Contracting Jurisdictions may also consult together for the elimination of double taxation in cases not provided for in the tax treaty. Such provisions of a Covered Tax Agreement would include, for example, those modelled after the second sentence of Article 25(3) of the OECD Model Tax Convention or of the UN Model Tax Convention.

#### Paragraph 5

199. As explained above, element 1.1 of the Action 14 minimum standard requires jurisdictions to include Article 25(1) through (3) of the OECD Model Tax Convention in their tax treaties, subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the Action 14 minimum standard. In this regard, while Article 16(1) through (3) would effectively incorporate Article 25(1) through (3) of the OECD Model Tax Convention into Covered Tax Agreements, Article 16(5) recognises that Parties are also permitted to implement element 1.1 of the Action 14 minimum standard through administrative measures, as provided under elements 3.1 and 3.3 of the Action 14 minimum standard. Article 16(5) provides reservations from Article 16(1) and (2) to reflect these variations.

200. Article 16(5)(a) allows a Party to opt out of applying the first sentence of Article 16(1), and thus not modify its Covered Tax Agreement to allow the taxpayer to present a case to the competent authority of either Contracting Jurisdiction. Such a reservation is allowed only on the basis that for the purposes of each of its Covered Tax Agreements (other than a Covered Tax Agreement that already permits the taxpayer to present a case to the competent authority of either Contracting Jurisdiction), the taxpayer may present its case to the competent authority of the Contracting Jurisdiction of which it is a resident (or a national in cases involving the non-discrimination provision based on nationality) and that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases presented by the taxpayers to its competent authority in which its competent authority does not consider the taxpayer's objection to be justified (with the understanding that such notification or consultation should not be interpreted as consultation as to how to resolve the case). Such an approach is allowed under element 3.1 of the Action 14 minimum standard which reads:

**3.1 Both competent authorities should be made aware of MAP requests being submitted and should be able to give their views on whether the request is accepted or rejected. In order to achieve this, countries should either:**

- **amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State, or**

- *where a treaty does not permit a MAP request to be made to either Contracting State, implement a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified (such consultation shall not be interpreted as consultation as to how to resolve the case).*

201. As explained above, the second sentence of Article 16(1) of the Convention would replace provisions of a Covered Tax Agreement that provide that a mutual agreement procedure case must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement or would apply in the absence of specific time period provided in the tax treaty. Recognising that Contracting Jurisdictions are left free to agree in their tax treaties to omit the second sentence of Article 25(1) of the OECD Model Tax Convention if their respective domestic regulations apply automatically and are more favourable in their effects to the taxpayer, either because they allow a longer time for presenting objections or because they do not set any time limits for such purpose, Article 16(5)(b) allows a Party to reserve on the application of the second sentence of Article 16(1) in instances where its tax treaty does not contain a provision stipulating the time period for the taxpayer to present the case for competent authority discussion under the mutual agreement procedure. A Party may make such a reservation only if it intends to ensure that even in the absence of such a provision, a taxpayer would be permitted to present its case within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. It is anticipated, therefore, that this reservation would only be made by a Contracting Jurisdiction to a Covered Tax Agreement if its domestic regulations apply automatically and are more favourable in their effects to the taxpayer, either because they allow a longer time for presenting objections or because they do not set any time limits for such purpose.

202. Article 16(5)(c) allows a Party to reserve on the application of the second sentence of Article 16(2) and thus not to require the implementation of all agreements reached via mutual agreement procedure notwithstanding any time limits in the domestic law of the Contracting Jurisdictions. Such a reservation is allowed only on the basis that for the purposes of all of its Covered Tax Agreements, either (i) all agreements reached via mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions; or (ii) it intends to meet the minimum standard by accepting, in its bilateral treaty negotiations, alternative treaty provisions that limit the time during which a Contracting Jurisdiction may make an adjustment pursuant to provisions modelled after Article 9(1) or Article 7(2) of the OECD Model Tax Convention, in order to avoid late adjustments with respect to which mutual agreement procedure relief will not be available. Such an approach is allowed under element 3.3 of the Action 14 minimum standard which reads:

*3.3 Countries should include in their tax treaties the second sentence of paragraph 2 of Article 25 ("Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State"). Countries that cannot include the second sentence of paragraph 2 of Article 25 in their tax treaties should be willing to accept alternative treaty provisions that limit the time during which a Contracting State may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.*

It is understood that where one Contracting Jurisdiction to a Covered Tax Agreement prefers to include the second sentence of Article 16(2) and the other Contracting Jurisdiction opts out of its application, whether such an alternative provision would be added to the Covered Tax Agreement would be a matter for bilateral negotiations.

#### Paragraph 6

203. Paragraph 6 requires a number of notifications, to ensure clarity as to how Covered Tax Agreements will be modified by Article 16. Paragraph 6(a) requires each Party (other than a Party that has reserved the right not to apply the first sentence of paragraph 1) to notify the Depositary of whether each of its Covered Tax Agreements contains an existing provision that provides that a taxpayer may present its case to the competent authority of the Contracting Jurisdiction of which that person is a resident (or a national, if the issue involves non-discrimination based on nationality), and if so, the article and paragraph number of each such provision. When all Contracting Jurisdictions to a Covered Tax Agreement have made a notification with respect to a provision of a Covered Tax Agreement, the first sentence of paragraph 1 replaces that provision. In other cases (except where one of the Contracting States has reserved the right not to apply the first sentence of paragraph 1), the first sentence of paragraph 1 shall apply to the Covered Tax Agreement, but shall supersede the existing provision of the Covered Tax Agreement only to the extent that those provisions are incompatible with that sentence.

204. Paragraph 6(b)(i) requires each Party that has not reserved the right not to apply the second sentence of paragraph 1 to notify the Depositary of the list of its Covered Tax Agreements which provide that a case referred to in the first sentence of Article 16(1) must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the Article and paragraph number of each such provision. Paragraph 6(b)(ii) requires each Party that has not reserved the right not to apply the second sentence of paragraph 1 to notify the Depositary of the list of its Covered Tax Agreements (as well as the article and paragraph number of each such provision) which include a provision that provides that a case referred to in the first sentence of Article 16(1) must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. The combined effect of paragraphs 6(b)(i) and 6(b)(ii) is that the second sentence of paragraph 1 will apply to a Covered Tax Agreement if either: (1) all Contracting Jurisdictions to a Covered Tax Agreement make such a notification that the Covered Tax Agreement provides for a time period shorter than three years; or (2) no Contracting Jurisdiction to a Covered Tax Agreement makes such a notification that the Covered Tax Agreement provides for a time period of at least three years. In all other cases, the second sentence of paragraph 1 shall apply to the covered Tax Agreement, but shall supersede the existing provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the second sentence of paragraph 1.

205. Paragraph 6(c)(i) requires each Party to notify the Depositary of the list of its Covered Tax Agreements which do not contain provisions that provide that the competent authority that is presented with the case by the person referred to in paragraph 1 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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement. The first sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions to a Covered Tax Agreement have made such a notification.

206. Paragraph 6(c)(ii) provides that each Party (other than a Party that has reserved the right not to apply the second sentence of paragraph 2) shall notify the Depositary of the list of its Covered Tax Agreements which do not contain provisions that require any agreement reached to be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions. The second sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions to a Covered Tax Agreement have made such a notification.

207. Paragraph 6(d)(i) requires each Party to notify the Depositary of the list of its Covered Tax Agreements which do not contain provisions that require the competent authorities of the Contracting Jurisdictions to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement. The first sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions to a Covered Tax Agreement have made such a notification.

208. Paragraph 6(d)(ii) requires each Party to notify the Depositary of the list of its Covered Tax Agreements which do not contain provisions that provide that the competent authorities may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement. The second sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions to a Covered Tax Agreement have made such a notification.

#### Article 17 – Corresponding Adjustments

209. Element 1.1 of the Action 14 minimum standard also provides that jurisdictions should provide access to the mutual agreement procedure in transfer pricing cases and should implement the resulting mutual agreements (e.g. by making appropriate adjustments to the tax assessed). The Action 14 Report noted that it would be more efficient if jurisdictions also had the possibility to provide for corresponding adjustments unilaterally in cases in which they find the objection of the taxpayer to be justified. In this regard, Best Practice 1, contained in the Action 14 Report, states that jurisdictions should include Article 9(2) of the OECD Model Tax Convention in their tax treaties. Article 17 of the Convention provides a mechanism for Parties to implement this Best Practice.

##### Paragraph 1

210. Paragraph 1 is based on the text of Article 9(2) of the OECD Model Tax Convention. Changes are made to the model text of Article 9(2) to conform the terminology used therein to the terminology used in the Convention. Article 9(2) of the OECD Model Tax Convention reads as follows:

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

##### Paragraph 2

211. Paragraph 2 contains a compatibility clause which describes the relationship between Article 17(1) of the Convention and provisions of Covered Tax Agreements. It provides that Article 17(1) shall apply to Covered Tax Agreements in the place or absence of a provision requiring that a Contracting Jurisdiction shall make a corresponding adjustment where the other Contracting Jurisdiction makes an adjustment that reflects the arm's length profits of an enterprise. Such existing provisions would include, for example, those modelled after Article 9(2) of the OECD Model Tax Convention or the UN Model Tax Convention, and also include provisions which require agreement by the competent authority of a Contracting Jurisdiction as a condition for making corresponding adjustment on the taxation by the other Contracting Jurisdiction.

##### Paragraph 3

212. The inclusion of Article 9(2) of the OECD Model Tax Convention in tax treaties is a best practice under Action 14 and is not required as part of the Action 14 minimum standard. However, element 1.1 of the Action 14 minimum standard requires that jurisdictions provide access to the mutual agreement procedure in transfer pricing cases and implement the resulting mutual agreements regardless of whether the tax treaty contains a provision modelled after Article 9(2) of the OECD Model Tax Convention. To reflect this, Article 17(3) allows a Party to reserve the right not to apply paragraph 1 only on the basis that in the absence of the provisions described in Article 17(2) in Covered Tax Agreements, either (i) the Party making the reservation will make the adjustment as referred to in Article 17(1), or (ii) its competent authority will endeavour to resolve a transfer pricing case under the mutual agreement procedure provision of its tax treaty. Where one Contracting Jurisdiction to a Covered Tax Agreement makes such a reservation and the other Contracting Jurisdiction does not, Article 17 will not apply to the Covered Tax Agreement, and there is no expectation created under the Convention that the Contracting Jurisdiction that has not made the reservation will make a corresponding adjustment.

213. A Party may also reserve the right for the Article not to apply to its Covered Tax Agreements that already contain a provision of the same type (whether or not the provision adopts the precise language of the OECD Model Tax Convention or the UN Model Tax Convention so long as the provision contains a requirement that a Contracting Jurisdiction shall make a corresponding adjustment). Such a provision would include, for example, a provision stating that a Contracting Jurisdiction shall make a corresponding adjustment if it considers the adjustment justified, or that the corresponding adjustment shall be made if there is an agreement reached between the competent authorities of the Contracting Jurisdictions. As described above in paragraph 17, however, such a provision would not include one which merely provides, for example, that the competent authorities of the Contracting Jurisdictions may consult together with a view to reach an agreement on the adjustment of profits in both Contracting Jurisdictions or that provides only that the Contracting Jurisdiction may make an appropriate adjustment. Paragraph 3 also provides for a Party that has made a reservation under Article 16(5)(c)(ii) to reserve the right for Article 17 not to apply to its Covered Tax Agreements on the basis that in its bilateral treaty negotiations it shall accept a treaty provision of the type contained in paragraph 1, provided that the Contracting Jurisdictions were able to reach agreement on that provision and on the provisions described in Article 16(5)(c)(ii).

##### Paragraph 4

214. Paragraph 4 requires each Party (other than a Party that has made either of the reservations under paragraph 3) to notify the Depositary of whether each of its Covered Tax Agreements contains an existing requirement to make a corresponding adjustment, and if so, the article and paragraph number of each such provision. The provisions of paragraph 1 will replace such provisions where all Contracting Jurisdictions to a Covered Tax Agreement have made such a notification. In other cases, paragraph 1 will apply to the Covered Tax Agreement, but will supersede existing provisions of a Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

## Part VI. Arbitration

### Article 18 – Choice to Apply Part VI

215 Part VI of the Convention is intended to apply only between Parties that explicitly choose to apply it. Article 18 allows a Party to choose to apply Part VI with respect to its Covered Tax Agreements by notifying the Depositary of its choice. As between two Contracting Jurisdictions to a Covered Tax Agreement, Part VI will apply only if both Contracting Jurisdictions notify the Depositary that they choose to apply it.

### Article 19 – Mandatory Binding Arbitration

#### Paragraph 1

216 Paragraph 1 contains the core arbitration provision. It provides that, where the competent authorities are unable to reach an agreement on a case pursuant to the mutual agreement procedure under the Covered Tax Agreement within a period of two years, unresolved issues will, at the request of the person who presented the case, be submitted to arbitration in the manner described in Part VI. This arbitration process is available where, under the provisions of a Covered Tax Agreement relating to the mutual agreement procedure (as they may be modified by Article 16(1)), a person has presented a case to the competent authority of a Contracting Jurisdiction on the basis that the actions of one or both of the Contracting Jurisdictions have resulted for that person in taxation not in accordance with the provisions of the Covered Tax Agreement. The start date for this two-year period is determined pursuant to paragraph 8 or 9, as the case may be. The competent authorities may, however, agree to a different time period with respect to a particular case, provided that they notify the person who presented the case of such agreement prior to the expiration of the two-year period referred to in subparagraph b). This different time period with respect to a particular case could be longer or shorter than the two-year period referred to in subparagraph b), depending, for example, on the nature and complexity of the particular case. In addition, as noted below, paragraph 11 permits a Party to reserve the right to substitute a three-year period for the two-year period referred to in subparagraph b) for the purposes of applying Article 19 to its Covered Tax Agreements. A Party is also permitted to formulate reservations with respect to the scope of cases that are eligible for arbitration, as described below in the sections of this Explanatory Statement related to Article 28(2) (subject to the acceptance of those reservations by the other Parties).

#### Paragraph 2

217 As noted in paragraph 51 of the Action 14 Report, the mutual agreement procedure is available to taxpayers irrespective of the judicial and administrative remedies provided by the domestic law of the Contracting Jurisdictions. Most tax administrations, however, will require that one process take place before the other, to ensure that a taxpayer's case will not proceed through both the mutual agreement procedure and a domestic court or administrative proceeding at the same time. To accommodate this approach, paragraph 2 provides that the period provided in paragraph 1(b) will stop running where a competent authority has suspended the mutual agreement process referred to in paragraph 1(a) because a case with respect to one or more of the same issues is pending before a court or administrative tribunal. The period will start running again when a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. It should be noted, however, that where a Party makes the reservation described in Article 19(12), the arbitration process will terminate if a decision is rendered by the court or administrative tribunal during the period in which the arbitration process is suspended.

218 Paragraph 2 also provides that the period provided in paragraph 1(b) will stop running where a person who presented a case and a competent authority have agreed to suspend the mutual agreement process for any reason. This would apply, for example, where the taxpayer and the competent authority have agreed to suspend the mutual agreement procedure due to serious illness or some other personal hardship. The period would start running again once that suspension has been lifted.

#### Paragraph 3

219 In some cases, after a taxpayer has provided the initial information needed to undertake substantive consideration of the case, the competent authorities may need to request additional information from the taxpayer. For example, after the period provided in paragraph 1(b) has begun and after further analysis based on working the case, a competent authority may determine that it needs additional information in respect of a particular structure or transaction in order to reach agreement on how to resolve a remaining issue. In such cases, a failure by a person directly affected by the case (i.e., the person who made the initial request for a mutual agreement procedure or a person whose tax liability is directly affected by the case) to provide such additional information in a timely manner may delay or prevent the competent authorities from being able to resolve the case. To address this, paragraph 3 provides that the period provided in paragraph 1(b) shall be extended where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in paragraph 1(b). In that case the period will be extended for an amount of time equal to the period beginning on the date by which the information was requested, and ending on the date on which that information was ultimately provided.

#### Paragraph 4

220 The arbitration process provided for by Part VI is intended to provide a mechanism for the competent authorities to resolve issues that may otherwise prevent agreement with respect to cases under the mutual agreement procedure. Given that the arbitration process is an extension of the mutual agreement procedure that serves to enhance the effectiveness of the procedure, subparagraph a) provides that the arbitration decision shall be implemented through the mutual agreement concerning a particular case. This means that following the decision of the arbitration panel, the competent authorities will enter into a mutual agreement that (except to the extent that Article 24 applies) reflects the outcome of the arbitration decision. This subparagraph also provides that the arbitration decision is final, meaning that, subject to subparagraph b)(ii), the arbitration decision cannot be changed, either by the competent authorities or by the arbitration panel, unless the provisions of Article 24 apply to permit agreement on a different resolution.

221 Subparagraph b) provides that the arbitration decision shall be binding on both Contracting Jurisdictions except in three situations: (i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision; (ii) if the arbitration decision is held to be invalid by a final decision of the courts of one of the Contracting Jurisdictions; and (iii) if a person directly affected by the case pursues litigation in any court or administrative tribunal on the issues which were resolved in the mutual agreement implementing the arbitration decision. The term "final decision of the courts" describes a decision that is not merely an interim order or decision. The decision can be at any level of court in one of the Contracting Jurisdictions.

222 Subparagraph b)(i) addresses the situation in which a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. Where a mutual agreement is reached before domestic remedies have been exhausted, the competent authorities may require, as a condition for the finalisation or conclusion of the agreement, that the taxpayer renounce the exercise of rights to domestic legal remedies with respect to the issues resolved through the mutual agreement on the case. Without such a renunciation, a subsequent court decision could prevent the tax authorities from

implementing the agreement. As a result, a person directly affected by the case will be considered not to accept the mutual agreement if that person does not withdraw from any domestic legal procedures or otherwise terminate any pending court or administrative proceedings in a manner consistent with the mutual agreement within 60 days after being notified of the mutual agreement implementing the arbitration decision. Where the mutual agreement is not accepted, or is considered not to have been accepted, the case shall not be eligible for any further consideration by the competent authorities.

223. Subparagraph b)(ii) provides that if a final decision of the courts of one of the Contracting Jurisdictions holds that the arbitration decision is invalid, the request for arbitration shall be considered not to have been made and the arbitration process shall be considered not to have taken place (except for the purposes of Article 21, related to confidentiality, and Article 25, related to the costs of arbitration proceedings). This paragraph is not intended to provide independent grounds for the invalidation of an arbitration decision where such grounds do not exist under the domestic laws of the Contracting Jurisdictions. Instead, it is meant to ensure that where a court of one of the Contracting Jurisdictions invalidates an arbitration decision based on such existing rules, the other Contracting Jurisdiction is not bound to implement the decision. This may occur under the domestic laws of some jurisdictions, for example, where there has been a procedural failure (e.g. a violation of the impartiality or independence requirements applicable to arbitrators pursuant to Article 20, a breach of the applicable confidentiality requirements pursuant to Article 21, or collusion between the taxpayer and one of the Contracting Jurisdictions) that has materially affected the outcome of the arbitration process. It is not expected, however, that a court would overturn an arbitration decision because it disagrees with the outcome of the arbitration process. This subparagraph also provides that in such a case the taxpayer can make a new request for arbitration unless the competent authorities agree that such a new request should not be permitted. Such a new request may be made without waiting for the passing of the period provided in paragraph 1(b), since such period will have already passed. It is expected that the competent authorities would agree that such a request should not be permitted where the actions of the taxpayer were the main reason for the invalidation of the arbitration decision.

224. Subparagraph b)(iii) provides that the arbitration decision shall not be binding on either Contracting Jurisdiction if the taxpayer pursues litigation in a court or administrative tribunal on issues that were resolved in the mutual agreement implementing the arbitration decision. This subparagraph ensures that where a Party is not permitted under its domestic law to require a taxpayer to agree to forego litigation as part of accepting a decision under the mutual agreement procedure, that litigation cannot be used to achieve non-taxation or reduced taxation, for example by asserting that the arbitration decision binds one Contracting Jurisdiction while the outcome of the litigation binds the other.

#### **Paragraphs 5 through 9**

225. Paragraphs 5 through 9 provide detailed rules to establish the start date of the period before a case becomes eligible for arbitration. Paragraph 5 provides that the competent authority that received the initial request for a mutual agreement procedure must, within two calendar months of receiving the initial request for a mutual agreement procedure, notify the person who presented the case that the request has been received, and send a notification of the request, along with a copy of the request, to the other competent authority. Under paragraph 6, a competent authority must notify the person that presented the case and the other competent authority that it has received all information necessary to undertake substantive consideration of the case, or request additional information for that purpose from the person that presented the case, within three calendar months from the date on which it received the initial request or was notified of the request, as the case may be. As noted below in paragraph 229, the competent authorities should settle between them the minimum information that each of them will require in order to undertake substantive consideration of the case, and should publish a list of such information. The

competent authorities may also wish to settle other procedural matters related to the application of paragraphs 5 through 9.

226. Where one or both competent authorities request additional information, paragraph 7 provides that after receiving such information, the competent authority requesting the information would have three calendar months to notify the person presenting the case and the other competent authority that it has received all necessary information, or that requested information is still missing.

227. The start date of the period referred to in paragraph 1(b) depends on whether such additional information has been requested. Where no request for additional information has been made, paragraph 8 provides that the start date is the earlier of: a) the date on which both competent authorities have notified the person who presented the case that all necessary information was received (i.e., the date on which the second of the two competent authorities has made that notification), and b) three calendar months after the date on which the competent authority to which the request for a mutual agreement procedure was initially made notified the other competent authority of the request.

228. Where additional information was requested, paragraph 9 provides that, in general, the start date is the earlier of: a) the latest date on which the competent authorities that requested additional information have notified the taxpayer and the other competent authority that the information has been received, and b) the date that is three calendar months after both competent authorities have received the additional information from the person who presented the case. If either competent authority notifies the taxpayer and the other competent authority that some of the requested information is still missing, such notification shall be treated as a request for additional information.

#### **Paragraph 10**

229. In recognition of the wide variety of legal and tax systems, and the fact that each competent authority relationship is unique, paragraph 10 requires that the competent authorities of the Contracting Jurisdictions settle the mode of application of the arbitration provisions by mutual agreement, including (but not limited to) the minimum information necessary for each competent authority to undertake substantive consideration of the case, before the date on which unresolved issues in a mutual agreement procedure case are first eligible to be submitted to arbitration. Ordinarily, a Contracting Jurisdiction's published guidance would indicate the information that would be required for consideration of a request for a mutual agreement procedure. In such cases, it is assumed that the competent authorities of the Contracting Jurisdictions would generally mutually agree to list or otherwise identify the information included in that guidance as the information that would be required by each Contracting Jurisdiction to undertake substantive consideration of the case.

230. While Part VI sets out the core provisions related to arbitration, as well as default rules to ensure that the key structural elements of the process are in place, ensuring the smooth functioning of the arbitration process will require close collaboration by the competent authorities to jointly agree on the procedural and operational details of the arbitration process. It will be important for the competent authorities to consult closely on these details in order to ensure that the mode of application of Part VI is settled before unresolved issues in a mutual agreement procedure case are first eligible for arbitration. This mode of application may be changed from time to time thereafter. In the absence of an agreement in advance, competent authorities and taxpayers may experience difficulty and delay in progressing through the arbitration process. It is expected that a model competent authority agreement that can be used as a basis for this consultation will be produced. Examples of the types of details that should be agreed between the competent authorities are described below in the explanatory text related to the other provisions of Part VI.

#### **Paragraph 11**

231. Paragraph 11 allows a Party to reserve the right to replace the two-year period set forth in paragraph 1(b) with a three-year period for the purposes of applying Part VI to its Covered Tax Agreements. Like other reservations to the Convention, where a Contracting Jurisdiction to a Covered Tax Agreement makes this reservation, it will apply for the purposes of the application of that Covered Tax Agreement by both Contracting Jurisdictions.

#### **Paragraph 12**

232. In some jurisdictions a mutual agreement concluded by the competent authority cannot override the decision of a court or administrative tribunal of that jurisdiction, either as a matter of law or as a matter of administrative policy or practice. Those jurisdictions, or jurisdictions intending to adopt such a practice, may wish to ensure that the arbitration process cannot be pursued with respect to issues that have been resolved through domestic litigation, either before submission of the issues to arbitration or during the arbitration process. Paragraph 12 addresses this issue by permitting a Party to reserve the right to exclude from arbitration issues with respect to which a decision has been rendered by a court or administrative tribunal of either Contracting Jurisdiction.

233. In the case of a Covered Tax Agreement of a Contracting Jurisdiction which has made the reservation described in paragraph 12, an unresolved issue shall not be submitted to arbitration if a decision on that issue has already been rendered by a court or administrative tribunal of either Contracting Jurisdiction. In addition, the arbitration process will terminate if a decision concerning the unresolved issue is rendered by a court or administrative tribunal of one of the Contracting Jurisdictions at any time after a request for arbitration has been made and before the arbitration decision has been delivered.

#### **Article 20 – Appointment of Arbitrators**

##### **Paragraphs 1 and 2**

234. Paragraphs 1 and 2 set out basic rules for the composition of an arbitration panel and the appointment and qualifications of arbitrators. While these rules would apply by default, paragraph 1 also permits the competent authorities to mutually agree on different rules, either generally or with respect to a particular case.

235. Under paragraph 2, the arbitration panel is composed of three individual members. These members must have expertise or experience in international tax matters, though, unless the competent authorities agree otherwise, there is no requirement that each member have experience as a judge or an arbitrator. One member is to be appointed by each competent authority within 60 days of the date of the request for arbitration pursuant to Article 19(1). Those two members must then, within 60 days of the latter of their appointments, appoint a third member who is not a national or resident of either Contracting Jurisdiction to serve as Chair of the arbitration panel.

236. Each member appointed to the arbitration panel must, at the time of accepting his or her appointment, be impartial and independent of the competent authorities, tax administrations, and ministries of finance (or relevant equivalent ministries or departments, regardless of their name) of the Contracting Jurisdictions, as well as all persons directly affected by the case and their advisors. Each member must also maintain his or her impartiality and independence throughout the proceedings, and must for a reasonable period of time thereafter avoid conduct that may damage the appearance of impartiality and independence of the members of the arbitration panel with respect to the proceedings. Such conduct would include, for example, accepting employment with one of the persons directly affected by the case soon after delivering the arbitration decision with respect to the case. In settling the mode of application of Part VI, the

competent authorities may wish to agree on additional details with respect to the applicable standards for impartiality and independence. For example, the competent authorities may wish to require that any prospective arbitration panel member disclose to the competent authorities any fact or circumstance likely to call into question that prospective member's impartiality or independence. The competent authorities may also wish to agree to rules addressing the situation in which a panel member is unable to perform his or her duties, as a result of illness or incapacity, failing to meet standards for impartiality and independence, or any other reason.

#### **Paragraphs 3 and 4**

237. Paragraphs 3 and 4 describe default rules which would apply in the case in which either competent authority fails, within the prescribed time periods, to appoint an arbitrator, or in the case in which two initial members of the arbitration panel fail to appoint a Chair. These paragraphs provide that, in such cases, the appointment will be made by the highest ranking official of the Centre for Tax Policy and Administration of the OECD that is not a national of either Contracting Jurisdiction. These default rules are intended to ensure that arbitration, and therefore a resolution of the issues in a mutual agreement procedure case, cannot be unduly delayed by a failure to constitute an arbitration panel. As default rules, the rules in paragraphs 3 and 4 will apply only to the extent that the competent authorities have not mutually agreed on different rules.

#### **Article 21 – Confidentiality of Arbitration Proceedings**

##### **Paragraph 1**

238. To ensure that the arbitration process can accomplish its purpose without undermining the confidentiality of the mutual agreement procedure, it is important that the competent authorities be permitted to provide arbitrators with relevant information, subject to the same strict confidentiality requirements that would apply to the competent authorities themselves. To accomplish this, paragraph 1 provides that, solely for the purposes of Part VI, the Covered Tax Agreement and the domestic laws of the Contracting Jurisdictions related to the exchange of information, confidentiality, and administrative assistance, the members of the arbitration panel shall be considered persons or authorities to whom information may be disclosed. Pursuant to paragraph 1, such information may also be disclosed to prospective arbitrators, but solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators, including, for example, their independence and impartiality. Paragraph 1 additionally provides that information received by the arbitration panel or by prospective arbitrators, as well as any information that the competent authorities may receive from the arbitration panel, shall be considered information exchanged under the exchange of information and administrative assistance provisions of the Covered Tax Agreement. Recognising the need to balance the goal of minimising the number of people to whom information may be disclosed against arbitration panel members' need for staff support, this paragraph also provides for disclosure under the same conditions to a maximum of three staff per panel member.

##### **Paragraph 2**

239. Paragraph 2 requires the competent authorities to ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure requirements under the provisions of the Covered Tax Agreement related to the exchange of information and administrative assistance and under the applicable laws of the Contracting Jurisdictions. As part of the agreement on the mode of application of Part VI under Article 19(10), the competent authorities may wish to settle the details of this process, including which competent authority would obtain such written

agreement. The consequences of breaching such an agreement would be determined under the domestic laws of the Contracting Jurisdictions and under the terms of the agreement.

#### **Article 22 – Resolution of a Case Prior to the Conclusion of the Arbitration**

240. Recognising that the purpose of arbitration under Part VI is to resolve disputes between the competent authorities arising from mutual agreement procedure cases, Article 22 provides that the mutual agreement procedure, as well as the arbitration procedure, will terminate if, during the arbitration process (at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision), either (i) the competent authorities come to a mutual agreement to resolve the case or (ii) the taxpayer withdraws either its request for arbitration or its request for a mutual agreement procedure.

#### **Article 23 – Type of Arbitration Process**

##### **Paragraph 1**

241. Paragraph 1 provides for default rules with respect to the type of arbitration process that will apply for the purposes of arbitration proceedings pursuant to Part VI, but permits the competent authorities of the Contracting Jurisdictions to mutually agree on different rules, which may apply to all cases or to a particular case.

242. By default, a “final offer” arbitration process (otherwise known as “last best offer” arbitration) will apply, except to the extent that the competent authorities mutually agree on different rules. Under this approach, the competent authorities will each submit to the arbitration panel a proposed resolution which addresses all of the unresolved issues in the case in a manner that is consistent with any previous agreements that have been reached in that case by the competent authorities. For each adjustment or similar issue in the case, the proposed resolution will include only the disposition of specific monetary amounts (for example, of income or expense) or the maximum rate of tax charged pursuant to the Covered Tax Agreement. In some cases, however, unresolved issues will include questions regarding whether the conditions for applying a provision of a Covered Tax Agreement have been met. Where the unresolved issues in a case include such a “threshold question”, such as whether a person is a resident of a Contracting Jurisdiction or whether an enterprise of one of the Contracting Jurisdictions has a permanent establishment in the other Contracting Jurisdiction, the competent authorities may submit their proposed answers to the threshold question (i.e. yes or no). If there are other unresolved issues the disposition of which is contingent on the answer reached with respect to the threshold question, it is expected that the competent authorities would also submit alternative proposed resolutions of those remaining issues.

243. The proposed resolutions submitted by the competent authorities of each Contracting Jurisdiction may be supported by a position paper. Each competent authority may also submit a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. The reply submission and its supporting paper are meant to address only the positions and arguments of the other competent authority, and are not intended as an opportunity for a competent authority to advance additional arguments in favour of its own position. Paragraph 1(b) provides that each competent authority that submits a proposed resolution, position paper or reply submission must provide a copy to the other competent authority by the date on which such proposed resolution, position paper or reply submission was due. Due dates for these documents (such as, for example, their maximum length) should be provided in the competent authority agreement on the mode of application of the arbitration procedure entered into pursuant to Article 19(10). As part of that agreement, the competent authorities may also wish to describe the process they will use to reach agreement on the issues to be resolved by the arbitration panel.

244. In the “final offer” arbitration process, the arbitration panel will select as its decision one of the proposed resolutions submitted by the competent authorities. In a case involving one or more threshold questions, the arbitration panel will decide the threshold question(s), and then adopt one of the alternative proposed resolutions submitted by the competent authorities. The decision will be adopted by a simple majority of the panel members, and will not include any rationale or explanation. In light of the purpose of arbitration to act as a streamlined method for resolving disputes between the competent authorities, the decision will be delivered in writing to the competent authorities and may not be used as precedent with respect to any other cases.

##### **Paragraph 2**

245. Under paragraph 2, a Party that is not willing to accept the “final offer” approach described in paragraph 1 as a default rule may reserve the right not to apply paragraph 1 to its Covered Tax Agreements and to adopt the “independent opinion” approach as the default type of arbitration process, except to the extent that the competent authorities of the two Contracting Jurisdictions mutually agree on different rules, which may apply to all cases or to a particular case. Under the “independent opinion” approach, each competent authority must provide to the arbitration panel any information that the panel may consider necessary to reach its decision. As part of the mutual agreement under Article 19(10), the competent authorities may wish to describe the process they will use to reach agreement on the issues to be resolved by the arbitration panel. The competent authorities may also agree, as part of the competent authority agreement entered into pursuant to Article 19(10), that each competent authority may submit a supporting position paper for consideration by the arbitration panel. Unless the competent authorities agree otherwise, the arbitration panel may not take into account any information that was not available to both competent authorities before both competent authorities received the request for arbitration.

246. The arbitration panel will then decide the issues which have been submitted to arbitration in accordance with the applicable provisions of the Covered Tax Agreement and, subject to those provisions, those of the domestic laws of the Contracting Jurisdictions. In this regard, the arbitration panel would review the application of domestic law only to the extent necessary to determine whether a Contracting Jurisdiction correctly applied the Covered Tax Agreement. The competent authorities may also, by mutual agreement, identify other sources of law or authority that will be considered by the arbitration panel.

247. The decision of the arbitration panel will be presented to the competent authorities in writing, indicating the sources of law relied upon and the reasoning which led to its result. It would also normally include a description of the relevant facts and circumstances of the case, a clear statement of the positions of both competent authorities, and a short summary of the proceedings. The adoption of the arbitration decision will be by a simple majority of the panel members. As with the “final offer” approach, the decision will have no precedential value.

##### **Paragraph 3**

248. Where a Party that has chosen to apply Part VI has made the reservation permitted by paragraph 2 and another Party that has chosen to apply Part VI either (i) also makes the reservation permitted by paragraph 2 or (ii) does nothing, the “independent opinion” approach will apply as between those two Parties. Paragraph 3 accordingly provides a mechanism to address the situation in which two Parties have differing, firmly-held views on their preferred type of arbitration process. Under paragraph 3, a Party that has not reserved the right to apply the independent opinion approach as a default rule under paragraph 2 may reserve the right for the default rules provided in paragraphs 1 and 2 not to apply with respect to its Covered Tax Agreements with Parties that have reserved the right to apply the “independent opinion” approach as a default rule in place of “final offer” arbitration. Where a Party has made the reservation permitted by paragraph 3, it would be left to the competent authority of that Party and the competent

authority of the Party that made a reservation under paragraph 2 to determine the type of arbitration process that would apply as between those two Parties.

249. Where a reservation under paragraph 3 has been made by either Contracting Jurisdiction to a Covered Tax Agreement, and where the other Contracting Jurisdiction has made a reservation under paragraph 2, the competent authorities are required to endeavour to reach an agreement on the type of arbitration process that will apply to all cases arising under the Covered Tax Agreement. Until such agreement is reached, Article 19 will not apply. As a result, the competent authorities are not required to consider a request for arbitration until such an agreement is reached.

#### **Paragraphs 4 and 5**

250. Paragraph 4 provides that Parties may choose to apply paragraph 5 to their Covered Tax Agreements. This paragraph is an optional provision which, subject to paragraphs 6 and 7, will apply between two Contracting Jurisdictions to a Covered Tax Agreement if either Contracting Jurisdiction chooses to apply it and notifies the Depositary accordingly. Paragraph 5 requires the competent authorities, prior to the start of arbitration proceedings, to ensure that each taxpayer involved in the case and their advisors agree in writing not to disclose any of the information received during the course of the arbitration proceedings from either competent authority or from the arbitration panel. A material breach of this agreement between the time at which the request for arbitration was made and before the arbitration panel has delivered its decision will result in the termination of the mutual agreement procedure and the arbitration proceedings with respect to the case.

#### **Paragraphs 6 and 7**

251. Paragraph 6 allows a Party, other than a Party that has chosen to apply paragraph 5, to reserve the right not to apply paragraph 5 with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements). A Party that has chosen to apply paragraph 5, however, may reserve the right under paragraph 7 for Part VI not to apply at all with respect to any Covered Tax Agreement for which the other Contracting Jurisdiction has made the reservation pursuant to paragraph 6. The overall effect of paragraphs 4 through 7 is to ensure that where a Contracting Jurisdiction to a Covered Tax Agreement has chosen to apply paragraph 5, taxpayers will be required to keep information received during the arbitration process secret by default. Parties that do not consider this necessary, however, may opt out of this requirement with respect to one or more Covered Tax Agreements. Parties that consider it essential to require the taxpayer to maintain strict confidentiality, however, may opt out of arbitration entirely with a Party that has opted out of the nondisclosure rule.

#### **Article 24 – Agreement on a Different Resolution**

##### **Paragraphs 1 and 2**

252. Paragraph 1 permits a Party to choose to apply paragraph 2 with respect to its Covered Tax Agreements. Notwithstanding Article 19(4), paragraph 2 allows the competent authorities to depart from the arbitration decision and to agree on a different resolution within three calendar months after the decision has been delivered to them. This may arise, for example, if the arbitration panel issues a decision that both competent authorities consider to be an inappropriate resolution of the issues in the case. Paragraph 2 is an optional provision and will be applied with respect to a Covered Tax Agreement only if both Contracting Jurisdictions choose to apply it.

##### **Paragraph 3**

253. Some jurisdictions consider that Article 24 would be unlikely to be applied where the “final offer” approach described in Article 23(1) is used, given that under “final offer” arbitration, the arbitration panel’s decision will be the position of one of the two competent authorities. To accommodate this view, paragraph 3 therefore allows a Party that chooses to apply paragraph 2 to reserve the right for paragraph 2 to apply only with respect to its Covered Tax Agreements for which the “independent opinion” approach described in Article 23(2) is applied.

#### **Article 25 – Costs of Arbitration Proceedings**

254. Article 25 provides that the competent authorities of the Contracting Jurisdictions shall settle by mutual agreement rules for the division of the fees and expenses of the members of the arbitration panel (which shall not include those of the staff of such members), as well as any costs incurred in connection with the arbitration proceedings. It also provides that, in the absence of such agreement, (i) each Contracting Jurisdiction will bear its own expenses and those of its appointed panel member, and (ii) the cost of the chair of the arbitration panel and the other expenses associated with the conduct of the arbitration proceedings will be borne by the two Contracting Jurisdictions in equal shares. The reference to “other expenses” is intended to include expenses such as the reasonable travel and telecommunication costs of the chair, but is not intended to include internal costs associated with the logistical arrangements for the meetings of the arbitration panel, such as the use of meeting facilities owned by a Contracting Jurisdiction, related resources, financial management, other logistical support provided by the competent authority of a Contracting Jurisdiction, and general administrative coordination of the proceedings, which would generally be borne by the Contracting Jurisdiction that hosts the meeting.

255. The competent authorities may also wish to reach agreement on a scale for the fees to be paid to the members of the arbitration panel. They are free to agree to set such fees in a way that reflects the particular circumstances of the Contracting Jurisdictions, their particular relationship, and the type of arbitration process. In addition, in some jurisdictions, ratification procedures may require that estimated costs connected to arbitration procedures be identified. For those jurisdictions, it may be necessary for the competent authorities to agree on a schedule of fees in advance. Jurisdictions have used a variety of schedules of fees as resources for this purpose, including the schedule of fees set by the International Centre for Settlement of Investment Disputes and the schedule of fees provided in the Revised Code of Conduct for the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the EU Arbitration Convention). Jurisdictions have also limited the amount of travel and the number of days for which the panel members will be compensated.

#### **Article 26 – Compatibility**

##### **Paragraph 1**

256. Paragraph 1 is a compatibility clause which describes the interaction between the provisions of Part VI and provisions of Covered Tax Agreements that provide for arbitration of mutual agreement procedure cases. This paragraph provides that the provisions of Part VI will apply to Covered Tax Agreements that do not already provide for arbitration of unresolved issues arising from mutual agreement procedure cases brought to the competent authorities by taxpayers. Part VI will also apply in place of existing arbitration provisions that apply to issues arising from mutual agreement procedure cases (whether they provide for mandatory binding arbitration or not), subject to the reservation in paragraph 4, described below, which permits a Party to preserve the application of certain existing mandatory binding arbitration provisions. Each Party that chooses to apply Part VI is required to notify the Depositary whether its Covered Tax Agreements (other than those within the scope of a reservation under paragraph 4) contain

arbitration provisions (and, if so, the article and paragraph number of each such provision). It is expected that in some cases, Contracting Jurisdictions to a Covered Tax Agreement that already provides for mandatory binding arbitration will prefer to make the reservation described in paragraph 4 to preserve those provisions. In other cases, as noted above in paragraphs 15 and 18, it is expected that the Contracting Jurisdictions will use their best efforts to notify the Depositary of all existing provisions that provide for the arbitration of unresolved issues arising from a mutual agreement procedure case. As a result, the circumstance in which an existing arbitration provision is not identified is expected to be extremely rare.

#### Paragraph 2

257. Paragraph 2 describes the interaction between the provisions of Part VI and the provisions of a bilateral or multilateral convention that provides for the mandatory binding arbitration of unresolved issues that arise from a mutual agreement procedure case. Given that a purpose of such conventions, like the purpose of Part VI, is to resolve disputes efficiently and effectively, paragraph 2 avoids duplication of efforts by providing that an unresolved issue arising from a mutual agreement procedure case will not be submitted to arbitration under Part VI if an arbitration panel or similar body has previously been set up with respect to the issue under another bilateral or multilateral convention that provides for the mandatory binding arbitration of unresolved issues. Where an arbitration panel has not yet been set up under another convention, however, Part VI would continue to apply to ensure that unresolved issues that arise in mutual agreement procedure cases and that are eligible for submission to arbitration pursuant to Article 19 can be resolved as quickly as possible.

#### Paragraph 3

258. Paragraph 3 clarifies that the provisions of Part VI are not intended to affect the fulfilment of wider obligations (e.g., obligations to resolve issues or cases that are not covered by Part VI) with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from any conventions to which the Contracting Jurisdictions are or will become parties, other than provisions of a Covered Tax Agreement which have been superseded by Part VI pursuant to paragraph 1.

#### Paragraph 4

259. As noted above, paragraph 4 allows a Party to preserve existing mandatory binding arbitration provisions by reserving the right for Part VI not to apply to one or more identified Covered Tax Agreements (or to all of its Covered Tax Agreements) that provide for mandatory binding arbitration of unresolved issues arising in a mutual agreement procedure case. In this context, a Covered Tax Agreement would be considered to provide for "mandatory binding arbitration" if, under specific circumstances (such as a request by a person who presented the case), the competent authorities are required to submit issues arising in a mutual agreement procedure case that are not resolved after a specific amount of time to arbitration, and the outcome of that arbitration is binding on the competent authorities.

## Part VII. Final Provisions

### Article 27 – Signature and Ratification, Acceptance or Approval

#### Paragraph 1

260. Paragraph 1 provides that the Convention will be open for signature as of 31 December 2016. It goes on to provide that the Convention is open for signature by all States.

261. In addition, given that certain non-State jurisdictions have concluded tax agreements under the arrangements with the State responsible for their international relations, the Convention is open for signature by jurisdictions listed in subparagraph b). Following the name of each jurisdiction in subparagraph b), the name of the State which is responsible for the international relations of that jurisdiction is specified in parentheses. The inclusion of each jurisdiction listed in subparagraph b) was authorised by the State responsible for its international relations and was agreed by the *ad hoc* Group.

262. Finally, subparagraph c) provides that the Parties and Signatories may decide to authorise other non-State jurisdictions to become Parties to the Convention following its opening for signature on 31 December 2016. This decision must be made by consensus, meaning that any jurisdiction which is not listed in subparagraph b) can only become a Party to the Convention if no Party or Signatory objects.

#### Paragraph 2

263. Paragraph 2 provides that signature of the Convention shall be followed by ratification, acceptance or approval. The appropriate term will depend on domestic legal requirements. Once the domestic procedures have been completed, an instrument of ratification, acceptance or approval must be deposited with the Depositary and this is the event which triggers the rule for the entry into force of the Convention pursuant to Article 34 of the Convention.

### Article 28 – Reservations

#### Paragraph 1

264. Paragraph 1 sets out a list of authorised reservations by reference to the provision in which they are set out. With the exception of reservations to Part VI of the Convention which are governed by Article 28(2), these are the only reservations which may be made under the Convention.

#### Paragraph 2

265. Paragraph 2(a) provides that any Party that chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) of the Convention may formulate one or more reservations with respect to the scope of cases that shall be eligible for arbitration under Part VI. In developing Part VI, the Sub-Group on Arbitration considered establishing a list of defined reservations with respect to the scope of cases. It was considered, however, that while the certainty provided by such a list would be desirable, it was unlikely that consensus could be reached on a list of defined reservations among all members of the Sub-Group. In addition, there was concern that if a Party had strong policy concerns with respect to particular types of cases that were not listed (for example because that Party did not take part in the initial development of Part VI), that Party might be unable to choose to apply Part VI despite a desire to commit to mandatory binding arbitration for other types of cases. Paragraph 2 was therefore added to provide Parties committing to arbitration with flexibility to tailor the scope of cases that will be eligible for arbitration to reflect their domestic policies regarding arbitration.

266. As provided in paragraph 5, a reservation under paragraph 2(a) would generally be made at the time of signature or when depositing the instrument of ratification, acceptance or approval. For a Party that does not choose to apply Part VI at the time it becomes a Party to the Convention, but chooses later to apply Part VI by making a notification to the Depositary, however, reservations under paragraph 2(a) must be made at the same time as the Party's notification to the Depositary that it chooses to apply Part VI pursuant to Article 18.

267. Paragraph 2(b) provides that reservations made under paragraph 2(a) will be subject to acceptance by the other Parties. It specifies that a reservation made under paragraph 2(a) shall be considered to have been accepted by another Party if that other Party has not notified the Depositary that it objects to the reservation by the end of a period of twelve calendar months beginning on the date of notification of the reservation to all Parties and Signatories by the Depositary or by the date on which the Party deposits its instrument of ratification, acceptance, or approval, whichever is later. For a Party that does not choose to apply Part VI at the time it becomes a Party to the Convention, but chooses later to apply Part VI by making a notification to the Depositary, however, objections to prior reservations made by other Parties pursuant to subparagraph a) can be made at the time of the first-mentioned Party's notification to the Depositary that it chooses to apply Part VI pursuant to Article 18.

268. In cases where a Party does raise an objection to a reservation made under paragraph 2(a), the entirety of Part VI would not apply between the objecting Party and the reserving Party. Accordingly, it is expected that Parties will carefully formulate their reservations under paragraph 2(a) as well as carefully consider any objections to such reservations since the result of an objection to a reservation will be that there is no basis for mandatory binding arbitration between those two Parties under the Convention.

269. It should be noted as well that a Party is free to withdraw a reservation or replace it with a more limited reservation pursuant to Article 28(9) at any time, and it is expected that Parties will continue to evaluate their reservations over time to ensure that they continue to be consistent with the shared goal of improving the resolution of disputes between the competent authorities.

#### **Paragraph 3**

270. Paragraph 3 confirms the effect of reservations made under paragraph 1 or 2 on the application of the relevant provisions of the Convention between the reserving Party and the other Parties to the Convention. The paragraph states that unless explicitly provided otherwise, any reservation made by a Party will modify the provisions to which it relates to the same extent for both the reserving Party and the other Party. Accordingly, unless a provision of the Convention explicitly provides otherwise, a reservation will modify the relevant provisions of the Convention as between the reserving Party and all other Parties to the Convention, i.e. for the reserving Party in its relations with the other Parties and for those other Parties in their relations with the reserving Party. In other words, reservations will apply symmetrically, unless provided otherwise.

#### **Paragraph 4**

271. Paragraph 4 requires a Party which has included, in its list of Covered Tax Agreements pursuant to Article 2(1)(a) of the Convention, one or more tax agreements entered into by or on behalf of a jurisdiction or territory for whose international relations it is responsible pursuant to Article 2(1)(a) of the Convention, to deposit a separate list of reservations for that jurisdiction or territory, which may be different from the Party's own list of reservations. This separate list of reservations will apply to all agreements entered into by or on behalf of that jurisdiction or territory which are covered by the Convention.

272. Paragraph 4 is not relevant to jurisdictions which become Parties to the Convention pursuant to Article 27(1)(b) or (c) because those jurisdictions are Parties in their own right and will make their reservations as any other Party under Article 28(1) and, if applicable Article 28(2).

273. The word "territory" is used in addition to "jurisdiction" in order to capture the various terms used to refer to non-State entities for whose international relations a State is responsible. The words "by or on behalf of" are also intended to capture the various ways in which a tax agreement may be concluded in respect of a non-State jurisdiction or territory. In certain cases, the tax agreement may be entered into by the jurisdiction or territory itself while, in other cases, the State which is responsible for the international relations of the jurisdiction or territory may enter into the tax agreement on its behalf. In both situations, the State Party responsible for the international relations of the jurisdiction or territory shall provide a list of reservations in respect of that jurisdiction or territory, which may be different from the State Party's own list of reservations.

274. If any reservations listed in Article 28(8) are made in respect of the jurisdiction or territory, the Party shall also provide a list of the tax agreements entered into by or on behalf of that jurisdiction or territory that are within the scope of the reservation. In all other cases, the list of reservations in respect of the jurisdiction or territory shall apply to all tax agreements concluded by that jurisdiction or territory and which are or later become Covered Tax Agreements, including agreements which are added in the future pursuant to Article 29(5) of the Convention.

275. The deposit by a Party of the list of reservations in respect of a jurisdiction or territory pursuant to Article 28(4) shall take place either: i) at the same time as the deposit of the list of reservations of the relevant Party if one or more tax agreements of the jurisdiction or territory are included in the Party's initial list of tax agreements pursuant to Article 2(1)(a)(i); or ii) at the same time as the notification of an extension of the list of agreements pursuant to Article 29(5) of the Convention if that extension includes for the first time a tax agreement entered into by the jurisdiction or territory.

#### **Paragraphs 5 through 7 – Timing of Reservations**

276. Paragraphs 5 through 7 set out the timing for making reservations under the Convention. Essentially, the Convention requires that a provisional list of reservations be provided to the Depositary at the time of signature and that a final list of reservations, subject to subsequent changes to that list which are explicitly authorised by the provisions of Article 28(2), (5), and (9) and Article 29(5) of the Convention, be provided to the Depositary at the time of the deposit of the instrument of ratification, acceptance or approval. At the same time, the Convention allows for the possibility that a final list of reservations, subject to subsequent changes to that list which are explicitly authorised by the provisions of Article 28(2), (5), and (9) and Article 29(5) of the Convention, can be provided to the Depositary at the time of signature (in such cases, the document containing the reservations must explicitly specify that it is to be considered final).

#### **Paragraph 5**

277. Paragraph 5 provides that reservations shall be made either at the time of signature or when depositing an instrument of ratification, acceptance or approval. This general rule is subject to the provisions of Article 28(2) (the possibility for a Party which chooses to apply Part VI to formulate one or more reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI), Article 28(6) (the possibility to provide a definitive list of reservations at the time of signature), Article 28(9) (the possibility to withdraw or replace reservations) and Article 29(5) (the possibility to make new reservations if an agreement added to the list notified under Article 2(1)(a)(ii) is the first to fall within the scope of a reservation listed in Article 28(8) or if a newly added agreement is the

first inclusion in the list of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations the Party is responsible). It is possible, however, for a Party to choose to apply Part VI of the Convention after it has already become a Party. To ensure that such a Party has the opportunity to make the defined reservations related to Part VI, paragraph 5 also provides that such reservations shall be made at the time of that Party's notification to the Depositary pursuant to Article 18 that it chooses to apply Part VI.

#### Paragraph 6

278. Paragraph 6 provides that if reservations are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval since this is the moment at which consent to be bound by the Convention is expressed following the completion of domestic procedures. At the time of the deposit of the instrument of ratification, acceptance or approval, changes may be made to the list of reservations including the addition or deletion of reservations or the modification of reservations made at the time of signature.

279. Paragraph 6 provides for an exception in a case in which a Signatory explicitly specifies that the list of reservations it makes at the time of signature is to be considered definitive. In such cases, no confirmation of the reservations would be required upon deposit of the instrument of ratification, acceptance or approval. The definitive nature of reservations made upon signature is, however, subject to the provisions of Article 28(2) and (5) (the possibility for a Party which chooses to apply Part VI after it has become a Party to the Convention to make the reservations permitted under Part VI at the time it chooses to apply Part VI), Article 28(9) (the possibility to withdraw or replace reservations) and Article 29(5) (the possibility to make new reservations if an agreement added to the list notified under Article 2(1)(a)(ii) is the first to fall within the scope of a reservation listed in Article 28(8) or if a newly added agreement is the first inclusion in the list of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations the Party is responsible), dealt with below.

#### Paragraph 7

280. Paragraph 7 provides that if reservations are not made at the time of signature, a provisional list of expected reservations shall be provided to the Depositary at that time. This provisional list is for transparency purposes only and is intended to give other Signatories a preliminary indication of the Signatory's intended position. This takes account of the nature of the Convention which will operate to modify existing bilateral or multilateral relationships and the reservations chosen by the other Contracting Jurisdictions will determine the way in which the existing bilateral or multilateral agreement is modified. Accordingly, provisional indications of intended positions are important to allow an understanding of the likely changes to an existing tax agreement and to facilitate domestic ratification procedures as well as to prepare for the implementation of the modifications made by the Convention. The provisional list of expected reservations under Article 28(7) does not restrict the ability of that Signatory to submit a modified list of reservations upon deposit of the instrument of ratification, acceptance or approval.

#### Paragraph 8

281. Paragraph 8 requires that, when reservations are made under the listed provisions, an exhaustive list of the Covered Tax Agreements which are within the scope of the reservation as defined in the relevant provision must be provided. In the case of a reservation that applies only where a Covered Tax Agreement contains a specific type of provision, a list of the article and paragraph number of each relevant provision must also be provided. This is intended to provide clarity as to the application of reservations which are intended to apply only to Covered Tax Agreements with a specific characteristic. Such reservations would not apply to any Covered Tax Agreement which is not included in the lists required by paragraph 8.

#### Paragraph 9

282. Paragraph 9 provides for the possibility to withdraw a reservation made in accordance with Article 28(1) or (2) or to replace it with a reservation which is more limited in scope, by means of a notification addressed to the Depositary. The purpose of allowing the replacement of a reservation by another is to allow a Party to accept further modifications to be made to its Covered Tax Agreements by the Convention. Accordingly, a Party can accept additional modifications of its Covered Tax Agreements by means of the replacement of a reservation but cannot use this mechanism to place new restrictions on the modifications of its tax agreements by the Convention. For example, a Party that has made reservation from the entirety of Article 3 under paragraph 5(a) of that Article could either withdraw that reservation entirely, or replace it with a reservation solely with respect to Covered Tax Agreements that already contain a provision addressing the treatment of transparent entities pursuant to paragraph 5(b) of that Article. However, a Party which had initially made a reservation under paragraph 5(b) of that Article could not subsequently replace it by a reservation under paragraph 5(a) of that Article. Paragraph 9(a) and (b) set out the dates on which such a withdrawal or replacement of a reservation will take effect, subject to Article 35(7).

283. Subparagraph a) applies where all Contracting Jurisdictions are States or jurisdictions which are Parties to the Convention on the date of receipt by the Depositary of the notification of withdrawal or replacement of the reservation. In line with the approach taken to the entry into effect of the Convention in Article 35, rather than entering into effect generally on a specific date, paragraph 9 defines the entry into effect of a withdrawal or replacement of a reservation by reference to the date or period to which specific taxes are attributable.

284. Subparagraph a) sets out two categories: (i) reservations to provisions relating to taxes withheld at source, and (ii) reservations to all other provisions.

285. With respect to category (i), the first taxes in relation to which the withdrawal or replacement of a reservation will have effect are those for which the event giving rise to the taxes occurs on or after 1 January of the next year following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the notification of the withdrawal or replacement to all Parties and Signatories.

286. For example, as illustrated in the timeline below, where a Party deposits a notification of withdrawal of a reservation in respect of provisions relating to taxes withheld at source on 25 August 2018, and the Depositary communicates this to all Parties and Signatories on 1 September 2018, the withdrawal will be effective for any tax where the event giving rise to such tax occurs on or after 1 January 2020 (the date of communication by the Depositary of 1 September 2018, plus expiration of the period of six calendar months takes the timeline to 1 March 2019, thus the first taxes to which the withdrawal will apply must relate to events occurring on or after 1 January the following year, i.e. 2020).

2018			2019	2020
25 August		1 September	6 month period	1 March 2019
Deposit of notification of withdrawal	of	Communication to all Parties and Signatories by Depositary	Expiration of 6 month period.	Withdrawal of reservation will have effect with respect to all withholding taxes which relate to an event occurring from this date onwards

287. With respect to category (ii), the first taxes in relation to which the withdrawal of the reservation will have effect are those which are levied with respect to periods beginning on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the notification of the withdrawal or replacement of the reservation.

288. For example, as illustrated in the timeline below, where a Party deposits a notification of withdrawal of a reservation in respect of all provisions other than those relating to taxes withheld at source on 25 August 2018, and the Depositary communicates this to all Parties and Signatories on 1 September 2018, the withdrawal will be effective for any tax levied with respect to taxable periods beginning on or after 1 January 2020 (the date of communication by the Depositary of 1 September 2018, plus expiration of the period of six months takes the timeline to 1 March 2019, thus the first taxes to which the withdrawal will apply will be those levied with respect to taxable periods beginning on or after 1 January the following year, i.e. 2020).

2018			2019	2020
25 August	1 September	6 month period	1 March 2019	1 January
Deposit of notification of withdrawal	Communication to all Parties and Signatories by Depositary		Expiration of 6 month period	Withdrawal of reservation will have effect with respect to all non-withholding taxes levied in respect of taxable periods beginning on or after 1 January 2020

289. Paragraph 9(b) applies with respect to Covered Tax Agreements for which one or more Contracting Jurisdictions becomes a Party to the Convention after the date of receipt by the Depositary of the notification of withdrawal or replacement of the reservation. In such cases, the withdrawal or replacement shall take effect on the latest date on which the Convention enters into force for each of those Contracting Jurisdictions. This takes into account the fact that, pursuant to Articles 34 and 35, there is at least a three month period between the date of deposit of the instrument of ratification, acceptance or approval and the entry into force of the Convention (i.e. the date on which a State or jurisdiction becomes a Party) as well as an additional period before the provisions of the Convention enter into effect for the new Party.

290. With regard to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible and listed by that Party pursuant to Article 2(1)(a)(ii), the references in Article 28(9)(a) and (b) to a Party to the Convention and in Article 28(9)(b) to the entry into force of the Convention for a Contracting Jurisdiction shall be read to refer to the Party which is responsible for the international relations of that jurisdiction or territory.

291. Article 35(7) provides for the possibility for a Party to modify the rule on the entry into effect of the withdrawal or replacement of a reservation in order to allow for the completion of internal procedures for this purpose (see paragraphs 338 to 344 below).

#### Article 29 - Notifications

##### Timing of Notifications

292. Paragraphs 1, 3 and 4 set out the timing for making notifications under the Convention. Essentially, the Convention requires that a provisional list of notifications be provided to the Depositary at

the time of signature and that a final list of notifications, subject to subsequent changes to that list which are explicitly authorised by the provisions of Articles 29(5), 29(6) and 35(7) of the Convention, be provided to the Depositary at the time of the deposit of the instrument of ratification, acceptance or approval. At the same time, the Convention allows for the possibility that a final list of notifications, subject to subsequent changes to that list which are explicitly authorised by the provisions of Articles 29(5), 29(6) and 35(7) of the Convention, can be provided to the Depositary at the time of signature (in such cases, the document containing the notifications must explicitly specify that it is to be considered final).

##### Paragraph 1

293. Paragraph 1 provides that notifications made pursuant to certain provisions in the Convention shall be made either at the time of signature or when depositing the instrument of ratification, acceptance or approval. This general rule applies subject to Article 29(5) (the possibility to extend the list of agreements notified under Article 2(1)(a)(ii) and to make any additional notifications that may be required in respect of the newly added agreements as well as to make new notifications if a newly added agreement is the first inclusion in the list of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations the Party is responsible); Article 29(6) (the possibility to make certain additional notifications in respect of tax agreements already included in the list notified under Article 2(1)(a)(ii)); and Article 35(7) (the notifications required when a Party makes a reservation to the provisions on entry into effect in order to allow for the completion of its internal procedures for that purpose).

294. Paragraph 1 sets out an exhaustive list of the required notifications by reference to the provision in which they are set out. These include notifications related to the choice of optional provisions, which would apply with respect to all tax agreements entered into by a Party that are or may become Covered Tax Agreements (subject to reservations applicable to Covered Tax Agreements that contain existing provisions with specific, objectively defined characteristics). They also include notifications regarding which of a Party's Covered Tax Agreements are within the scope of the compatibility clauses for each provision of the Convention.

##### Paragraph 2

295. Paragraph 2 requires a Party which has included, in its list of Covered Tax Agreements pursuant to Article 2(1)(a)(ii) of the Convention, one or more tax agreements entered into by or on behalf of a jurisdiction or territory for whose international relations it is responsible pursuant to Article 2(1)(a)(i)(B) of the Convention, to deposit a separate list of notifications for that jurisdiction or territory, which may be different from the Party's own list of notifications. This separate list of notifications will apply to all agreements entered into by or on behalf of that jurisdiction or territory which are covered by the Convention (subject to reservations applicable to Covered Tax Agreements that contain existing provisions with specific, objectively defined characteristics).

296. Paragraph 2 is not relevant to jurisdictions which become Parties to the Convention pursuant to Article 27(1)(b) or (c) because those jurisdictions are Parties in their own right and will make their notifications as any other Party under Article 29(1).

297. The word "territory" is used in addition to "jurisdiction" in order to capture the various terms used to refer to non-State entities for whose international relations a State is responsible. The words "by or on behalf of" are also intended to capture the various ways in which a tax agreement may be concluded in respect of a non-State jurisdiction or territory. In certain cases, the tax agreement may be entered into by the jurisdiction or territory itself while, in other cases, the State which is responsible for the international relations of the jurisdiction or territory may enter into the tax agreement on its behalf. In both situations, the State Party responsible for the international relations of the jurisdiction or territory shall provide a list

of notifications in respect of that jurisdiction or territory, which may be different from the State Party's own list of notifications.

298. Notifications related to the choice of optional provisions to be applied in respect of the jurisdiction or territory shall apply to all tax agreements which are concluded by that jurisdiction or territory and which are or later become Covered Tax Agreements, including agreements which are added in the future pursuant to Article 29(5) of the Convention (subject to reservations applicable to Covered Tax Agreements that contain existing provisions with specific, objectively defined characteristics).

299. The deposit by a Party of the list of notifications in respect of a jurisdiction or territory pursuant to Article 29(2) shall take place either: (i) at the same time as the deposit of the list of notifications of the relevant Party if one or more tax agreements of the jurisdiction or territory are included in the Party's initial list of tax agreements pursuant to Article 2(1)(a)(ii); or (ii) at the same time as the notification of an extension of the list of agreements pursuant to Article 29(5) of the Convention if that extension includes for the first time a tax agreement entered into by the jurisdiction or territory.

#### **Paragraph 3**

300. Paragraph 3 provides that if notifications are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval since this is the moment at which consent to be bound by the Convention is expressed following the completion of domestic procedures. At the time of the deposit of the instrument of ratification, acceptance or approval, changes may be made to the list of notifications including the addition or deletion of notifications or the modification of notifications made at the time of signature.

301. Paragraph 3 provides for an exception in a case in which a Party explicitly specifies that the list of notifications it makes at the time of signature is to be considered definitive. In such cases, no confirmation of the notifications would be required upon deposit of the instrument of ratification, acceptance or approval. The definitive nature of notifications made upon signature is, however, subject to the provisions of Article 29(5) (the possibility to extend the list of agreements notified under Article 2(1)(a)(ii) and to make any additional notifications that may be required in respect of the newly added agreements as well as to make new notifications if a newly added agreement is the first inclusion in the list of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations the Party is responsible); Article 29(6) (the possibility to make certain additional notifications in respect of tax agreements already included in the list notified under Article 2(1)(a)(ii)); and Article 35(7) (the notifications required when a Party makes a reservation to the provisions on entry into effect in order to allow for the completion of its internal procedures for that purpose).

#### **Paragraph 4**

302. Paragraph 4 provides that if notifications are not made at the time of signature, a provisional list of expected notifications shall be provided to the Depositary at that time. This provisional list is for transparency purposes only and is intended to give other Signatories a preliminary indication of the Signatory's intended position. This takes account of the nature of the Convention which will operate to modify existing bilateral or multilateral relationships and the options chosen by the other Contracting Jurisdictions will determine the way in which the existing bilateral or multilateral agreement is modified. Accordingly, provisional indications of intended positions are important to allow an understanding of the likely changes to an existing tax agreement and to facilitate domestic ratification procedures as well as to prepare for the implementation of the modifications made by the Convention. The provisional list of expected notifications under Article 29(4) does not restrict the ability of that Signatory to submit a modified list of notifications upon deposit of the instrument of ratification, acceptance or approval.

#### **Paragraph 5**

303. Paragraph 5 provides that the list of agreements notified under Article 2(1)(a)(ii) may be extended at any time by means of a notification addressed to the Depositary. If the agreement falls within the scope of any of the reservations made by the Party listed in Article 28(8), the Party must specify this in this notification.

304. The Party must also specify any additional notifications that are required under Article 29(1)(b) through (s) to reflect the inclusion of the additional agreements. This would apply if the extension of the list resulted in the inclusion of an agreement containing existing provisions falling within the scope of the notifications required under Articles 3 through 26.

305. In addition, as noted above, if the extension results for the first time in the inclusion of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, the Party shall specify at that time any reservations or notifications that would apply to Covered Tax Agreements entered into by or on behalf of that jurisdiction or territory.

306. Finally, paragraph 5 provides that, on the date on which a newly added agreement becomes a Covered Tax Agreement under the Convention, the provisions on entry into effect in Article 35 will govern the date on which the modifications to the Covered Tax Agreement will have effect.

#### **Paragraph 6**

307. Paragraph 6 allows Parties to make additional notifications pursuant to Article 29(1)(b) through (s) after becoming a Party to the Convention by means of a notification addressed to the Depositary. Subparagraphs a) and b) set out when such additional notifications will take effect. The provision mirrors Article 28(9) relating to the date on which the withdrawal or replacement of a reservation will take effect.

308. With regard to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible and listed by that Party pursuant to Article 2(1)(a)(ii), the references in Article 29(6)(a) and (b) to a Party to the Convention and in Article 29(6)(b) to the entry into force of the Convention for a Contracting Jurisdiction shall be read to refer to the Party which is responsible for the international relations of that jurisdiction or territory.

309. Article 35(7) provides for the possibility for a Party to modify the rule on the entry into effect of the additional notifications in order to allow for the completion of internal procedures for this purpose (see paragraphs 338 to 344 below).

#### **Article 30 – Subsequent Modifications of Covered Tax Agreements**

310. Article 30 provides that the provisions of the Convention are without prejudice to any subsequent modifications to Covered Tax Agreements which may be agreed between the Contracting Jurisdictions to the Covered Tax Agreement. This reflects the fact that the Convention is not intended to freeze in time the underlying agreement and that Contracting Jurisdictions may of course decide to further amend the underlying agreement after it has been modified by the Convention.

#### **Article 31 – Conference of the Parties**

##### **Paragraph 1**

311. Paragraph 1 provides that the Parties may convene a Conference of the Parties for the purposes of taking any decisions or exercising any functions as may be required or appropriate under the provisions of

the Convention. This could include a Conference of the Parties to address questions of interpretation or implementation of the Convention as foreseen in Article 32(2) or to consider a possible amendment to the Convention as foreseen in Article 33(2).

312. The Parties may decide to invite Signatories to participate in a Conference of the Parties. The Conference of the Parties could meet in person, but could also fulfil its functions by meeting remotely, for example by using videoconference or teleconference, by taking decisions through written procedure or by any other means decided upon by the Parties.

#### **Paragraph 2**

313. Paragraph 2 provides that a Conference of the Parties shall be served by the Depositary.

#### **Paragraph 3**

314. Paragraph 3 provides that any Party may request a Conference of the Parties by communicating a request to the Depositary. Thereafter, the Depositary will inform all Parties of such request. If the request is supported by one-third of the Parties within six calendar months of the communication by the Depositary of the request, the Depositary will convene a Conference of the Parties.

### **Article 32 – Interpretation and Implementation**

#### **Paragraph 1**

315. Paragraph 1 clarifies the mechanism for determining questions of the interpretation and implementation of Covered Tax Agreements, as opposed to questions of the interpretation and implementation of the Convention itself. Paragraph 1 provides that any questions as to the interpretation or implementation of the provisions of a Covered Tax Agreement as modified by the Convention shall be determined in accordance with the relevant provision(s) of that Covered Tax Agreement itself (as those provisions may be modified by the Convention). Accordingly, the usual mechanisms foreseen by the Covered Tax Agreement should be used to determine questions of interpretation and implementation of the provisions of the Covered Tax Agreement which have been modified by the Convention. This would include questions as to how the Convention has modified a specific Covered Tax Agreement pursuant to the compatibility clauses and other provisions set out in the Convention. The competent authorities of the Contracting Jurisdictions can therefore agree on the application of the Convention to their Covered Tax Agreements, as long as the agreement reached is consistent with the provisions of the Convention.

#### **Paragraph 2**

316. Paragraph 2 concerns the interpretation and implementation of the Convention itself and provides that such questions may be addressed by a Conference of the Parties convened in accordance with the procedure set out in Article 31(3). The word "may" is used in paragraph 2 since there could be other means by which to address questions of interpretation and implementation of the Convention, such as the competent authorities agreeing between themselves on how the Convention will operate in relation to a particular Covered Tax Agreement.

317. The final clause of the Convention provides the authentic languages of the Convention are English and French. Accordingly, where questions of interpretation arise in relation to Covered Tax Agreements concluded in other languages or in relation to translations of the Convention into other languages, it may be necessary to refer back to the English or French authentic texts of the Convention.

### **Article 33 – Amendment**

#### **Paragraph 1**

318. Paragraph 1 provides that any Party can propose an amendment to the Convention by submitting the proposed amendment to the Depositary.

#### **Paragraph 2**

319. Paragraph 2 provides that a Conference of the Parties may be convened to consider the proposed amendment in accordance with the procedure set out in Article 31(3).

### **Article 34 – Entry into Force**

#### **Paragraph 1**

320. Paragraph 1 provides that the Convention will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval. As of that date, the five Signatories which have deposited their instruments of ratification, acceptance or approval to the Convention will become Parties and be bound by the Convention.

321. In a case where the date of deposit of the fifth instrument of ratification, acceptance or approval takes place on the first day of a month, "the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit" will be four months after the deposit of the instrument or instruments of ratification, acceptance or approval. For example, if the fifth instrument of ratification, acceptance or approval is deposited on 1 March 2018, the Convention will enter into force on 1 July 2018.

#### **Paragraph 2**

322. Paragraph 2 provides that for each Signatory ratifying, accepting or approving the Convention after the deposit of the fifth instrument of ratification, acceptance or approval, the Convention shall enter into force for that State or jurisdiction on the first day of the month following the expiration of a period of three calendar months after the date of the deposit by such State or jurisdiction of its instrument of ratification, acceptance or approval. As of this date, such State or jurisdiction will be bound by the Convention and its Covered Tax Agreements will be modified with effect from the date set out in Article 35.

323. In a case where the date of deposit of the instrument of ratification, acceptance or approval takes place on the first day of a month, the Convention will enter into force for that Signatory four months later as described with respect to Article 34(1).

### **Article 35 – Entry into Effect**

324. Article 35 sets out when the provisions of the Convention shall have effect in each Contracting Jurisdiction with respect to specific taxes which fall within the scope of a Covered Tax Agreement.

#### **Paragraph 1**

325. Article 35 divides modifications into two categories based on the type of taxation to which they apply. These categories are set out in subparagraphs a) and b) respectively.

326. Paragraph 1(a) relates to entry into effect of provisions of the Convention with respect to taxes withheld at source on amounts paid or credited to non-residents. In this category, the first taxes for which the provisions of the Convention will enter into effect are those for which the event giving rise to the tax occurs on or after the first day of the next calendar year that begins on or after the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. For example, if the Convention enters into force for the first Contracting Jurisdiction on 1 March 2018 and for the second Contracting Jurisdiction on 1 March 2019, the Convention will take effect with respect to all taxes which relate to an event occurring from 1 January 2020 onwards.

327. Paragraph 1(b) relates to the entry into effect of provisions of the Convention with respect to all other taxes levied by a Contracting Jurisdiction. In this category, the first taxes for which provisions of the Convention will enter into effect are those which are levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depositary that they intend to apply such shorter period) from the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. For example, where the Contracting Jurisdictions do not agree to apply a shorter period:

2018	2019
1 September	1 March 2019
Latest date of entry into force of the Convention for each of the Contracting Jurisdictions to a Covered Tax Agreement	6 month period Expiration of 6 month period. The provisions of the Convention will have effect with respect to all non-withholding taxes levied in respect of taxable periods beginning on or after this date. In the case of a taxable year that follows the calendar year, the provisions of the Convention would have effect with respect to the taxable period beginning 1 January 2020.

328. With regard to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible and listed by that Party pursuant to Article 2(1)(a)(ii), the references in Article 35(1)(a) and (b) to the entry into force of the Convention for a Contracting Jurisdiction shall be read to refer to the Party which is responsible for the international relations of that jurisdiction or territory.

#### Paragraph 2

329. Paragraph 2 provides that a Party may choose to substitute "taxable period" for "calendar year" for the purposes of its own application of Article 35(1)(a) and (5)(a), and must notify the Depositary accordingly if they do so. This will permit Contracting Jurisdictions to choose to link the entry into effect of provisions related to withholding taxes to the taxable period, to address situations in which the taxable period does not follow the calendar year.

330. In such cases, for the entry into effect of the provisions of the Convention with respect to a specific Covered Tax Agreement, the Party choosing this option shall apply the rule in paragraphs 1(a) and 5(a) with reference to its taxable period but the other Contracting Jurisdiction(s) can apply that rule with reference to the calendar year (if they have not also chosen this option). Accordingly, the use of the word "solely" at the beginning of paragraph 2 is intended to make clear that this choice would apply asymmetrically and would apply only with respect to the application of paragraphs 1(a) and 5(a) by the Contracting Jurisdiction that opted for it.

#### Paragraph 3

331. Paragraph 3 provides that a Party may choose to replace the reference to "taxable periods beginning on or after the expiration of a period" with a reference to "taxable periods beginning on or after 1 January of the next calendar year beginning on or after the expiration of a period" for the purposes of its own application of Article 35(1)(b) and (5)(b), and must notify the Depositary accordingly if it does so. This is to allow Contracting Jurisdictions to ensure that the entry into effect would take place only after the start of a calendar year.

332. In the same manner as paragraph 2, the word "solely" is intended to make clear that this option may lead to asymmetrical entry into effect of the Convention's provisions between Contracting Jurisdictions.

#### Paragraph 4

333. Paragraph 4 provides a specific rule for the entry into effect of Article 16 on Mutual Agreement Procedure. Under this rule, Article 16 will have effect with respect to a Covered Tax Agreement for a case presented to the competent authority of a Contracting Jurisdiction on or after the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement, except for cases that were not eligible to be presented as of that date under the Covered Tax Agreement prior to its modification by the Convention, without regard to the taxable period to which the case relates. Paragraph 4 is intended to ensure that the provisions on Mutual Agreement Procedure apply as soon as possible after the entry into force of the Convention, rather than applying only after expiry of the period set out in paragraph 1, so that the provisions of Article 16 can apply to cases which are presented to the competent authority after the entry into force of the Convention, even if they relate to taxable periods prior to the entry into force of the Convention.

334. The exception for cases which were not eligible to be presented for Mutual Agreement Procedure prior to the entry into force of the Convention is intended to ensure that the Convention would not "revive" cases which had been ineligible for Mutual Agreement Procedure prior to the entry into force of the Convention.

#### Paragraph 5

335. Paragraph 5 provides for the entry into effect in each Contracting Jurisdiction of the Convention's provisions for Covered Tax Agreements which result from an extension pursuant to Article 29(5) of the list of agreements notified under Article 2(1)(a)(ii). The time periods run similarly to those described above with respect to paragraph 1, except that a time period of 30 days is added in subparagraph a), and the time period in subparagraph b) is nine calendar months rather than six, and the time periods in both cases start running as of the date of the communication by the Depositary of the notification of the extension of the list of agreements, rather than from the latest of the dates of the entry into force of the Convention for each of the Contracting Jurisdictions to the Covered Tax Agreement.

336. As noted above, the choices set out in paragraphs 2 and 3 would also apply to the rule on entry into effect set out in paragraph 5(a) and (b), respectively.

#### Paragraph 6

337. Under paragraph 6, a Party may reserve the right for paragraph 4, which relates to the earlier entry into effect of Article 16 on Mutual Agreement Procedure, not to apply with respect to its Covered Tax Agreements. In such case, the entry into effect of Article 16 for a Covered Tax Agreement to which

Party which makes this reservation is a Contracting Jurisdiction will be governed by Article 35(1) through (3).

**Paragraph 7**

338. Paragraph 7 provides that a Party may reserve the right to delay the entry into effect of the provisions of the Convention and thus the modification of Covered Tax Agreements until that Party has completed its internal procedures for this purpose. In such cases, the rule on entry into effect set out in Article 35(1) and (5) would apply as from the date that is 30 days after the Depositary has received a notification from each reserving Party that it has completed its internal procedures with respect to a specific Covered Tax Agreement. If more than one Contracting Jurisdiction to a Covered Tax Agreement makes this reservation, the trigger date for the rule on entry into effect would be 30 days after the Depositary has received a notification from the last reserving Contracting Jurisdiction that it has completed its internal procedures with respect to that Covered Tax Agreement. The same approach would be taken to the entry into effect of the withdrawal or replacement of a reservation pursuant to Article 28(9), any additional notifications pursuant to Article 29(6), or the entry into effect of Part VI pursuant to Article 36.

339. Mechanically, this is achieved by reserving the right to replace:

- i) specific sections of paragraphs 1, 4 and 5 such that the date from which the entry into effect of the Convention is calculated is modified to be the date 30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 that it has completed its internal procedures for the entry into effect of the provisions of the Convention with respect to that specific Covered Tax Agreement;
- ii) specific sections of Article 28(9) on Reservations which deal with the entry into effect of withdrawals or replacements of reservations such that the date from which the entry into effect of such withdrawal or replacement is calculated is modified to be the date 30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 that it has completed its internal procedures for the entry into effect of the withdrawal or replacement of the reservation with respect to that specific Covered Tax Agreement, and
- iii) specific sections of Article 29(6) on Notifications which deal with the entry into effect of additional notifications under that paragraph such that the date from which the entry into effect of such additional notifications is calculated is modified to be the date 30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 that it has completed its internal procedures for the entry into effect of the additional notifications with respect to that specific Covered Tax Agreement.
- iv) specific sections of Article 36(1) through (5) which deal with the Entry into Effect of Part VI such that the date from which the entry into effect of Part VI is calculated is modified to be:
  - a) where a Party chooses to apply Part VI when it initially becomes a Party to the Convention, the date 30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 that it has completed its internal procedures for the entry into effect of the provisions of the Convention with respect to that specific Covered Tax Agreement, and
  - b) where a Party begins applying Part VI to a Covered Tax Agreement only after it becomes a Party to the Convention (because a new Covered Tax Agreement is added due to an extension of the list of agreements of one or both Parties under Article 2(1)(a)(ii), because

of the withdrawal or replacement of a reservation made under Article 26(4) pursuant to Article 28(9), because of the withdrawal of an objection to a reservation made under Article 28(2), or because a Party chooses to apply Part VI for the first time after it becomes a Party), the date 30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 that it has completed its internal procedures for the entry into effect of the provisions of Part VI with respect to that specific Covered Tax Agreement.

340. Such a notification with respect to the entry into effect of the provisions of the Convention, the withdrawal or replacement of a reservation, an additional notification, or the entry into effect of Part VI would be required from a reserving Party with respect to each Covered Tax Agreement.

341. An additional delay of 30 days between such notification and the entry into effect is provided for practical reasons, to avoid the risk that the implementation of provisions could be required without sufficient notice.

342. The intention behind this reservation is to allow Parties which are required to amend their domestic legislation to reflect the exact changes to their tax agreements to do so before the modifications made by the Convention take effect. However, the clear understanding and expectation is that any Party which makes this reservation will complete its internal procedures as expeditiously as possible in order to fulfil its obligations under the Convention and minimise the delay in the entry into effect of the Convention in relation to its Covered Tax Agreements.

343. Subparagraph b) provides that the Party which made the reservation shall notify the confirmation of the completion of its internal procedures simultaneously to the Depositary and the other Contracting Jurisdiction(s) to the Covered Tax Agreement to which the notification relates. This is important in order to provide the other Contracting Jurisdiction(s) with notice as early as possible as to when the timelines for entry into effect will start running with respect to the Covered Tax Agreement. If a Contracting Jurisdiction that has made the reservation under Article 35(7) does not have internal procedures to complete with respect to a particular change of reservations or notifications, it is expected that that Contracting Jurisdiction would immediately inform the Depositary and the other Contracting Jurisdiction that its domestic procedures are completed for the purposes of this paragraph.

344. Subparagraph c) provides that Article 35(7) shall apply symmetrically as between all Contracting Jurisdictions to a Covered Tax Agreement. It states that where one or more Contracting Jurisdictions to a Covered Tax Agreement makes a reservation under paragraph 7, the date of entry into effect of the provisions of the Convention, of the withdrawal or replacement of a reservation pursuant to Article 28(9), of an additional notification pursuant to Article 29(6) with respect to that Covered Tax Agreement, or of the entry into effect of Part VI pursuant to Article 36, shall be governed by Article 35(7) for all Contracting Jurisdictions to the Covered Tax Agreement. As such, if any Contracting Jurisdiction to a Covered Tax Agreement makes the reservation set out in paragraph 7, the modified timelines for entry into effect will apply to all Contracting Jurisdictions to the Covered Tax Agreement.

**Article 36 – Entry into Effect of Part VI**

**Paragraph 1**

345. Paragraph 1 provides that notwithstanding the provisions of Article 28(9) (addressing the withdrawal of a reservation), Article 29(6) (addressing additional notifications), and Article 35 (other than paragraph 7) (addressing the entry into effect of the Convention), Article 36 shall govern the entry into effect of the provisions of Part VI of the Convention.

346. Subparagraph a) provides that Part VI will have effect with respect to cases presented to the competent authority of a Contracting Jurisdiction on or after the later of the dates on which the Convention enters into force for each of the Contracting Jurisdictions.

347. Subparagraph b) provides that Part VI will have effect with respect to cases presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which the Convention enters into force for each of the Contracting Jurisdictions, on the date on which both Contracting Jurisdictions have notified the Depositary that they have reached mutual agreement on the application of Part VI pursuant to Article 19(10), along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting Jurisdiction according to the terms of that mutual agreement. For this purpose, the date on which both Contracting Jurisdictions have notified the Depositary that they have reached mutual agreement on the application of Part VI pursuant to Article 19(10) is the date on which the Depositary has received the notification from the second Contracting Jurisdiction. With respect to the date on which such cases shall be considered to have been presented, the competent authorities of the Contracting Jurisdictions can agree on a date which applies to all cases or a specific date for each individual case. Communication to the Depositary of dates with respect to individual cases, however, may require an anonymisation process in order to avoid breaching confidentiality of taxpayer information. Alternatively, a Contracting Jurisdiction may communicate the specific dates to the taxpayers directly, and simply notify the Depositary of the fact that an agreement on dates with respect to individual cases has been reached, without providing details on those individual cases. Subparagraph b) is intended to allow competent authorities to delay the eligibility of existing cases until they have agreed the mode of application of Part VI, and to spread out the dates on which such cases become eligible for arbitration, so all existing cases do not become eligible for arbitration on the same day.

#### **Paragraph 2**

348. Paragraph 2 provides that Parties may reserve the right for Part VI to apply to a case presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which the Convention enters into force for each of the Contracting Jurisdictions only to the extent that the competent authorities of both Contracting Jurisdictions agree that it will apply to that specific case. Where a Party has made this reservation, its existing stock of mutual agreement procedure cases would not be covered unless the competent authorities both agree that a particular existing case may be submitted to arbitration. Among other things, this is intended to address concerns that resource constraints may make it challenging for Contracting Jurisdictions with a large backlog of cases to apply Part VI effectively to those cases, despite the ability under paragraph 1(b) to defer eligibility for arbitration.

349. With regard to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible and listed by that Party pursuant to Article 2(1)(a)(ii), the references in Article 36(1)(a) and (b) and Article 36(2) to the entry into force of the Convention for a Contracting Jurisdiction shall be read to refer to the Party which is responsible for the international relations of that jurisdiction or territory.

#### **Paragraphs 3 through 5**

350. Paragraphs 3 through 5 address the entry into effect of Part VI in the case in which a Party begins applying Part VI to a Covered Tax Agreement only after it becomes a Party to the Convention. This can arise because a new Covered Tax Agreement is added due to an extension by either Contracting Jurisdiction of the list of agreements notified under Article 2(1)(a)(ii). It can also arise because of the withdrawal of a reservation under Article 26(4) not to apply Part VI with respect to a specific Covered Tax Agreement, or the replacement of such a reservation with one that is more limited in scope (e.g. by

replacing a reservation with respect to all Covered Tax Agreements with one that applies only to particular Covered Tax Agreement). In addition, it can arise where a Party that previously objected to a reservation formulated under Article 28(2) withdraws that objection. Finally, it can arise because a Party changes its policy regarding arbitration and chooses to apply Part VI to its Covered Tax Agreements for the first time after it becomes a Party. In all such cases, the date of entry into effect is based on the date of communication by the Depositary of the relevant notification, withdrawal or replacement of reservation, or withdrawal of objection, rather than the date of entry into force of the Convention.

#### **Article 37 - Withdrawal**

##### **Paragraph 1**

351. Paragraph 1 provides that any Party may withdraw from the Convention at any time by means of a notification addressed to the Depositary.

##### **Paragraph 2**

352. Paragraph 2 provides that withdrawal will be effective as of the date on which the Depositary receives the notification.

353. Paragraph 2 also provides that in cases where the Convention has entered into force with respect to all Contracting Jurisdictions to a Covered Tax Agreement before the date on which a Party's withdrawal becomes effective, that Covered Tax Agreement shall remain as modified by the Convention. Accordingly, the effects of withdrawal are forward-looking only. That is, where the Convention has already modified a Covered Tax Agreement (and regardless of whether those modifications have come into effect pursuant to Article 35), a unilateral decision to withdraw from the Convention would not reverse the modifications already made to that Covered Tax Agreement. Instead, any further change to the Covered Tax Agreement following withdrawal from the Convention would be at the discretion of the Contracting Jurisdictions. This approach replicates the approach taken in amending protocols to bilateral tax treaties in which the bilaterally agreed amendments cannot be unilaterally reversed by means of withdrawal from the protocol.

354. Withdrawal would ensure that the Convention would not modify any tax agreements with States and jurisdictions that join the Convention after the date of withdrawal since they would not fall within the definition of "Covered Tax Agreements".

355. With regard to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible and listed by that Party pursuant to Article 2(1)(a)(ii), the reference in Article 37(2) to the entry into force of the Convention for a Contracting Jurisdiction shall be read to refer to the Party which is responsible for the international relations of that jurisdiction or territory.

#### **Article 38 - Relation with Protocols**

356. Article 38 provides that the Convention may be supplemented with one or more protocols, that to become a party to a protocol, a State or jurisdiction must be a Party to the Convention, and that a Party to the Convention would not be bound by any protocol unless it becomes a party to the protocol in accordance with its provisions.

**Article 39 – Depositary**

**Paragraph 1**

357 Paragraph 1 provides that the Secretary-General of the Organisation for Economic Co-operation and Development is the Depositary of the Convention and any protocols pursuant to Article 38.

**Paragraph 2**

358 Paragraph 2 sets out a non-exhaustive list of the acts, notifications or communications in relation to the Convention of which the Depositary will notify all Parties and Signatories. The Depositary must notify the Parties and Signatories within one calendar month of the act, notification or communication.

**Paragraph 3**

359 Paragraph 3 provides that the Depositary shall maintain publicly available lists of Covered Tax Agreements, reservations made by Parties, and notifications made by Parties.

**ANNEX**

**ACTION REPORTS CONTAINING TAX TREATY-RELATED BEPS MEASURES  
ADDRESSED BY PROVISIONS OF THE CONVENTION**

The following are the Action Reports that contain the substance of the tax treaty-related BEPS measures agreed as part of the Final BEPS Package. Each measure is addressed in Articles 3 through 26 of the Convention.

**1. Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 - 2015 Final Report  
(Published on 5 October 2015)**

Tax Treaty-Related BEPS Measure	Related Article of the Convention
Dual-resident entities (page 137)	Article 4
Treaty provision on transparent entities (page 139)	Article 3
Exemption method (page 146), and Credit method (page 147)	Article 5

**2. Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report (Published on 5 October 2015)**

Tax Treaty-Related BEPS Measure	Related Article of the Convention
Limitation-on-benefits rule (page 20)	Article 7 (paragraphs 8 through 13)
Rules aimed at arrangements one of the principal purposes of which is to obtain treaty benefits (page 54)	Article 7 (paragraphs 1 and 4)
Dividend transfer transactions (page 70)	Article 8
Transactions that circumvent the application of Article 13(4) (page 71)	Article 9
Tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals (page 72)	Article 4
Anti-abuse rule for permanent establishments situated in third States (page 75)	Article 10
Application of tax treaties to restrict a Contracting State's right to tax its own residents (page 86)	Article 11
Clarification that tax treaties are not intended to be used to generate double non-taxation (page 91)	Preamble and Article 6

3. *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report (Published on 5 October 2015)*

Tax Treaty-Related BEPS Measure	Related Article of the Convention
Artificial avoidance of PE status through <i>commissionnaire</i> arrangements and similar strategies (page 15)	Articles 12 and 15
Artificial avoidance of PE status through the specific activity exemptions (page 28)	Article 13
Splitting-up of contracts (page 42)	Article 14

4. *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report (Published on 5 October 2015)*

Tax Treaty-Related BEPS Measure	Related Article of the Convention
Elements of a minimum standard to ensure the timely, effective and efficient resolution of treaty-related disputes (page 13), and best practices (page 28)	Articles 16 and 17
Commitment to mandatory binding MAP arbitration (page 41)	Articles 18 through 26

LIETUVOS RESPUBLIKOS

ĮSTATYMAS

DĖL DAUGIAŠALĖS KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ  
SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ  
BAZĖS EROZIJAI IR PELNO PERKĖLIMUI RATIFIKAVIMO

2017 m.

d. Nr.

Vilnius

**1 straipsnis. Konvencijos ratifikavimas**

Lietuvos Respublikos Seimas, vadovaudamasis Lietuvos Respublikos Konstitucijos 67 straipsnio 16 punktu ir 138 straipsnio pirmosios dalies 6 punktu bei atsižvelgdamas į Respublikos Prezidento 2017 m. d. dekretą Nr. , ratifikuoja su išlygomis ir pareiškimais 2017 m. birželio 7 d. Paryžiuje pasirašytą Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui (toliau – Konvencija).

**2 straipsnis. Lietuvos Respublikos išlygos ir pareiškimai**

Vadovaudamasis Konvencijos 28 straipsnio 7 dalimi ir Konvencijos 29 straipsnio 4 dalimi, Lietuvos Respublikos Seimas pareiškia, kad Lietuvos Respublika taikys išlygas ir teiks pareiškimus (Konvencijoje nustatyta pranešimų forma), išdėstytus šio įstatymo priede.

*Skelbiu šį Lietuvos Respublikos Seimo priimtą įstatymą.*

Respublikos Prezidentas

FM Teisės departamento  
direktorius

Evaldas Kašėta  
2018-11-20

Kalbos raiškos  
2018-12-20

Finansų ministras  
Vilijus Šapoka  
2018-12-28

2018-12-21

Lietuvos Respublikos  
įstatymo dėl Daugiašalės  
konvencijos, kuria  
įgyvendinamos su mokesčių  
sutartimis susijusios  
priemonės, skirtos užkirsti  
kelį mokesčių bazės erozijai  
ir pelno perkėlimui,  
ratifikavimo  
priedas

## LIETUVOS RESPUBLIKOS IŠLYGOS IR PRANEŠIMAI

### 2 Konvencijos straipsnis.

#### Sąvokų aiškinimas

#### *Pranešimas. Sutartys, kurioms taikoma Konvencija*

Remdamasi Konvencijos 2 straipsnio 1 dalies a punkto ii papunkčiu, Lietuvos Respublika taikys Konvenciją šioms sutartims:

Nr.	Pavadinimas	Kita Susitariančioji Jurisdikcija	Pradinis / Pakeitimo dokumentas	Pasirašymo data	Isigaliojimo data
1	Lietuvos Respublikos ir Armėnijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Armėnija	Pradinis	2000-03-13	2001-02-26
2	Lietuvos Respublikos ir Austrijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo	Austrija	Pradinis	2005-04-06	2005-11-17
3	Lietuvos Respublikos Vyriausybės ir Azerbaidžano Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Azerbaidžanas	Pradinis	2004-04-02	2004-11-13
4	Lietuvos Respublikos Vyriausybės ir Baltarusijos Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Baltarusija	Pradinis	1995-07-18	1996-06-26
5	Lietuvos Respublikos Vyriausybės ir Belgijos Karalystės Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Belgija	Pradinis	1998-11-26	2003-05-05

6	Lietuvos Respublikos ir Bulgarijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Bulgarija	Pradinis	2006-05-09	2006-12-27
7	Lietuvos Respublikos Vyriausybės ir Kanados Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Kanada	Pradinis	1996-08-29	1997-12-12
8	Lietuvos Respublikos Vyriausybės ir Kinijos Liaudies Respublikos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Kinija	Pradinis	1996-06-03	1996-10-18
9	Lietuvos Respublikos Vyriausybės ir Kroatijos Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Kroatija	Pradinis	2000-05-04	2001-03-30
10	Lietuvos Respublikos ir Čekijos Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Čekijos Respublika	Pradinis	1994-10-27	1995-08-08
11	Lietuvos Respublikos Vyriausybės ir Kipro Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Kipras	Pradinis	2013-06-21	2014-04-17
12	Lietuvos Respublikos ir Danijos Karalystės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Danija	Pradinis	1993-10-13	1993-12-30
13	Lietuvos Respublikos ir Estijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Estija	Pradinis	2004-10-21	2006-02-08
14	Lietuvos Respublikos ir Suomijos Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Suomija	Pradinis	1993-04-30	1993-12-30
15	Lietuvos Respublikos Vyriausybės ir Prancūzijos Respublikos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Prancūzija	Pradinis	1997-07-07	2001-05-01
16	Lietuvos Respublikos ir Gruzijos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Gruzija	Pradinis	2003-09-11	2004-07-20
17	Lietuvos Respublikos ir Vokietijos Federacinės Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo išvengimo	Vokietija	Pradinis	1997-07-22	1998-11-11

18	Lietuvos Respublikos Vyriausybės ir Graikijos Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Graikija	Pradinis	2002-05-15	2005-12-05
19	Lietuvos Respublikos ir Vengrijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Vengrija	Pradinis	2004-05-12	2004-12-22
20	Lietuvos Respublikos ir Islandijos Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Islandija	Pradinis	1998-06-13	1999-06-17
21	Lietuvos Respublikos Vyriausybės ir Indijos Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Indija	Pradinis	2011-07-26	2012-07-10
22	Lietuvos Respublikos Vyriausybės ir Airijos Vyriausybės sutartis dėl pajamų ir kapitalo prieaugio pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Airija	Pradinis	1997-11-18	1998-06-05
23	Lietuvos Respublikos Vyriausybės ir Izraelio Valstybės Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Izraelis	Pradinis	2006-05-11	2006-12-01
24	Lietuvos Respublikos Vyriausybės ir Italijos Respublikos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Italija	Pradinis	1996-04-04	1999-06-03
25	Lietuvos Respublikos ir Kazachstano Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Kazachstanas	Pradinis	1997-03-07	1997-12-11
26	Lietuvos Respublikos Vyriausybės ir Korėjos Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Korėja	Pradinis	2006-04-20	2007-07-14
27	Lietuvos Respublikos Vyriausybės ir Kuveito Valstybės Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Kuveitas	Pradinis	2013-04-18	-
28	Lietuvos Respublikos ir Kirgizijos Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Kirgizija	Pradinis	2008-05-15	2013-06-20
29	Lietuvos Respublikos ir Latvijos Respublikos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Latvija	Pradinis	1993-12-17	1994-12-30

30	Lietuvos Respublikos Vyriausybės ir Liuksemburgo Didžiosios Hercogystės Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Liuksemburgas	Pradinis	2004-11-22	2006-04-14
			Pakeitimo dokumentas	2014-06-20	2015-12-11
31	Lietuvos Respublikos Vyriausybės ir Makedonijos Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Makedonija	Pradinis	2007-08-29	2008-08-27
32	Lietuvos Respublikos Vyriausybės ir Maltos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir pajamų mokesčių slėpimo prevencijos	Malta	Pradinis	2001-05-17	2004-02-02
33	Lietuvos Respublikos Vyriausybės ir Meksikos Jungtinių Valstijų Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Meksika	Pradinis	2012-02-23	2012-11-29
34	Lietuvos Respublikos Vyriausybės ir Moldovos Respublikos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Moldova	Pradinis	1998-02-18	1998-09-07
35	Lietuvos Respublikos Vyriausybės ir Maroko Karalystės Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Marokas	Pradinis	2013-04-19	-
36	Lietuvos Respublikos ir Nyderlandų Karalystės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Nyderlandai	Pradinis	1999-06-16	2000-08-31
37	Lietuvos Respublikos ir Norvegijos Karalystės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Norvegija	Pradinis	1993-04-27	1993-12-30
38	Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Lenkija	Pradinis	1994-01-20	1994-07-19
39	Lietuvos Respublikos ir Portugalijos Respublikos sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir pajamų mokesčių slėpimo prevencijos	Portugalija	Pradinis	2002-02-14	2003-02-26
40	Lietuvos Respublikos ir Rumunijos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir pajamų bei kapitalo mokesčių slėpimo prevencijos	Rumunija	Pradinis	2001-11-26	2002-07-15

41	Lietuvos Respublikos Vyriausybės ir Rusijos Federacijos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Rusija	Pradinis	1999-06-29	2005-05-05
42	Lietuvos Respublikos Vyriausybės ir Serbijos Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo	Serbija	Pradinis	2007-08-28	2009-06-12
43	Lietuvos Respublikos Vyriausybės ir Singapūro Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Singapūras	Pradinis	2003-11-18	2004-06-28
44	Lietuvos Respublikos ir Slovakijos Respublikos sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Slovakija	Pradinis	2001-03-15	2002-12-16
45	Lietuvos Respublikos Vyriausybės ir Slovėnijos Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Slovėnija	Pradinis	2000-05-23	2002-02-01
46	Lietuvos Respublikos ir Ispanijos Karalystės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Ispanija	Pradinis	2003-07-22	2003-12-26
47	Lietuvos Respublikos ir Švedijos Karalystės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Švedija	Pradinis	1993-09-27	1993-12-30
48	Lietuvos Respublikos Vyriausybės ir Šveicarijos Federalinės Tarybos sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo išvengimo	Šveicarija	Pradinis	2002-05-27	2002-12-18
49	Lietuvos Respublikos Vyriausybės ir Turkijos Respublikos Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Turkija	Pradinis	1998-11-24	2000-05-17
50	Lietuvos Respublikos Vyriausybės ir Turkmėnistanos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Turkmėnistanas	Pradinis	2013-06-18	2014-12-10
51	Lietuvos Respublikos Vyriausybės ir Ukrainos Vyriausybės sutartis dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Ukraina	Pradinis	1996-09-23	1997-12-25
52	Lietuvos Respublikos Vyriausybės ir Jungtinių Arabų Emyratų Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Jungtiniai Arabų Emyratai	Pradinis	2013-06-30	2014-12-19

53	Lietuvos Respublikos Vyriausybės ir Didžiosios Britanijos ir Šiaurės Airijos Jungtinės Karalystės Vyriausybės sutartis dėl pajamų bei kapitalo prieaugio pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Jungtinė Karalystė	Pradinis	2001-03-19	2002-02-04
			Pakeitimo dokumentas	2002-05-21	2002-11-28
54	Lietuvos Respublikos Vyriausybės ir Jungtinių Amerikos Valstijų Vyriausybės sutartis dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo	Jungtinės Valstijos	Pradinis	1998-01-15	1999-12-30
55	Lietuvos Respublikos Vyriausybės ir Uzbekistano Respublikos Vyriausybės sutartis dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos	Uzbekistanas	Pradinis	2002-02-18	2002-11-11

### 3 Konvencijos straipsnis.

#### Skaidrūs subjektai

##### *Išlyga*

Remdamasi Konvencijos 3 straipsnio 5 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 3 straipsnio savo Sutartims, kurioms taikoma Konvencija.

### 4 Konvencijos straipsnis.

#### Dvigubo rezidavimo subjektai

##### *Išlyga*

Remdamasi Konvencijos 4 straipsnio 3 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 4 straipsnio savo Sutartims, kurioms taikoma Konvencija.

### 6 Konvencijos straipsnis.

#### Sutarties, kuriai taikoma Konvencija, tikslas

##### *Pranešimas apie dabartinę konstatuojamosios dalies tekstą nurodytose sutartyse*

Remdamasi Konvencijos 6 straipsnio 5 dalimi, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis, kurioms netaikoma išlyga pagal 6 straipsnio 4 dalį, yra įtrauktas 6 straipsnio 2 dalyje nurodytas konstatuojamosios dalies tekstas. Atitinkamos konstatuojamosios dalies pastraipos tekstas pateikiamas toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Konstatuojamosios dalies tekstas
1	Armėnija	„siekdamos skatinti ir stiprinti abiejų Susitariančiųjų Valstybių ekonominius, mokslinius, techninius bei kultūrinius ryšius ir norėdamos išvengti pajamų bei kapitalo dvigubo apmokestinimo, taip pat užkirsti kelią mokesčių slėpimui bei panaikinti mokesčių diskriminaciją, nusprendė sudaryti šią Sutartį“
2	Austrija	„siekdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo,“
3	Azerbaidžanas	„Siekdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
4	Baltarusija	„Siekdamos sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
5	Belgija	„Siekdamos sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
6	Bulgarija	„Siekdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos ir taip skatinti bei stiprinti ekonominius abiejų valstybių ryšius,“
7	Kanada	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
8	Kinija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
9	Kroatija	„Siekdamos sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
10	Čekijos Respublika	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
11	Kipras	„Siekdamos sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
12	Danija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
13	Estija	„siekdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
14	Suomija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
15	Prancūzija	„siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
16	Gruzija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
18	Graikija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
19	Vengrija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
20	Islandija	„Siekdamos sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
21	Indija	„norėdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos ir siekdamos skatinti ekonominę dviejų Susitariančiųjų Valstybių bendradarbiavimą,“
22	Airija	„siekdamos sudaryti Sutartį dėl pajamų ir kapitalo prieaugio pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
23	Izraelis	„SIEKDAMOS sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
24	Italija	„Siekdamos sudaryti Sutartį pajamų ir kapitalo dvigubam apmokestinimui ir fiskaliniams pažeidimams išvengti,“

25	Kazachstanas	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
26	Korėja	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
27	Kuveitas	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
28	Kirgizija	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
29	Latvija	„siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
30	Liuksemburgas	„Siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
31	Makedonija	„siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
32	Malta	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
33	Meksika	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
34	Moldova	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
35	Marokas	„norėdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
36	Nyderlandai	„norėdamas sudaryti sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
37	Norvegija	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
38	Lenkija	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
39	Portugalija	„siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir pajamų mokesčių slėpimo prevencijos,“
40	Rumunija	„siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir pajamų bei kapitalo mokesčių slėpimo prevencijos ir taip paskatinti ir sutvirtinti ekonominius ryšius,“
41	Rusija	„norėdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo ir siekdamas stiprinti abiejų valstybių ekonominį bendradarbiavimą,“
42	Serbija	„Siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo,“
43	Singapūras	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
44	Slovakija	„siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
45	Slovėnija	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
46	Ispanija	„siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
47	Švedija	„siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
48	Šveicarija	„Siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo,“
49	Turkija	„Siekdamas sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
50	Turkmėnistanas	„siekdamas sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
51	Ukraina	„Siekdamas sudaryti Sutartį dėl pajamų ir kapitalo dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo ir patvirtindamos savo siekius plėtoti ir gilinti abipusius ekonominius

		ryšius,“
52	Jungtiniai Arabų Emyratai	„Norėdamos skatinti savitarpio ekonominius ryšius ir siekdamos sudaryti tarpusavio Sutartį dėl pajamų dvigubo apmokestinimo ir fiskalinių pažeidimų išvengimo,“
53	Jungtinė Karalystė	„Siekdamos sudaryti Sutartį dėl pajamų bei kapitalo prieaugio pajamų dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos,“
54	Jungtinės Valstijos	„siekdamos sudaryti Sutartį dėl pajamų dvigubo apmokestinimo išvengimo ir pajamų mokesčių slėpimo prevencijos,“
55	Uzbekistanas	„Siekdamos sudaryti Sutartį dėl pajamų bei kapitalo dvigubo apmokestinimo išvengimo ir mokesčių slėpimo prevencijos, ir skatinti ekonominį šalių bendradarbiavimą,“

## 7 Konvencijos straipsnis.

### Piktnaudžiavimo sutartimi prevencija

#### *Pranešimas apie neprivalomų nuostatų pasirinkimą*

Remdamasi Konvencijos 7 straipsnio 17 dalies b punktu, Lietuvos Respublika taikys 7 straipsnio 4 dalį.

#### *Pranešimas apie dabartines nurodytų sutarčių nuostatas*

Remdamasi Konvencijos 7 straipsnio 17 dalies a punktu, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis, kurioms netaikoma išlyga pagal 7 straipsnio 15 dalies b punktą, yra įtraukta 7 straipsnio 2 dalyje nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
5	Belgija	29 straipsnis
7	Kanada	28 straipsnio 3 dalis
13	Estija	30 straipsnis
21	Indija	30 straipsnio 1 dalis
24	Italija	30 straipsnio 1 dalis
25	Kazachstanas	28 straipsnis
29	Latvija	30 straipsnis
31	Makedonija	28 straipsnis
32	Malta	27 straipsnio 3 dalis
33	Meksika	23 straipsnis
36	Nyderlandai	10 straipsnio 8 dalis
41	Rusija	28 straipsnis
43	Singapūras	22 straipsnio 3 dalis, 4 dalis
51	Ukraina	25 straipsnis
52	Jungtiniai Arabų Emyratai	30 straipsnis
53	Jungtinė Karalystė	10 straipsnio 6 dalis, 11 straipsnio 8 dalis, 12 straipsnio 7 dalis, 22 straipsnio 4 dalis, 25 straipsnio 2 dalis
55	Uzbekistanas	28 straipsnis

**8 Konvencijos straipsnis.  
Dividendų pervedimo sandoriai**

***Išlyga***

Remdamasi Konvencijos 8 straipsnio 3 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 8 straipsnio savo Sutartims, kurioms taikoma Konvencija.

**9 Konvencijos straipsnis.**

**Kapitalo prieaugio pajamos, gaunamos perleidus subjektą, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus**

***Išlyga***

Remdamasi Konvencijos 9 straipsnio 6 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti 9 straipsnio 1 dalies savo Sutartims, kurioms taikoma Konvencija.

**10 Konvencijos straipsnis.**

**Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms**

***Išlyga***

Remdamasi Konvencijos 10 straipsnio 5 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 10 straipsnio savo Sutartims, kurioms taikoma Konvencija.

**11 Konvencijos straipsnis.**

**Mokesčių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus**

***Išlyga***

Remdamasi Konvencijos 11 straipsnio 3 dalies a punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 11 straipsnio savo Sutartims, kurioms taikoma Konvencija.

**12 Konvencijos straipsnis.**

**Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis**

***Pranešimas apie dabartines nurodytų sutarčių nuostatas***

Remdamasi Konvencijos 12 straipsnio 5 dalimi, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta 12 straipsnio 3 dalies a punkte nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	5 straipsnio 5 dalis
2	Austrija	5 straipsnio 5 dalis
3	Azerbaidžanas	5 straipsnio 5 dalis
4	Baltarusija	5 straipsnio 5 dalis
5	Belgija	5 straipsnio 5 dalis

6	Bulgarija	5 straipsnio 5 dalis
7	Kanada	5 straipsnio 5 dalis
8	Kinija	5 straipsnio 5 dalis
9	Kroatija	5 straipsnio 5 dalis
10	Čekijos Respublika	5 straipsnio 5 dalis
11	Kipras	5 straipsnio 5 dalis
12	Danija	5 straipsnio 5 dalis
13	Estija	5 straipsnio 5 dalis
14	Suomija	5 straipsnio 5 dalis
15	Prancūzija	5 straipsnio 5 dalis
16	Gruzija	5 straipsnio 5 dalis
17	Vokietija	5 straipsnio 5 dalis
18	Graikija	5 straipsnio 5 dalis
19	Vengrija	5 straipsnio 5 dalis
20	Islandija	5 straipsnio 5 dalis
21	Indija	5 straipsnio 5 dalies a punktas
22	Airija	5 straipsnio 5 dalis
23	Izraelis	5 straipsnio 5 dalis
24	Italija	5 straipsnio 4 dalis
25	Kazachstanas	5 straipsnio 5 dalis
26	Korėja	5 straipsnio 5 dalis
27	Kuveitas	5 straipsnio 5 dalis
28	Kirgizija	5 straipsnio 5 dalis
29	Latvija	5 straipsnio 5 dalis
30	Liuksemburgas	5 straipsnio 5 dalis
31	Makedonija	5 straipsnio 5 dalis
32	Malta	5 straipsnio 5 dalis
33	Meksika	5 straipsnio 5 dalis
34	Moldova	5 straipsnio 5 dalis
35	Marokas	5 straipsnio 5 dalis
36	Nyderlandai	5 straipsnio 5 dalis
37	Norvegija	5 straipsnio 5 dalis
38	Lenkija	5 straipsnio 5 dalis
39	Portugalija	5 straipsnio 5 dalis
40	Rumunija	5 straipsnio 6 dalis
41	Rusija	5 straipsnio 5 dalis
42	Serbija	5 straipsnio 5 dalis
43	Singapūras	5 straipsnio 5 dalis
44	Slovakija	5 straipsnio 5 dalis
45	Slovėnija	5 straipsnio 5 dalis
46	Ispanija	5 straipsnio 5 dalis
47	Švedija	5 straipsnio 5 dalis
48	Šveicarija	5 straipsnio 5 dalis
49	Turkija	5 straipsnio 5 dalis
50	Turkmėnistanas	5 straipsnio 5 dalis
51	Ukraina	5 straipsnio 5 dalis
52	Jungtiniai Arabų Emyratai	5 straipsnio 6 dalis
53	Jungtinė Karalystė	5 straipsnio 5 dalis
54	Jungtinės Valstijos	5 straipsnio 5 dalis
55	Uzbekistanas	5 straipsnio 5 dalis

Remdamasi Konvencijos 12 straipsnio 6 dalimi, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta 12 straipsnio 3 dalies b punkte nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	5 straipsnio 6 dalis
2	Austrija	5 straipsnio 6 dalis
3	Azerbaidžanas	5 straipsnio 6 dalis
4	Baltarusija	5 straipsnio 6 dalis
5	Belgija	5 straipsnio 6 dalis
6	Bulgarija	5 straipsnio 6 dalis
7	Kanada	5 straipsnio 6 dalis
8	Kinija	5 straipsnio 6 dalis
9	Kroatija	5 straipsnio 6 dalis
10	Čekijos Respublika	5 straipsnio 6 dalis
11	Kipras	5 straipsnio 6 dalis
12	Danija	5 straipsnio 6 dalis
13	Estija	5 straipsnio 6 dalis
14	Suomija	5 straipsnio 6 dalis
15	Prancūzija	5 straipsnio 6 dalis
16	Gruzija	5 straipsnio 6 dalis
17	Vokietija	5 straipsnio 6 dalis
18	Graikija	5 straipsnio 6 dalis
19	Vengrija	5 straipsnio 6 dalis
20	Islandija	5 straipsnio 6 dalis
21	Indija	5 straipsnio 6 dalis
22	Airija	5 straipsnio 6 dalis
23	Izraelis	5 straipsnio 6 dalis
24	Italija	5 straipsnio 5 dalis
25	Kazachstanas	5 straipsnio 6 dalis
26	Korėja	5 straipsnio 6 dalis
27	Kuveitas	5 straipsnio 6 dalis
28	Kirgizija	5 straipsnio 6 dalis
29	Latvija	5 straipsnio 6 dalis
30	Liuksemburgas	5 straipsnio 6 dalis
31	Makedonija	5 straipsnio 6 dalis
32	Malta	5 straipsnio 6 dalis
33	Meksika	5 straipsnio 6 dalis
34	Moldova	5 straipsnio 6 dalis
35	Marokas	5 straipsnio 6 dalis
36	Nyderlandai	5 straipsnio 6 dalis
37	Norvegija	5 straipsnio 6 dalis
38	Lenkija	5 straipsnio 6 dalis
39	Portugalija	5 straipsnio 6 dalis
40	Rumunija	5 straipsnio 7 dalis
41	Rusija	5 straipsnio 6 dalis
42	Serbija	5 straipsnio 6 dalis
43	Singapūras	5 straipsnio 6 dalis
44	Slovakija	5 straipsnio 6 dalis
45	Slovėnija	5 straipsnio 6 dalis
46	Ispanija	5 straipsnio 6 dalis
47	Švedija	5 straipsnio 6 dalis
48	Šveicarija	5 straipsnio 6 dalis
49	Turkija	5 straipsnio 6 dalis
50	Turkmėnistanas	5 straipsnio 6 dalis
51	Ukraina	5 straipsnio 6 dalis
52	Jungtiniai Arabų Emyratai	5 straipsnio 7 dalis
53	Jungtinė Karalystė	5 straipsnio 6 dalis
54	Jungtinės Valstijos	5 straipsnio 6 dalis
55	Uzbekistanas	5 straipsnio 6 dalis

### 13 Konvencijos straipsnis.

Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis

#### *Pranešimas apie neprivalomų nuostatų pasirinkimą*

Remdamasi Konvencijos 13 straipsnio 7 dalimi, Lietuvos Respublika taikys B variantą pagal 13 straipsnio 1 dalį.

#### *Pranešimas apie dabartines nurodytų sutarčių nuostatas*

Remdamasi Konvencijos 13 straipsnio 7 dalimi, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta 13 straipsnio 5 dalies a punkte nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	5 straipsnio 4 dalis
2	Austrija	5 straipsnio 4 dalis
3	Azerbaidžanas	5 straipsnio 4 dalis
4	Baltarusija	5 straipsnio 4 dalis
5	Belgija	5 straipsnio 4 dalis
6	Bulgarija	5 straipsnio 4 dalis
7	Kanada	5 straipsnio 4 dalis
8	Kinija	5 straipsnio 4 dalis
9	Kroatija	5 straipsnio 4 dalis
10	Čekijos Respublika	5 straipsnio 4 dalis
11	Kipras	5 straipsnio 4 dalis
12	Danija	5 straipsnio 4 dalis
13	Estija	5 straipsnio 4 dalis
14	Suomija	5 straipsnio 4 dalis
15	Prancūzija	5 straipsnio 4 dalis
16	Gruzija	5 straipsnio 4 dalis
17	Vokietija	5 straipsnio 4 dalis
18	Graikija	5 straipsnio 4 dalis
19	Vengrija	5 straipsnio 4 dalis
20	Islandija	5 straipsnio 4 dalis
21	Indija	5 straipsnio 4 dalis
22	Airija	5 straipsnio 4 dalis
23	Izraelis	5 straipsnio 4 dalis
24	Italija	5 straipsnio 3 dalis
25	Kazachstanas	5 straipsnio 4 dalis
26	Korėja	5 straipsnio 4 dalis
27	Kuveitas	5 straipsnio 4 dalis
28	Kirgizija	5 straipsnio 4 dalis
29	Latvija	5 straipsnio 4 dalis
30	Liuksemburgas	5 straipsnio 4 dalis
31	Makedonija	5 straipsnio 4 dalis
32	Malta	5 straipsnio 4 dalis
33	Meksika	5 straipsnio 4 dalis
34	Moldova	5 straipsnio 4 dalis
35	Marokas	5 straipsnio 4 dalis
36	Nyderlandai	5 straipsnio 4 dalis
37	Norvegija	5 straipsnio 4 dalis

38	Lenkija	5 straipsnio 4 dalis
39	Portugalija	5 straipsnio 4 dalis
40	Rumunija	5 straipsnio 4 dalis
41	Rusija	5 straipsnio 4 dalis
42	Serbija	5 straipsnio 4 dalis
43	Singapūras	5 straipsnio 4 dalis
44	Slovakija	5 straipsnio 4 dalis
45	Slovėnija	5 straipsnio 4 dalis
46	Ispanija	5 straipsnio 4 dalis
47	Švedija	5 straipsnio 4 dalis
48	Šveicarija	5 straipsnio 4 dalis
49	Turkija	5 straipsnio 4 dalis
50	Turkmėnistanas	5 straipsnio 4 dalis
51	Ukraina	5 straipsnio 4 dalis
52	Jungtiniai Arabų Emyratai	5 straipsnio 5 dalis
53	Jungtinė Karalystė	5 straipsnio 4 dalis
54	Jungtinės Valstijos	5 straipsnio 4 dalis
55	Uzbekistanas	5 straipsnio 4 dalis

#### 14 Konvencijos straipsnis.

##### Sutarčių išskaidymas

##### *Išlyga*

Remdamasi Konvencijos 14 straipsnio 3 dalies b punktu, Lietuvos Respublika pasilieka teisę netaikyti viso 14 straipsnio savo Sutarčių, kurioms taikoma Konvencija, nuostatoms, susijusioms su gamtos išteklių paieška arba naudojimu. Toliau nurodytose sutartyse yra nuostatų, kurioms taikoma ši išlyga.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	5 straipsnio 3 dalies b punktas
2	Austrija	21 straipsnis
3	Azerbaidžanas	21 straipsnis
5	Belgija	21 straipsnis
6	Bulgarija	5 straipsnio 3 dalies c punktas
7	Kanada	29 straipsnis
8	Kinija	22 straipsnis
9	Kroatija	21 straipsnis
11	Kipras	21 straipsnis
12	Danija	21 straipsnis
13	Estija	29 straipsnis
14	Suomija	21 straipsnis
16	Gruzija	21 straipsnis
17	Vokietija	20A straipsnis
18	Graikija	21 straipsnis
19	Vengrija	5 straipsnio b punktas
20	Islandija	21 straipsnis
21	Indija	5 straipsnio c punktas
22	Airija	22 straipsnis
23	Izraelis	5 straipsnio 3 dalies b punktas
24	Italija	22 straipsnis
25	Kazachstanas	21 straipsnis
27	Kuveitas	5 straipsnio 3 dalies c punktas
28	Kirgizija	21 straipsnis

29	Latvija	29 straipsnis
30	Liuksemburgas	21 straipsnis
31	Makedonija	5 straipsnio 3 dalies c punktas
32	Malta	21 straipsnis
33	Meksika	21 straipsnis
34	Moldova	5 straipsnio 3 dalies b punktas
35	Marokas	5 straipsnio 3 dalies c punktas
36	Nyderlandai	25 straipsnis
37	Norvegija	21 straipsnis
38	Lenkija	22 straipsnis
39	Portugalija	22 straipsnis
40	Rumunija	Protokolas
41	Rusija	21 straipsnis
42	Serbija	5 straipsnio 3 dalies 2 punktas
43	Slovakija	Protokolas (III pastr.)
44	Slovėnija	5 straipsnio 3 dalies b punktas
46	Ispanija	21 straipsnis
47	Švedija	21 straipsnis
51	Ukraina	21 straipsnis
52	Jungtiniai Arabų Emyratai	22 straipsnis
53	Jungtinė Karalystė	23 straipsnis
54	Jungtinės Valstijos	21 straipsnis
55	Uzbekistanas	21 straipsnis

### 16 Konvencijos straipsnis.

#### Abipusio susitarimo procedūra

#### *Pranešimas apie dabartines nurodytų sutarčių nuostatas*

Remdamasi Konvencijos 16 straipsnio 6 dalies a punktu, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta 16 straipsnio 4 dalies a punkto i papunktyje nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	25 straipsnio 1 dalies pirmas sakiny
2	Austrija	26 straipsnio 1 dalies pirmas sakiny
3	Azerbaidžanas	26 straipsnio 1 dalies pirmas sakiny
4	Baltarusija	24 straipsnio 1 dalies pirmas sakiny
5	Belgija	25 straipsnio 1 dalies pirmas sakiny
6	Bulgarija	26 straipsnio 1 dalies pirmas sakiny
7	Kanada	25 straipsnio 1 dalies pirmas sakiny
8	Kinija	27 straipsnio 1 dalies pirmas sakiny
9	Kroatija	25 straipsnio 1 dalies pirmas sakiny
10	Čekijos Respublika	25 straipsnio 1 dalies pirmas sakiny
11	Kipras	25 straipsnio 1 dalies pirmas sakiny

12	Danija	26 straipsnio 1 dalies pirmas sakiny
13	Estija	25 straipsnio 1 dalies pirmas sakiny
14	Suomija	26 straipsnio 1 dalies pirmas sakiny
15	Prancūzija	25 straipsnio 1 dalies pirmas sakiny
16	Gruzija	26 straipsnio 1 dalies pirmas sakiny
17	Vokietija	25 straipsnio 1 dalies pirmas sakiny
18	Graikija	26 straipsnio 1 dalies pirmas sakiny
19	Vengrija	25 straipsnio 1 dalies pirmas sakiny
20	Islandija	26 straipsnio 1 dalies pirmas sakiny
21	Indija	26 straipsnio 1 dalies pirmas sakiny
22	Airija	25 straipsnio 1 dalies pirmas sakiny
23	Izraelis	25 straipsnio 1 dalies pirmas sakiny
24	Italija	27 straipsnio 1 dalies pirmas sakiny
25	Kazachstanas	26 straipsnio 1 dalies pirmas sakiny
26	Korėja	25 straipsnio 1 dalies pirmas sakiny
27	Kuveitas	25 straipsnio 1 dalies pirmas sakiny
28	Kirgizija	25 straipsnio 1 dalies pirmas sakiny
29	Latvija	25 straipsnio 1 dalies pirmas sakiny
30	Liuksemburgas	26 straipsnio 1 dalies pirmas sakiny
31	Makedonija	25 straipsnio 1 dalies pirmas sakiny
32	Malta	25 straipsnio 1 dalies pirmas sakiny
33	Meksika	26 straipsnio 1 dalies pirmas sakiny
34	Moldova	25 straipsnio 1 dalies pirmas sakiny
35	Marokas	25 straipsnio 1 dalies pirmas sakiny
36	Nyderlandai	27 straipsnio 1 dalies pirmas sakiny
37	Norvegija	26 straipsnio 1 dalies pirmas sakiny
38	Lenkija	27 straipsnio 1 dalies pirmas sakiny
39	Portugalija	26 straipsnio 1 dalies pirmas sakiny
40	Rumunija	27 straipsnio 1 dalies pirmas

		sakinys
41	Rusija	26 straipsnio 1 dalies pirmas sakinys
42	Serbija	26 straipsnio 1 dalies pirmas sakinys
43	Singapūras	25 straipsnio 1 dalies pirmas sakinys
44	Slovakija	25 straipsnio 1 dalies pirmas sakinys
45	Slovėnija	26 straipsnio 1 dalies pirmas sakinys
46	Ispanija	26 straipsnio 1 dalies pirmas sakinys
47	Švedija	26 straipsnio 1 dalies pirmas sakinys
48	Šveicarija	25 straipsnio 1 dalies pirmas sakinys
49	Turkija	24 straipsnio 1 dalies pirmas sakinys
50	Turkmėnistanas	25 straipsnio 1 dalies pirmas sakinys
51	Ukraina	27 straipsnio 1 dalies pirmas sakinys
52	Jungtiniai Arabų Emyratai	26 straipsnio 1 dalies pirmas sakinys
53	Jungtinė Karalystė	28 straipsnio 1 dalis
54	Jungtinės Valstijos	26 straipsnio 1 dalies pirmas sakinys
55	Uzbekistanas	26 straipsnio 1 dalies pirmas sakinys

Remdamasi Konvencijos 16 straipsnio 6 dalies b punkto i papunkčiu, Lietuvos Respublika praneša, kad į toliau nurodytą sutartį yra įtraukta nuostata, kuria nustatoma, kad 16 straipsnio 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateikiamas per konkretų laikotarpį, ne ilgesnį kaip treji metai nuo pirmo pranešimo apie veiklą, apmokestiną nesilaikant Sutarties, kuriai taikoma Konvencija, nuostatų. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
7	Kanada	25 straipsnio 1 dalies antras sakinys

Remdamasi Konvencijos 16 straipsnio 6 dalies b punkto ii papunkčiu, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta nuostata, kuria nustatoma, kad 16 straipsnio 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateikiamas per konkretų laikotarpį, lygų trejiems metams nuo pirmo pranešimo apie veiklą, apmokestiną nesilaikant Sutarties, kuriai taikoma Konvencija, nuostatų, arba ilgesnį kaip treji metai. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	25 straipsnio 1 dalies antras sakinys
2	Austrija	26 straipsnio 1 dalies antras sakinys
3	Azerbaidžanas	26 straipsnio 1 dalies antras sakinys
4	Baltarusija	24 straipsnio 1 dalies antras sakinys

5	Belgija	25 straipsnio 1 dalies antras sakiny
6	Bulgarija	26 straipsnio 1 dalies antras sakiny
8	Kinija	27 straipsnio 1 dalies antras sakiny
9	Kroatija	25 straipsnio 1 dalies antras sakiny
10	Čekijos Respublika	25 straipsnio 1 dalies antras sakiny
11	Kipras	25 straipsnio 1 dalies antras sakiny
12	Danija	26 straipsnio 1 dalies antras sakiny
13	Estija	25 straipsnio 1 dalies antras sakiny
14	Suomija	26 straipsnio 1 dalies antras sakiny
15	Prancūzija	25 straipsnio 1 dalies antras sakiny
16	Gruzija	26 straipsnio 1 dalies antras sakiny
17	Vokietija	25 straipsnio 1 dalies antras sakiny
18	Graikija	26 straipsnio 1 dalies antras sakiny
19	Vengrija	25 straipsnio 1 dalies antras sakiny
20	Islandija	26 straipsnio 1 dalies antras sakiny
21	Indija	26 straipsnio 1 dalies antras sakiny
22	Airija	25 straipsnio 1 dalies antras sakiny
23	Izraelis	25 straipsnio 1 dalies antras sakiny
24	Italija	27 straipsnio 1 dalies antras sakiny
25	Kazachstanas	26 straipsnio 1 dalies antras sakiny
26	Korėja	25 straipsnio 1 dalies antras sakiny
27	Kuveitas	25 straipsnio 1 dalies antras sakiny
28	Kirgizija	25 straipsnio 1 dalies antras sakiny
29	Latvija	25 straipsnio 1 dalies antras sakiny
30	Liuksemburgas	26 straipsnio 1 dalies antras sakiny
31	Makedonija	25 straipsnio 1 dalies antras sakiny
32	Malta	25 straipsnio 1 dalies antras sakiny
33	Meksika	26 straipsnio 1 dalies antras sakiny
34	Moldova	25 straipsnio 1 dalies antras

		sakinys
35	Marokas	25 straipsnio 1 dalies antras sakinys
36	Nyderlandai	27 straipsnio 1 dalies antras sakinys
37	Norvegija	26 straipsnio 1 dalies antras sakinys
38	Lenkija	27 straipsnio 1 dalies antras sakinys
39	Portugalija	26 straipsnio 1 dalies antras sakinys
40	Rumunija	27 straipsnio 1 dalies antras sakinys
41	Rusija	26 straipsnio 1 dalies antras sakinys
42	Serbija	26 straipsnio 1 dalies antras sakinys
43	Singapūras	25 straipsnio 1 dalies antras sakinys
44	Slovakija	25 straipsnio 1 dalies antras sakinys
45	Slovėnija	26 straipsnio 1 dalies antras sakinys
46	Ispanija	26 straipsnio 1 dalies antras sakinys
47	Švedija	26 straipsnio 1 dalies antras sakinys
48	Šveicarija	25 straipsnio 1 dalies antras sakinys
49	Turkija	24 straipsnio 1 dalies antras sakinys
50	Turkmėnistanas	25 straipsnio 1 dalies antras sakinys
51	Ukraina	27 straipsnio 1 dalies antras sakinys
52	Jungtiniai Arabų Emyratai	26 straipsnio 1 dalies antras sakinys
54	Jungtinės Valstijos	26 straipsnio 1 dalies antras sakinys
55	Uzbekistanas	26 straipsnio 1 dalies antras sakinys

Remdamasi Konvencijos 16 straipsnio 6 dalies c punkto ii papunkčiu, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis neįtraukta 16 straipsnio 4 dalies b punkto ii papunktyje nurodyta nuostata.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija
7	Kanada
24	Italija
33	Meksika
48	Šveicarija
53	Jungtinė Karalystė

Remdamasi Konvencijos 16 straipsnio 6 dalies d punkto ii papunkčiu, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis neįtraukta 16 straipsnio 4 dalies c punkto ii papunktyje nurodyta nuostata.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija
5	Belgija
22	Airija
24	Italija
51	Ukraina
53	Jungtinė Karalystė

### 17 Konvencijos straipsnis.

#### Atitinkami patikslinimai

#### *Pranešimas apie dabartines nurodytų sutarčių nuostatas*

Remdamasi Konvencijos 17 straipsnio 4 dalimi, Lietuvos Respublika praneša, kad į toliau nurodytas sutartis yra įtraukta 17 straipsnio 2 dalyje nurodyta nuostata. Kiekvienos tokios nuostatos straipsnio ir dalies numeriai pateikiami toliau.

Nurodytos sutarties numeris	Kita Susitariančioji Jurisdikcija	Nuostata
1	Armėnija	9 straipsnio 2 dalis
2	Austrija	9 straipsnio 2 dalis
3	Azerbaidžanas	9 straipsnio 2 dalis
4	Baltarusija	9 straipsnio 2 dalis
5	Belgija	9 straipsnio 2 dalis
6	Bulgarija	9 straipsnio 2 dalis
7	Kanada	9 straipsnio 2 dalis
8	Kinija	9 straipsnio 2 dalis
9	Kroatija	9 straipsnio 2 dalis
11	Kipras	9 straipsnio 2 dalis
12	Danija	9 straipsnio 2 dalis
13	Estija	9 straipsnio 2 dalis
14	Suomija	9 straipsnio 2 dalis
15	Prancūzija	9 straipsnio 2 dalis
16	Gruzija	9 straipsnio 2 dalis
18	Graikija	9 straipsnio 2 dalis
19	Vengrija	9 straipsnio 2 dalis
20	Islandija	9 straipsnio 2 dalis
21	Indija	9 straipsnio 2 dalis
22	Airija	9 straipsnio 2 dalis
23	Izraelis	9 straipsnio 2 dalis
24	Italija	Protokolas (g punktas)
25	Kazachstanas	9 straipsnio 2 dalis
26	Korėja	9 straipsnio 2 dalis
27	Kuveitas	9 straipsnio 2 dalis
28	Kirgizija	9 straipsnio 2 dalis
29	Latvija	9 straipsnio 2 dalis
30	Liuksemburgas	9 straipsnio 2 dalis
31	Makedonija	9 straipsnio 2 dalis
32	Malta	9 straipsnio 2 dalis
33	Meksika	9 straipsnio 2 dalis
34	Moldova	9 straipsnio 2 dalis
35	Marokas	9 straipsnio 2 dalis

36	Nyderlandai	9 straipsnio 2 dalis
37	Norvegija	9 straipsnio 2 dalis
38	Lenkija	9 straipsnio 2 dalis
39	Portugalija	9 straipsnio 2 dalis
40	Rumunija	9 straipsnio 2 dalis
41	Rusija	9 straipsnio 2 dalis
42	Serbija	9 straipsnio 2 dalis
43	Singapūras	9 straipsnio 2 dalis
44	Slovakija	9 straipsnio 2 dalis
45	Slovėnija	9 straipsnio 2 dalis
46	Ispanija	9 straipsnio 2 dalis
47	Švedija	9 straipsnio 2 dalis
48	Šveicarija	9 straipsnio 2 dalis
49	Turkija	9 straipsnio 2 dalis
50	Turkmėnistanas	9 straipsnio 2 dalis
51	Ukraina	9 straipsnio 2 dalis
52	Jungtiniai Arabų Emyratai	9 straipsnio 2 dalis
53	Jungtinė Karalystė	9 straipsnio 2 dalis
54	Jungtinės Valstijos	9 straipsnio 2 dalis
55	Uzbekistanas	9 straipsnio 2 dalis

FM Teisės departamento  
direktorius

Evaldas Kašėta  
2017-11-20

Kalbos įrašas

D. Nėra, vicė  
2017-12-20

Finansų ministras

Vytautas Sapoka  
2017-12-20

**DAUGIAŠALĖ KONVENCIJA,  
KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS,  
SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI**

Šios Konvencijos Šalys,

*pripažindamos*, kad vyriausybės praranda didelę dalį pelno mokesčio pajamų dėl tarptautiniu mastu taikomo agresyvaus mokesčių planavimo, dėl kurio pelnas dirbtinai perkeliamas į vietas, kur jam netaikomi mokesčiai arba taikomi mažesni mokesčiai;

*prisimindamos*, kad mokesčių bazės erozija ir pelno perkėlimas (angl. *base erosion and profit shifting (BEPS)*) (toliau – BEPS) yra aktualus klausimas ne tik išsivysčiusioms, bet ir besiformuojančios rinkos ekonomikos šalims ir besivystančioms šalims;

*pripažindamos*, jog svarbu užtikrinti, kad pelnas būtų apmokestinamas ten, kur vykdoma esminė tą pelną duodanti ekonominė veikla ir kur sukurama vertė;

*pritardamos* pagal EBPO / G20 BEPS projektą (toliau – EBPO / G20 BEPS paketas) parengtam priemonių paketui;

*pažymėdamos*, kad EBPO / G20 BEPS paketą sudaro su mokesčių sutartimis susijusios priemonės, skirtos klausimams dėl tam tikrų šalių mokesstinės tvarkos neatitikimų schemų išspręsti, taip pat užkirsti kelią piktnaudžiavimui sutartimi, neleisti dirbtinai išvengti nuolatinės buveinės statuso ir pagerinti ginčų sprendimą;

*suprasdamos* poreikį užtikrinti greitą, koordinuotą ir nuoseklų su sutartimi susijusių BEPS priemonių įgyvendinimą daugiašaliame kontekste;

*pažymėdamos* poreikį užtikrinti, kad galiojančios sutartys dėl dvigubo pajamų apmokestinimo išvengimo būtų aiškinamos, kaip tokios, kuriomis panaikinamas dvigubas apmokestinimas atsižvelgiant į mokesčius, kuriems šios sutartys taikomos, ir nesudaroma neapmokestinimo ar mažesnio apmokestinimo galimybių slepiant ar vengiant mokėti mokesčius (įskaitant ir per susitarimus dėl palankesnių sutarčių sąlygų, kuriais siekiama pasinaudoti tuose susitarimuose nustatytais lengvatomis, kurios būtų netiesiogiai naudingos trečiųjų šalių jurisdikcijai pavaldiems rezidentams);

*pripažindamos* poreikį sukurti veiksmingą mechanizmą, kad būtų galima sinchroniškai ir veiksmingai įgyvendinti sutartus pokyčius visose galiojančiose sutartyse dėl pajamų dvigubo apmokestinimo išvengimo ir kad nereikėtų iš naujo dvišaliu pagrindu derėtis dėl kiekvienos tokios sutarties,

*susitarė:*

## I DALIS

### TAKYMO APIMTIS IR SĄVOKŲ AIŠKINIMAS

#### 1 straipsnis

##### Konvencijos taikymo apimtis

Šia Konvencija modifikuojamos visos sutartys, kurioms taikoma Konvencija, kaip apibrėžta 2 straipsnio 1 dalies a punkte (Sąvokų aiškinimas).

#### 2 straipsnis

##### Sąvokų aiškinimas

1. Šioje Konvencijoje vartojamos šios apibrėžtys:

a) sąvoka **Sutartis, kuriai taikoma Konvencija**, reiškia sutartį dėl dvigubo apmokestinimo išvengimo pajamų mokesčių srityje (neatsižvelgiant į tai, ar sutartis taip pat taikoma kitiems mokesčiams):

i) kuri galioja dviem ar daugiau:

A) Šalių; ir/arba

B) jurisdikcijų ar teritorijų, kurios yra pirmiau minėtos sutarties šalys ir už kurių tarptautinius ryšius Šalis atsako; ir

ii) dėl kurios tokia Šalis nusiuntė depozitarui pranešimą, įvardydama sutartį ir bet kokius ją keičiančius ar prie jos pridedamus dokumentus (nurodydama dokumento pavadinimą, šalių pavadinimus, pasirašymo datą ir, jei taikoma pranešimo teikimo momentu, įsigaliojimo datą), kaip sutartį, kuriai, jos pageidavimu, būtų taikoma ši Konvencija;

b) sąvoka **Šalis** reiškia:

i) valstybę, kuriai ši Konvencija galioja vadovaujantis 34 straipsniu (Įsigaliojimas); arba

ii) jurisdikciją, kuri pasirašė šią Konvenciją vadovaujantis 27 straipsnio 1 dalies b ar c punktu (Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas) ir kuriai ši Konvencija galioja vadovaujantis 34 straipsniu (Įsigaliojimas).

c) sąvoka **Susitariančioji Jurisdikcija** reiškia atitinkamos Sutarties, kuriai taikoma Konvencija, šalį.

d) sąvoka **Signatarė** reiškia valstybę ar jurisdikciją, kuri pasirašė šią Konvenciją, tačiau kuriai Konvencija dar neįsigaliojo.

2. Šaliai kuriuo nors metu taikant šią Konvenciją, bet kuri joje neapibrėžta sąvoka, jei pagal kontekstą nereikalaujama kitaip, turi tokią reikšmę, kokią ji tuo metu turi pagal atitinkamą Sutartį, kuriai taikoma Konvencija.

## II DALIS

### MOKESTINĖS TVARKOS NEATITIKIMAI

#### 3 straipsnis

##### Skaidrūs subjektai

1. Taikant Sutartį, kuriai taikoma Konvencija, subjekto ar įstaigos gautos pajamos ar pajamos, gautos per subjektą ar įstaigą, kurie laikomi visiškai ar iš dalies finansiškai skaidriais pagal kiekvienos Susitariančiosios Jurisdikcijos mokesčių teisę, laikomos Susitariančiosios Jurisdikcijos rezidento pajamomis, bet tik tiek, kiek ta Susitariančioji Jurisdikcija mokesčių tikslais laiko minėtas pajamas šios Susitariančiosios Jurisdikcijos rezidento pajamomis.

2. Sutarties, kuriai taikoma Konvencija, nuostatos, pagal kurias Susitariančioji Jurisdikcija privalo atleisti nuo pajamų mokesčio ar suteikti galimybę atskaityti mokestį ar suteikti kreditą, lygų pajamų mokesčiui nuo tos Susitariančiosios Jurisdikcijos rezidento gautų pajamų, kurios, vadovaujantis Sutarties, kuriai taikoma Konvencija, nuostatomis, gali būti apmokestinamos kitoje Susitariančiojoje Jurisdikcijoje, netaikomos tiek, kiek tokiomis nuostatomis leidžiama tai kitai Susitariančiajai Jurisdikcijai apmokestinti tik dėl to, kad šios pajamos taip pat yra tos kitos Susitariančiosios Jurisdikcijos rezidento gautos pajamos.

3. Atsižvelgiant į Sutartį, kurioms taikoma Konvencija ir dėl kurių viena ar daugiau Šalių nustatė 11 straipsnio (Mokesčių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus) 3 dalies a punkte nurodytą išlygą, 1 dalies pabaigoje pridėdamas toks sakiny: „Jokia šios dalies nuostata nelaikoma nuostata, kuria galima daryti poveikį Susitariančiosios Jurisdikcijos teisei apmokestinti šios Susitariančiosios Jurisdikcijos rezidentus“.

4. 1 dalis (kuri gali būti pakeista 3 dalimi) taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų arba kai jų nėra tiek, kiek tomis nuostatomis sprendžiama, ar subjektų arba įstaigų gautos pajamos ar pajamos, gautos per subjektus arba įstaigas, kurie pagal kiekvienos Susitariančiosios Jurisdikcijos mokesčių teisę laikomi finansiškai skaidriais (taikant bendrą taisyklę arba išsamiai nustatant konkreitiems faktų pavyzdžiams ir subjektų ar įstaigų tipams taikomus reikalavimus) turi būti laikomos Susitariančiosios Jurisdikcijos rezidento pajamomis.

5. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateikta nuostata;

c) netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateikta nuostata, kuria panaikinama Sutartimi, kuriai taikoma Konvencija, teikiama nauda, kai tai susiję su trečiojoje šalyje įsteigto subjekto ar įstaigos arba per tokį subjektą ar įstaigą gautomis pajamomis;

d) netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateikta nuostata, kurioje išsamiai nustatoma konkreitiems faktiniams pavyzdžiams ir subjektų ar įstaigų tipams taikomi reikalavimai;

e) netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateikta nuostata, kuria panaikinama Sutartimi, kuriai taikoma Konvencija, teikiama nauda, kai tai

susiję su trečiojoje šalyje įsteigto subjekto ar įstaigos arba per tokį subjektą ar įstaigą gautomis pajamomis;

f) netaikyti 2 dalies Savo sutartims, kurioms taikoma Konvencija;

g) taikyti 1 dalį tik toms savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateikta nuostata, kurioje išsamiai nustatoma konkrečioms faktiniams pavyzdžiams ir subjektų ar įstaigų tipams taikomi reikalavimai.

6. Kiekviena Šalis, kuri nenustatė 5 straipsnio a arba b punktuose nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 4 dalyje nurodyta nuostata, kuriai netaikoma išlyga pagal 5 straipsnio c–e punktus, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Atsižvelgiant į Šalį, kuri nustatė 5 straipsnio g punkte nurodytą išlygą, pranešimai pagal pirmiau pateiktą dalį teikiami tik dėl tų Sutarčių, kurioms taikoma Konvencija, jei joms taikoma ta išlyga. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarčių, kurioms taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies (kuri gali būti pakeista 3 dalimi) nuostatomis tiek, kiek tai nustatyta 4 dalyje. Kitais atvejais 1 dalimi (kuri gali būti pakeista 3 dalimi) Sutarties, kuriai taikoma Konvencija, nuostatos pakeičiamos tik tiek, kiek šios nuostatos yra nesuderinamos su 1 dalimi (kuri gali būti pakeista 3 dalimi).

#### **4 straipsnis**

##### **Dvigubo rezidavimo subjektai**

1. Jeigu taikant Sutarties, kuriai taikoma Konvencija, nuostatas subjektas, kuris nėra fizinis asmuo, yra daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentas, Susitariančiųjų Jurisdikcijų kompetentingi asmenys siekia abipusiu susitarimu nustatyti Susitariančiąją Jurisdikciją, kurios rezidentu turi būti laikomas toks subjektas Sutartyje, kuriai taikoma Konvencija, atsižvelgiant į jo tikrąją valdymo vietą, jo įregistravimo ar įkūrimo vietą ir bet kuriuos kitus susijusius veiksnius. Kai tokio susitarimo nėra, tokiam asmeniui netaikomos jokios Sutartimi, kuriai taikoma Konvencija, nustatytos mokesčių lengvatos ar atleidimas nuo mokesčių, išskyrus kiek ir koku būdu tai gali būti nustatyta Susitariančiųjų Jurisdikcijų kompetentingų asmenų susitarimu.

2. 1 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba tada, kai jų nėra), nustatančių taisykles, kuriomis būtų galima nustatyti, ar subjektas, kuris nėra fizinis asmuo, turi būti laikomas vienos iš Susitariančiųjų Jurisdikcijų rezidentu tais atvejais, kai kitu atveju tas subjektas būtų laikomas daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentu. Tačiau 1 dalis netaikoma Sutarties, kuriai taikoma Konvencija, nuostatomis, kuriomis konkrečiai reglamentuojamas bendrovių, dalyvaujančių dvigubos sąrašinės bendrovės susitarimuose, buveinės klausimas.

3. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, jei jomis jau reglamentuojami atvejai, kai subjektas, kuris nėra fizinis asmuo, yra daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentas, reikalaujant, kad Susitariančiųjų Jurisdikcijų kompetentingi asmenys stengtųsi pasiekti abipusį susitarimą dėl vienos rezidavimo Susitariančiosios Jurisdikcijos;

c) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, jei jomis jau reglamentuojami atvejai, kai subjektas, kuris nėra fizinis asmuo, yra daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentas, nesuteikiant Sutartimi teikiamos naudos ir nereikalaujant, kad Susitariančiųjų Jurisdikcijų kompetentingi asmenys stengtųsi pasiekti abipusį susitarimą dėl vienos rezidavimo Susitariančiosios Jurisdikcijos;

d) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, jei jomis jau reglamentuojami atvejai, kai subjektas, kuris nėra fizinis asmuo, yra daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentas, reikalaujant, kad Susitariančiųjų Jurisdikcijų kompetentingi asmenys stengtųsi pasiekti abipusį susitarimą dėl vienos rezidavimo Susitariančiosios Jurisdikcijos ir jei jomis, kai tokio susitarimo negalima pasiekti, pagal Sutartį, kuriai taikoma Konvencija, nustatomi minėtam subjektui taikomi reikalavimai;

e) savo Sutartyse, kurioms taikoma Konvencija, pakeisti paskutinį 1 dalies sakinį taip: „Kai tokio susitarimo nėra, tokiam asmeniui netaikomos jokios Sutartimi, kuriai taikoma Konvencija, nustatytos mokesčių lengvatos ar atleidimas nuo mokesčių.“;

f) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, sudarytoms su Šalimis, kurios nustatė e punkte nurodytą išlygą.

4. Kiekviena Šalis, kuri nėra nustačiusi 3 straipsnio a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 2 dalyje nurodyta nuostata, kuriai netaikoma išlyga pagal 3 straipsnio b–d punktus, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies nuostatomis. Kitais atvejais 1 dalis pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek šios nuostatos yra nesuderinamos su 1 dalimi.

## **5 straipsnis**

### **Dvigubo apmokestinimo panaikinimo metodų taikymas**

1. Šalis gali pasirinkti taikyti 2 ir 3 dalis (A galimybė), 4 ir 5 dalis (B galimybė) ar 6 ir 7 dalis (C galimybė) arba gali nesirinkti nė vienos šių galimybių. Jeigu kiekviena Sutarties, kuriai taikoma Konvencija, Susitariančioji Jurisdikcija pasirenka skirtingą galimybę (ar jei viena Susitariančioji Jurisdikcija pasirenka taikyti kurią nors galimybę, o kita Susitariančioji Jurisdikcija pasirenka netaikyti nė vienos iš galimybių), kiekvienos Susitariančiosios Jurisdikcijos pasirinkta galimybė taikoma jos pačios rezidentams.

#### **A galimybė**

2. Sutarties, kuriai taikoma Konvencija, nuostatos, pagal kurias kitu atveju Susitariančiosios Jurisdikcijos rezidento gautoms pajamoms ar turimam kapitalui nebūtų taikomi mokesčiai toje Susitariančiojoje Jurisdikcijoje dvigubo apmokestinimo panaikinimo tikslu, netaikomos, jeigu kita Susitariančioji Jurisdikcija taiko Sutarties, kuriai taikoma Konvencija, nuostatas, kad atleistų tokias pajamas ar kapitalą nuo mokesčių arba apribotų apmokestinimo, kuris gali būti taikomas tokioms pajamoms ar kapitalui, tarifą. Pastaruoju atveju pirmiau minėta Susitariančioji Jurisdikcija leidžia išskaityti iš to rezidento pajamų ar kapitalo mokesčio sumą, lygią toje kitoje Susitariančiojoje Jurisdikcijoje sumokėto mokesčio sumai. Tačiau ta atimama suma neturi būti didesnė už tą prieš atėmimą apskaičiuotą mokesčio dalį, kuri yra priskiriama tokioms pajamoms ar kapitalui, kurie gali

būti apmokestinami toje kitoje Susitariančiojoje Jurisdikcijoje.

3. 2 dalis taikoma Sutarčiai, kuriai taikoma Konvencija, pagal kurią kitu atveju Susitariančioji Jurisdikcija privalėtų netaikyti mokesčių toje dalyje nurodytoms pajamoms ir kapitalui.

### **B galimybė**

4. Sutarties, kuriai taikoma Konvencija, nuostatos, kuriomis kitu atveju Susitariančiosios Jurisdikcijos rezidento gautos pajamos nebūtų apmokestinamos toje Susitariančiojoje Jurisdikcijoje siekiant išvengti dvigubo apmokestinimo dėl to, kad minėta Susitariančioji Jurisdikcija laiko tokias pajamas dividendais, netaikomos, jeigu tokiomis pajamomis suteikiama teisė į atskaitymą siekiant apskaičiuoti kitos Susitariančiosios Jurisdikcijos rezidento apmokestinamąjį pelną pagal tos kitos Susitariančiosios Jurisdikcijos įstatymus. Tokiu atveju pirmiau minėta Susitariančioji Jurisdikcija leidžia atskaityti iš to rezidento pajamų mokesčio sumą, lygią toje kitoje Susitariančiojoje Jurisdikcijoje sumokėto pajamų mokesčio sumai. Tačiau ta atimama suma neturi būti didesnė už prieš atėmimą apskaičiuotą pajamų mokesčio dalį, priskirtiną tokioms pajamoms, kurios gali būti apmokestinamos toje kitoje Susitariančiojoje Jurisdikcijoje.

5. 4 dalis taikoma Sutarčiai, kuriai taikoma Konvencija, pagal kurią kitu atveju Susitariančioji Jurisdikcija privalėtų netaikyti mokesčių toje dalyje nurodytoms pajamoms.

### **C galimybė**

6. a) Jeigu Susitariančiosios Jurisdikcijos rezidentas gauna pajamas ar turi kapitalą, kurie, vadovaujantis Sutartimi, kuriai taikoma Konvencija, gali būti apmokestinami kitoje Susitariančiojoje Jurisdikcijoje (išskyrus tiek, kiek tokiomis nuostatomis tai kitai Susitariančiajai Jurisdikcijai leidžiama apmokestinti tik dėl to, kad šios pajamos taip pat yra tos kitos Susitariančiosios Jurisdikcijos rezidento gautos pajamos), pirmiau minėta Susitariančioji Jurisdikcija leidžia:

i) atskaityti iš to rezidento pajamų mokesčio sumą, lygią toje kitoje Susitariančiojoje Jurisdikcijoje sumokėto pajamų mokesčio sumai;

ii) atskaityti iš to rezidento kapitalo mokesčio sumą, lygią toje kitoje Susitariančiojoje Jurisdikcijoje sumokėto kapitalo mokesčio sumai.

Tačiau tokio atskaitymo suma neturi būti didesnė už tą prieš atėmimą apskaičiuotą pajamų ar kapitalo mokesčio dalį, priskirtiną tokioms pajamoms ar kapitalui, kurie gali būti apmokestinami toje kitoje Susitariančiojoje Jurisdikcijoje;

b) jeigu pagal bet kurią Sutarties, kuriai taikoma Konvencija, nuostatą Susitariančiosios Jurisdikcijos rezidento gautos pajamos ar turimas kapitalas yra atleidžiami nuo mokesčio toje Susitariančiojoje Jurisdikcijoje, tokia Susitariančioji Jurisdikcija, apskaičiuodama mokesčio dydį likusioms to rezidento pajamoms ar kapitalui, vis tiek gali atsižvelgti į atleistas nuo mokesčio pajamas ar kapitalą.

7. 6 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų, pagal kurias siekiant išvengti dvigubo apmokestinimo Susitariančioji Jurisdikcija privalo neapmokestinti toje Susitariančiojoje Jurisdikcijoje jos rezidento gautų pajamų ar turimo kapitalo, kurie, vadovaujantis Sutarties, kuriai taikoma Konvencija, nuostatomis gali būti apmokestinami toje kitoje Susitariančiojoje Jurisdikcijoje.

8. Šalis, kuri nepasirenka taikyti jokios galimybės pagal 1 dalį, gali pasilikti teisę netaikyti viso šio straipsnio vienai ar daugiau nustatytų Sutarčių, kurioms taikoma Konvencija (arba visoms savo Sutartims, kurioms taikoma Konvencija).

9. Šalis, kuri nepasirenka taikyti C galimybės, gali pasilikti teisę neleisti kitai (-oms) Susitariančiajai (-iosioms) Jurisdikcijai (-oms) taikyti C galimybę, kai tai susiję su viena ar daugiau nustatytų Sutarčių, kurioms taikoma Konvencija (arba kai tai susiję su visomis jos Sutartimis, kurioms taikoma Konvencija).

10. Kiekviena šalis, kuri pasirenka taikyti galimybę pagal 1 dalį, praneša apie pasirinktąją galimybę depozitarui. Tokiame pranešime taip pat pateikiama:

a) kai tai susiję su Šalimi, kuri pasirenka A galimybę, jos Sutarčių, kurioms taikoma Konvencija, jei jose yra 3 dalyje pateikta nuostata, sąrašas, taip pat nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius;

b) kai tai susiję su Šalimi, kuri pasirenka B galimybę, jos Sutarčių, kurioms taikoma Konvencija, jei jose yra 5 dalyje pateikta nuostata, sąrašas, taip pat nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius;

c) kai tai susiję su Šalimi, kuri pasirenka C galimybę, jos Sutarčių, kurioms taikoma Konvencija, jei jose yra 7 dalyje pateikta nuostata, sąrašas, taip pat nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius.

Galimybė Sutarties, kuriai taikoma Konvencija, nuostatai taikoma tik tada, kai galimybę taikyti pasirinkusi Šalis pateikia pranešimą dėl tokios nuostatos.

### III DALIS

#### PIKTNAUDŽIAVIMAS SUTARTIMI

#### 6 straipsnis

##### **Sutarties, kuriai taikoma Konvencija, tikslas**

1. Sutartis, kuriai taikoma Konvencija, keičiama įtraukiant į ją tokią konstatuojamąją dalį:

„ketindamos panaikinti dvigubą pajamų apmokestinimą atsižvelgiant į mokesčius, kuriems taikoma ši sutartis, nesudarant neapmokestinimo ar mažesnio apmokestinimo galimybių slepiant ar vengiant mokėti mokesčius (įskaitant ir per susitarimus dėl palankesnių sutarčių sąlygų, kuriais siekiama pasinaudoti šioje sutartyje, nustatytomis lengvatomis, kad jos būtų netiesiogiai naudingos trečiųjų šalių jurisdikcijai pavaldiems rezidentams),“.

2. 1 dalyje nurodytas tekstas įtraukiamas į Sutartį, kuriai taikoma Konvencija, vietoj Sutarties, kuriai taikoma Konvencija, konstatuojamosios dalies arba tada, kai jos nėra, nurodant ketinimą panaikinti dvigubą apmokestinimą, neatsižvelgiant į tai, ar tame tekste taip pat užsimenama apie ketinimą nesudaryti neapmokestinimo ar mažesnio apmokestinimo galimybių.

3. Šalis gali taip pat pasirinkti įtraukti į savo Sutartį, kuriai taikoma Konvencija, jei jos konstatuojamojoje dalyje nekalbama apie norą plėtoti ekonominius santykius ar stiprinti bendradarbiavimą mokesčių srityje, tokią konstatuojamąją dalį:

„*norėdamos* toliau plėtoti savo ekonominius santykius ir sustiprinti tarpusavio bendradarbiavimą mokesčių srityje,“.

4. Šalis gali pasilikti teisę netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija, jei jų konstatuojamojoje dalyje jau kalbama apie Susitariančiųjų Jurisdikcijų ketinimą panaikinti dvigubą apmokestinimą nesudarant neapmokestinimo ar mažesnio apmokestinimo galimybių, neatsižvelgiant į tai, ar tame tekste apsiribojama tik mokesčių slėpimo ar vengimo atvejais (įskaitant ir priemones, kai siekiama pasinaudoti palankiomis sutarčių sąlygomis, stengiantis gauti Sutartyje, kuriai taikoma Konvencija, nustatytų lengvatų, netiesiogiai naudingų trečiųjų šalių jurisdikcijai pavaldiesiems rezidentams) ar kalbama apie platesnį taikymą.

5. Kiekviena Šalis praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, išskyrus Sutartis, kurioms taikoma išlyga pagal 4 dalį, yra 2 dalyje nurodyta konstatuojamoji dalis, ir jei toks tekstas yra, nurodo atitinkamos konstatuojamosios dalies numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie tokią konstatuojamąją dalį, tokia konstatuojamoji dalis pakeičiama 1 dalies tekstu. Kitais atvejais 1 dalyje nurodytas tekstas įtraukiamas papildomai į esamą konstatuojamąją dalį.

6. Kiekviena Šalis, kuri pasirenka taikyti 3 dalį, praneša apie pasirinkimą depozitarui. Tokiame pranešime ji taip pat pateikia savo Sutarčių, kurioms taikoma Konvencija, kurių konstatuojamosiose dalyse dar nekalbama apie norą plėtoti ekonominius santykius ar stiprinti bendradarbiavimą mokesčių srityje, sąrašą. 3 dalyje apibūdintas tekstas įtraukiamas į Sutartį, kuriai taikoma Konvencija, tik tada, jeigu visos Susitariančiosios Jurisdikcijos pasirenka taikyti tą dalį ir pateikia tokį pranešimą dėl Sutarties, kuriai taikoma Konvencija.

## **7 straipsnis**

### **Piktnaudžiavimo sutartimi prevencija**

1. Neatsižvelgiant į bet kurias Sutarties, kuriai taikoma Konvencija, nuostatas, Sutarties, kuriai taikoma Konvencija, lengvata nesuteikiama pajamoms ar kapitalui, jei, atsižvelgiant į visus reikšmingus faktus ir aplinkybes, būtų pagrįsta daryti išvadą, kad gauti tokią lengvatą buvo pagrindinis bet kurio susitarimo ar sandorio, kuris tiesiogiai ar netiesiogiai lėmė tos lengvatos atsiradimą, tikslas, nebent nustatoma, kad tos lengvatos suteikimas tokiomis aplinkybėmis atitinka Sutarties, kuriai taikoma Konvencija, atitinkamos nuostatos tikslus.

2. 1 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba kai tokių nuostatų nėra), kuriomis neleidžiama suteikti visų ar dalies lengvatų, kurios kitu atveju būtų suteiktos pagal Sutartį, kuriai taikoma Konvencija, jeigu pagrindinis ar vienas pagrindinių bet kurio susitarimo ar sandorio arba bet kurio su susitarimu ar sandoriu susijusio asmens tikslų buvo gauti tokias lengvatas.

3. Šalis, nenustačiusi 15 dalies a punkte nurodytos išlygos, taip pat gali pasirinkti savo Sutartims, kurioms taikoma Konvencija, taikyti 4 dalį.

4. Jeigu asmeniui neleidžiama pasinaudoti Sutarties, kuriai taikoma Konvencija, teikiama lengvata pagal Sutarties, kuriai taikoma Konvencija (kuri gali būti pakeista šia Konvencija), nuostatas, kuriomis neleidžiama naudotis visomis lengvatomis ar dalimi lengvatų, kurios kitu atveju būtų teikiamos pagal Sutartį, kuriai taikoma Konvencija, jeigu pagrindinis ar vienas pagrindinių bet kurio susitarimo ar sandorio ar bet kurio su susitarimu ar sandoriu susijusio asmens tikslų buvo

gauti tokias lengvatas, Susitariančiosios Jurisdikcijos kompetentingas asmuo, kuris kitu atveju būtų suteikęs šias lengvatas, vis tiek laiko, kad toks asmuo turi teisę gauti šias lengvatas ar įvairias su konkrečiomis pajamomis ar kapitalu susijusias lengvatas, jei toks kompetentingas asmuo minėto asmens prašymu ir atsižvelgęs į reikšmingus faktus ir aplinkybes nustato, kad tokios lengvatos būtų suteiktos tam asmeniui, jeigu nebūtų sandorio ar susitarimo. Susitariančiosios Jurisdikcijos kompetentingas asmuo, kuriam kitos Susitariančiosios Jurisdikcijos rezidentas pateikė prašymą pagal šią dalį, prieš atmesdama prašymą tariasi su kitos Susitariančiosios Jurisdikcijos kompetentingu asmeniu.

5. 4 dalis taikoma Sutarties, kuriai taikoma Konvencija (kuri gali būti pakeista šia Konvencija), nuostatomis, kuriomis neleidžiama suteikti visų ar dalies lengvatų, kurios kitu atveju būtų suteiktos pagal Sutartį, kuriai taikoma Konvencija, jeigu pagrindinis ar vienas pagrindinių bet kurio susitarimo ar sandorio ar bet kurio su susitarimu ar sandoriu susijusio asmens tikslų buvo gauti tokias lengvatas.

6. Šalis taip pat gali pasirinkti taikyti 8–13 dalyse pateikiamas nuostatas (toliau – supaprastintas lengvatų teikimo apribojimas) savo Sutartims, kurioms taikoma Konvencija, pateikdama 17 dalies c punkte nurodytą pranešimą. Supaprastintas lengvatų teikimo apribojimas taikomas Sutartimi, kuriai taikoma Konvencija, tik tada, jei jį taikyti pasirenka visos Susitariančiosios Jurisdikcijos.

7. Tais atvejais, kai tam tikros, bet ne visos Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos pasirenka taikyti supaprastintą lengvatų teikimo apribojimą pagal 6 dalį, tada, neatsižvelgiant į tos dalies nuostatas, supaprastintas lengvatų teikimo apribojimas taikomas lengvatomis pagal Sutartį, kuriai taikoma Konvencija, kurias teikia:

a) visos Susitariančiosios Jurisdikcijos, jei visos Susitariančiosios Jurisdikcijos, kurios nepasirinko taikyti supaprastinto lengvatų teikimo apribojimo pagal 6 dalį, pritaria tokiam taikymui pasirinkdamos taikyti šį punktą ir atitinkamai pranešdamos depozitarui; ar

b) tik Susitariančiosios Jurisdikcijos, kurios pasirenka taikyti supaprastintą lengvatų teikimo apribojimą, jei visos Susitariančiosios Jurisdikcijos, kurios nepasirenka taikyti supaprastinto lengvatų teikimo apribojimo pagal 6 dalį, pritaria tokiam taikymui pasirinkdamos taikyti šį punktą ir atitinkamai pranešdamos depozitarui.

#### **Supaprastintas lengvatų teikimo apribojimas**

8. Jeigu pagal supaprastinto lengvatų teikimo apribojimo nuostatą nenustatyta kitaip, Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas neturi teisės gauti naudos, kuri kitu atveju jam būtų suteikta Sutartimi, kuriai taikoma Konvencija, išskyrus naudą pagal Sutarties, kuriai taikoma Konvencija, nuostatas:

a) kuriomis nustatoma subjekto, kuris nėra fizinis asmuo, ir kuris taikant Sutarties, kuriai taikoma Konvencija, nuostatas, apibrėžiančias Susitariančiosios Jurisdikcijos rezidentą, yra daugiau nei vienos Susitariančiosios Jurisdikcijos rezidentas, gyvenamoji vieta;

b) kuriomis nustatoma, kad Susitariančioji Jurisdikcija suteiks tos Susitariančiosios Jurisdikcijos įmonei teisę atitinkamai patikslinti mokesčio, taikomo toje Susitariančiojoje Jurisdikcijoje asocijuotosios įmonės pelnui, sumą, po kitos Susitariančiosios Jurisdikcijos vadovaujantis Sutartimi, kuriai taikoma Konvencija, atlikto pradinio patikslinimo; ar

c) kuriomis Susitariančiosios Jurisdikcijos rezidentams leidžiama reikalauti, kad tos

Susitariančiosios Jurisdikcijos kompetentingas asmuo nagrinėtų apmokestinimo nesilaikant Sutarties, kuriai taikoma Konvencija, atvejus,

nebent toks rezidentas naudos suteikimo momentu yra 9 dalyje apibrėžtas „turintis teisę gauti naudą asmuo“.

9. Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas yra turintis teisę gauti naudą asmuo tuo momentu, kai kitu atveju jam būtų suteikta nauda pagal Sutartį, kuriai taikoma Konvencija, jeigu tuo momentu rezidentas yra:

a) fizinis asmuo;

b) ta Susitariančioji Jurisdikcija ar jos vietos valdžios institucijos politinis padalinys arba bet kurios tokios Susitariančiosios Jurisdikcijos agentūra ar žinyba, politinis padalinys ar vietos valdžios institucija;

c) bendrovė ar kitas subjektas, jeigu pagrindine jos akcijų klase reguliariai prekiaujama vienoje ar daugiau pripažintų biržų;

d) subjektas, kuris nėra fizinis asmuo, bet jis:

i) yra tokio tipo ne pelno organizacija, kuriai pasikeičiant diplomatinėmis notomis pritarė Susitariančioji Jurisdikcija; ar

ii) yra toje Susitariančiojoje Jurisdikcijoje įsteigtas subjektas ar įstaiga, kuri pagal tos Susitariančiosios Jurisdikcijos mokesčių įstatymus laikoma atskiru asmeniu ir:

A) kuri yra įsteigta ir veikia vien tik tam arba beveik vien tik tam, kad tvarkytų ar teiktų pensijų išmokas ir papildomas ar atsitiktines išmokas fiziniams asmenims ir kurios veiklą tokiu statusu reglamentuoja Susitariančioji Jurisdikcija arba vienas jos politinių padalinių ar vietos valdžios institucijų; ar

B) kuri yra įsteigta ir veikia vien tik tam arba beveik vien tik tam, kad investuotų lėšas A punkte nurodytų subjektų ar įstaigų naudai;

e) subjektas, kuris nėra fizinis asmuo, jei bent pusę dienų per dvylikos mėnesių laikotarpį, apimančią laiką, kai kitu atveju nauda būtų suteikta, asmenims, kurie yra tos Susitariančiosios Jurisdikcijos rezidentai ir kurie turi teisę pasinaudoti Sutarties, kuriai taikoma Konvencija, teikiama nauda pagal a–d punktus, tiesiogiai ar netiesiogiai priklauso bent 50 proc. to subjekto akcijų.

10. a) Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas turės teisę gauti naudą pagal Sutartį, kuriai taikoma Konvencija, kai tai susiję su iš kitos Susitariančiosios Jurisdikcijos gautomis pajamomis, neatsižvelgiant į tai, ar rezidentas yra turintis teisę gauti naudą asmuo, jei rezidentas aktyviai vykdo verslo veiklą pirmiau minėtoje Susitariančiojoje Jurisdikcijoje, o iš kitos Susitariančiosios Jurisdikcijos gautos pajamos yra susijusios su ta veikla arba yra atsitiktinės jos atžvilgiu. Taikant supaprastintą lengvatų teikimo apribojimo nuostatą, sąvoka „aktyviai vykdoma verslo veikla“ neapima toliau pateikiamos tokios veiklos ar jos derinių:

i) veiklos, kaip holdingo bendrovė;

ii) bendrovių grupės bendros priežiūros ar administravimo veiklos;

iii) grupių finansavimo (įskaitant bendro lėšų fondo sudarymą) veiklos; ar

iv) investavimo ar investicijų valdymo veiklos, nebent šią veiklą, atlikdami savo įprastines funkcijas, vykdytų bankas, draudimo bendrovė ar registruotas vertybinių popierių makleris.

b) jeigu Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas gauna pajamų iš savo kitoje Susitariančiojoje Jurisdikcijoje vykdomos verslo veiklos arba gauna pajamų kitoje Susitariančiojoje Jurisdikcijoje iš susijusio asmens, laikoma, kad tokios pajamos atitinka a punkte nurodytas sąlygas tik tada, jei pirmiau minėtoje Susitariančiojoje Jurisdikcijoje rezidento vykdoma verslo veikla, su kuria tos pajamos susijusios, yra iš esmės susijusi su ta pačia rezidento ar tokio susijusio asmens kitoje Susitariančiojoje Jurisdikcijoje vykdoma veikla ar papildoma verslo veikla. Tai, ar tokia verslo veikla taikant šį punktą yra faktinė, nustatoma remiantis visais faktais ir aplinkybėmis.

c) taikant šį punktą, laikoma, kad susijusių asmenų vykdoma veikla, susijusi su Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentu, yra tokio rezidento vykdoma veikla.

11. Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas, kuris nėra turintis teisę gauti naudą asmuo, taip pat turi teisę gauti naudą, kuri kitu atveju būtų suteikta jo pajamoms pagal Sutartį, kuriai taikoma Konvencija, jei bent pusę dienų per dvylikos mėnesių laikotarpį, apimančią laiką, kai kitu atveju lengvata būtų suteikta, asmenims, kurie yra lygiaverčiai naudos gavėjai, tiesiogiai ar netiesiogiai priklauso bent 75 proc. rezidento naudą teikiančių turtinių interesų.

12. Jeigu Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidentas, nėra nei turintis teisę gauti naudą asmuo vadovaujantis 9 dalies nuostatomis, nei turi teisę gauti naudą pagal 10 ar 11 dalį, kitos Susitariančiosios Jurisdikcijos kompetentingas asmuo vis tiek gali leisti pasinaudoti Sutarties, kuriai taikoma Konvencija, teikiama nauda ar nauda, susijusia su pajamų dalimi, atsižvelgdama į Sutarties, kuriai taikoma Konvencija tikslus, bet tik tada, jei toks rezidentas tokiam kompetentingam asmeniui įrodo, kad nei jo įsisteigimu, nei įsigijimu ar išlaikymu, nei jo vykdoma veikla nesiekama, kaip vieno iš pagrindinių tikslų, gauti naudą pagal Sutartį, kuriai taikoma Konvencija. Prieš patenkindama ar atmesdama Susitariančiosios Jurisdikcijos rezidento pagal šią dalį pateiktą prašymą, kitos Susitariančiosios Jurisdikcijos kompetentingas asmuo, kuriam buvo pateiktas prašymas, tariausi su pirmiau minėtos Susitariančiosios Jurisdikcijos kompetentingu asmeniu.

13. Taikant supaprastintą lengvatų teikimo apribojimo nuostatą:

a) sąvoka „pripažinta birža“ reiškia:

i) bet kurią įsteigtą ir bet kurios Susitariančiųjų Jurisdikcijų įstatymais reglamentuojamą biržą;

ii) bet kurią kitą biržą, dėl kurios susitarė Susitariančiųjų Jurisdikcijų kompetentingi asmenys;

b) sąvoka „pagrindinė akcijų klasė“ reiškia bendrovės akcijų klasę ar klases, kurios sudaro didžiąją bendrovės bendro balsų skaičiaus ir vertės dalį arba subjekto naudą teikiančių turtinių interesų klasę ar klases, kurios sudaro didžiąją to subjekto bendro balsų skaičiaus ir vertės dalį;

c) sąvoka „lygiavertis naudos gavėjas“ reiškia bet kurį asmenį, kuris turėtų teisę gauti su pajamomis susijusią naudą, suteikiamą Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos pagal jos vidaus teisę, Sutarties, kuriai taikoma Konvencija, ar bet kurio kito tarptautinio dokumento, kuri yra lygiavertė ar palankesnė nei pagal Sutartį, kuriai taikoma Konvencija, toms pajamoms teikiama nauda; siekiant nustatyti, ar asmuo yra lygiavertis naudos gavėjas, atsižvelgiant į dividendus, laikoma, kad asmuo turi tokį pat dividendus mokančios

bendrovės kapitalą, kokį turi bendrovė, norinti pasinaudoti su dividendais susijusia nauda;

d) atsižvelgiant į subjektus, kurie nėra bendrovės, sąvoka „akcijos“ reiškia turtines teises, kurios prilygsta akcijoms;

e) du asmenys laikomi „susijusiais asmenimis“, jei kiekvienam iš jų tiesiogiai ar netiesiogiai priklauso bent 50 proc. kito asmens naudą teikiančių turtinių interesų (arba, jei tai bendrovė, bent 50 proc. visų bendrovės akcijų suteikiamų balsų ir vertės), o kitam asmeniui tiesiogiai ar netiesiogiai priklauso bent 50 proc. naudą teikiančių interesų (arba, jei tai bendrovė, bent 50 proc. visų bendrovės akcijų suteikiamų balsų ir vertės); bet kuriuo atveju asmuo yra susijęs su kitu asmeniu, jeigu, remiantis visais reikšmingais faktais ir aplinkybėmis, vienas kontroliuoja kitą arba juos abu kontroliuoja tas pats asmuo ar asmenys.

14. Supaprastinto lengvatų teikimo apribojimo nuostata taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba tada, kai jų nėra), kuriomis nauda pagal Sutartį, kuriai taikoma Konvencija, būtų teikiama (arba kuriomis būtų apribota kita nauda, nei nauda pagal Sutarties, kuriai taikoma Konvencija, nuostatas, susijusi su gyvenamąja vieta, asocijuotomis įmonėmis ar nediskriminavimu, ar nauda, kuri teikiama ne vien tik Susitariančiosios Jurisdikcijos rezidentams) apsiribojant tik rezidentais, kurie turi teisę gauti tokią naudą, nes atitinka vieną ar daugiau susijusių su kategorijomis reikalavimų.

15. Šalis gali pasilikti teisę:

a) netaikyti 1 dalies savo sutartims, kurioms taikoma Konvencija, remdamasi tuo, kad ketina taikyti išsamaus lengvatų teikimo apribojimo nuostatos ir bet kurių taisyklių derinį, siekdama atsižvelgti į tarpininkaujamas finansavimo struktūras ar pagrindinio tikslo kriterijų ir taip įvykdydama būtinuosius piktnaudžiavimo sutartimi prevencijos reikalavimus pagal EBPO / G20 BEPS paketą; tokiais atvejais Susitariančiosios Jurisdikcijos stengiasi rasti abipusiškai priimtina sprendimą, kuris atitiktų būtinuosius reikalavimus;

b) netaikyti 1 dalies (taip pat 4 dalies, kai tai susiję su šią dalį taikyti pasirinkusia Šalimi) savo sutartims, kurioms taikoma Konvencija, jei jose jau yra nuostatos, neleidžiančios suteikti visos naudos, kuri kitu atveju būtų suteikta pagal Sutartį, kuriai taikoma Konvencija, jeigu pagrindinis ar vienas pagrindinių bet kurio susitarimo ar sandorio ar bet kurio su susitarimu ar sandoriu susijusio asmens tikslų buvo gauti tokią naudą;

c) netaikyti supaprastinto lengvatų teikimo apribojimo nuostatos savo sutartims, kurioms taikoma Konvencija, jei jose jau yra 14 dalyje pateikta nuostata.

16. Išskyrus atvejus, kai supaprastinto lengvatų teikimo apribojimas taikomas lengvatoms, teikiamoms vadovaujantis 7 dalimi vienos ar daugiau Šalių pagal Sutartį, kuriai taikoma Konvencija, Šalis, kuri vadovaudamasi 6 dalimi pasirenka taikyti supaprastinto lengvatų teikimo apribojimą, gali pasilikti teisę netaikyti viso šio straipsnio savo sutartims, kurioms taikoma Konvencija, kurių atžvilgiu viena ar daugiau kitų Susitariančiųjų Jurisdikcijų pasirinko netaikyti supaprastinto lengvatų teikimo apribojimo. Tokiais atvejais Susitariančiosios Jurisdikcijos stengiasi rasti abipusiškai priimtina sprendimą, kuris atitiktų būtinuosius piktnaudžiavimo sutartimi prevencijos reikalavimus pagal EBPO / G20 BEPS paketą.

17. a) Kiekviena Šalis, nenustačiusi 15 dalies a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje tokioje jos Sutartyje, kuriai taikoma Konvencija ir kuriai nenustatoma 15 dalies b punkte nurodyta išlyga, yra 2 dalyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos

pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies (ir, jei taikoma, 4 dalies) nuostatomis. Kitais atvejais 1 dalis (ir, jei taikoma, 4 dalis) pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek šios nuostatos yra nesuderinamos su 1 dalimi (ir, jei taikoma, 4 dalimi). Šalis, siunčianti pranešimą pagal šį punktą, taip pat gali kartu su juo pateikti raštą, nurodydama, kad nors tokia Šalis ir pritaria vien tik 1 dalies, kaip tarpinės priemonės, taikymui, ji ketina, kai įmanoma, dvišalių derybų būdu, be 1 dalies, papildomai arba vietoj 1 dalies taikyti apribojimo lengvatų teikimui nuostatą.

b) Kiekviena Šalis, kuri pasirenka taikyti 4 dalį, praneša apie pasirinkimą depozitarui. Sutarčiai, kuriai taikoma Konvencija, 4 dalis taikoma tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus.

c) Kiekviena Šalis, kuri pasirenka taikyti supaprastintą lengvatų teikimo apribojimą pagal 6 dalį, praneša apie pasirinkimą depozitarui. Jei tokia Šalis nenustatė 15 dalies c punkte nurodytos išlygos, tokiam pranešime taip pat pateikiamas jos sutarčių, kurioms taikoma Konvencija, jei jose yra 14 dalyje nurodyta nuostata, sąrašas, nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius.

d) Kiekviena Šalis, kuri pasirenka netaikyti supaprastinto lengvatų teikimo apribojimo pagal 6 dalį, bet pasirenka taikyti arba 7 dalies a punktą arba 7 dalies b punktą, praneša depozitarui apie pasirinktą punktą. Jei tokia Šalis nenustatė 15 dalies c punkte nurodytos išlygos, tokiam pranešime taip pat pateikiamas jos sutarčių, kurioms taikoma Konvencija, jei jose yra 14 dalyje nurodyta nuostata, sąrašas, nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius.

e) Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus pagal c arba d punktus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama supaprastinto lengvatų teikimo apribojimo nuostata. Kitais atvejais supaprastinto lengvatų teikimo apribojimo nuostata pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek šios nuostatos yra nesuderinamos su supaprastinto lengvatų teikimo apribojimo nuostata.

## **8 straipsnis**

### **Dividendų pervedimo sandoriai**

1. Sutarties, kuriai taikoma Konvencija, nuostatos, pagal kurias bendrovės, Susitariančiosios Jurisdikcijos rezidentės, mokamiems dividendams netaikomi mokesčiai ar sumažinamas tarifas, kuriuo tokie dividendai gali būti apmokestinami, jeigu faktiškasis savininkas ar gavėjas yra bendrovė, kitos Susitariančiosios Jurisdikcijos rezidentė, kuri valdo, turi ar kontroliuoja daugiau negu tam tikrą dividendus mokančios bendrovės kapitalo, akcijų, įstatinio kapitalo, akcininkų balsų, balsavimo teisių ar panašių nuosavybės teisių dalį ar skaičių, taikomos tik tada, jei per 365 dienų laikotarpį, apimančią dividendų mokėjimo dieną (apskaičiuojant šį laikotarpį, neatsižvelgiama į nuosavybės teisių pokyčius, kurie yra tiesiogiai susiję su tokia akcijas turinčios ar dividendus mokančios bendrovės reorganizacija, kaip susijungimas ar skaidomoji reorganizacija), buvo atitinkamos šiose nuostatose nurodytos nuosavybės sąlygos.

2. 1 dalyje nustatytas trumpiausias laikymo laikotarpis taikomas vietoj 1 dalyje nurodytose Sutarties, kuriai taikoma Konvencija, nuostatose nustatyto trumpiausio laikymo laikotarpio arba kai tokio laikotarpio nėra.

3. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo sutartims, kurioms taikoma Konvencija;

b) netaikyti viso šio straipsnio savo sutartims, kurioms taikoma Konvencija, tiek, kiek 1 dalyje nurodytos nuostatos jau apima:

i) trumpiausią laikymo laikotarpį;

ii) trumpiausią laikymo laikotarpį, kuris yra trumpesnis nei 365 dienos ar

ii) trumpiausią laikymo laikotarpį, kuris yra ilgesnis nei 365 dienos.

4. Kiekviena Šalis, kuri nėra nustačiusi 3 straipsnio a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 1 dalyje nurodyta nuostata, kuriai netaikoma 3 straipsnio b punkte nurodyta išlyga, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. 1 dalis taikoma Sutarties, kuriai taikoma Konvencija, nuostatai tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus dėl tokios nuostatos.

## 9 straipsnis

### **Kapitalo prieaugio pajamos, gaunamos perleidus subjektų, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus**

1. Sutarties, kuriai taikoma Konvencija, nuostatos, kuriomis nustatoma, kad Susitariančiosios Jurisdikcijos rezidento kapitalo prieaugio pajamos, gautos perleidus akcijas ar kitas dalyvavimo subjekto kapitale teises, gali būti apmokestinamos kitoje Susitariančiojoje Jurisdikcijoje, jeigu daugiau kaip tam tikra šių akcijų ar teisių vertės dalis buvo sukurta iš toje kitoje Susitariančiojoje Jurisdikcijoje esančio nekilnojamojo turto (arba jeigu daugiau nei tam tikrą subjekto nuosavybės dalį sudaro toks nekilnojamasis turtas):

a) taikomos, jeigu bet kuriuo momentu 365 dienų laikotarpiu prieš perleidžiant akcijas ar teises išlaikoma atitinkama vertės viršutinė riba;

b) taikomos akcijoms ar lygiavertėms turtinėms teisėms, pavyzdžiui, dalis bendrijos ar fondo kapitale (tiek, kiek jos dar netaikomos akcijoms ar kapitalo dalims), be visų kitų akcijų ar teisių, kurioms tos nuostatos jau taikomos.

2. 1 dalies a punkte nustatytas laikotarpis taikomas vietoj laikotarpio, skirto nustatyti, ar išlaikoma 1 dalyje nurodytose Sutarties, kuriai taikoma Konvencija, nuostatose nustatyta atitinkama vertės viršutinė riba arba tada, kai tokio laikotarpio nėra.

3. Šalis taip pat gali pasirinkti savo Sutartims, kurioms taikoma Konvencija, taikyti 4 dalį.

4. Taikant Sutartį, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos rezidento kapitalo prieaugio pajamos, gautos perleidus akcijas ar kitas lygiavertes turtines teises, pavyzdžiui, dalis bendrijos ar fondo kapitale, gali būti apmokestinamos kitoje Susitariančiojoje Jurisdikcijoje, jeigu bet kuriuo momentu 365 dienų laikotarpiu prieš perleidžiant akcijas ar teises 50 proc. šių akcijų ar lygiavertėms turtinių teisių vertės buvo sukurta iš toje kitoje Susitariančiojoje Jurisdikcijoje esančio nekilnojamojo turto.

5. 4 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų, nustatančių, kad Susitariančiosios Jurisdikcijos rezidento kapitalo prieaugio pajamos, gautos perleidus akcijas ar

kitas dalyvavimo subjekto kapitale teises gali būti apmokestinamos kitoje Susitariančiojoje Jurisdikcijoje, jeigu daugiau kaip tam tikra šių akcijų ar teisių vertės dalis buvo sukurta iš toje kitoje Susitariančiojoje Jurisdikcijoje esančio nekilnojamojo turto (arba jeigu daugiau nei tam tikrą subjekto nuosavybės dalį sudaro toks nekilnojamasis turtas).

6. Šalis gali pasilikti teisę:

a) netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti 1 dalies a papunkčio savo Sutartims, kurioms taikoma Konvencija;

c) netaikyti 1 dalies b papunkčio savo Sutartims, kurioms taikoma Konvencija;

d) netaikyti 1 dalies a papunkčio savo sutartims, kurioms taikoma Konvencija, jei jose jau yra tokio tipo nuostata, kaip nurodyta 1 dalyje, apimanti laikotarpį, skirtą nustatyti, ar buvo išlaikyta atitinkama vertės viršutinė riba;

e) netaikyti 1 dalies a papunkčio savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra tokio tipo nuostata, kaip nurodyta 1 dalyje, apimanti laikotarpį, skirtą nustatyti, ar buvo išlaikyta atitinkama vertės viršutinė riba;

f) netaikyti 4 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 5 dalyje pateiktos nuostatos.

7. Kiekviena Šalis, kuri nėra nustačiusi 6 straipsnio a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 1 dalyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. 1 dalis taikoma Sutarties, kuriai taikoma Konvencija, nuostatai tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus dėl šios nuostatos.

8. Kiekviena šalis, kuri pasirenka taikyti 4 dalį, praneša apie savo pasirinkimą depozitarui. 4 dalis taikoma Sutarčiai, kuriai taikoma Konvencija, tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus. Tokiu atveju 1 dalis minėtai Sutarčiai, kuriai taikoma Konvencija, netaikoma. Jei Šalis nenustatė 6 dalies f punkte nurodytos išlygos, bet nustatė 6 dalies a punkte nurodytą išlygą, minėtame pranešime taip pat pateikiamas jos Sutarčių, kurioms taikoma Konvencija, jei jose yra 5 dalyje nurodyta nuostata, sąrašas, nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius. Jeigu visos Susitariančiosios Jurisdikcijos pateikė pagal šią arba 7 dalį tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 4 dalies nuostatomis. Kitais atvejais 4 dalis pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek šios nuostatos yra nesuderinamos su 4 dalimi.

## **10 straipsnis**

### **Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms**

1. Jeigu:

a) Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos įmonė gauna pajamas iš kitos Susitariančiosios Jurisdikcijos ir pirmoji Susitariančioji Jurisdikcija laiko, kad tokios pajamos priskirtinos nuolatinei trečiosios šalies jurisdikcijoje įsikūrusiai įmonės buveinei; ir

b) tai nuolatinei buveinei priskirtinam pelnui netaikomas mokestis pirmiau minėtoje

Susitariančiojoje Jurisdikcijoje,

Sutartimi, kuriai taikoma Konvencija, teikiamos lengvatos netaikomos jokioms pajamoms, kurios trečiosios šalies jurisdikcijoje apmokestinamos mokesčiu, sudarančiu mažiau nei 60 proc. mokesčio, kuris būtų taikomas toms pajamoms pirmiau minėtoje Susitariančiojoje Jurisdikcijoje, jeigu ta nuolatinė buveinė būtų įsikūrusi pirmiau minėtoje Susitariančiojoje Jurisdikcijoje. Tokiu atveju bet kokios pajamos, kurioms taikomos šios dalies nuostatos, išlieka apmokestinamomis pajamomis vadovaujantis kitos Susitariančiosios Jurisdikcijos vidaus teise, neatsižvelgiant į bet kurias kitas Sutarties, kuriai taikoma Konvencija, nuostatas.

2. 1 dalis, netaikoma, jeigu 1 dalyje nurodytos iš kitos Susitariančiosios Jurisdikcijos gautos pajamos buvo gautos iš aktyviai per nuolatinę buveinę vykdomos verslo veiklos ar yra atsitiktinės tokios veiklos atžvilgiu (veiklos, kuri nėra investavimas, investicijų valdymas ar vien tik jų laikymas įmonės reikmėms, nebent ši veikla yra bankininkystė, draudimo veikla ar su vertybiniais popieriais susijusi ir vykdoma atitinkamai banko, draudimo įmonės ar registruoto vertybinių popierių maklerio veikla).

3. Jeigu vadovaujantis 1 dalimi Susitariančiosios Jurisdikcijos rezidento pajamoms lengvatos pagal Sutartį, kuriai taikoma Konvencija, nesuteikiamos, kitos Susitariančiosios Jurisdikcijos kompetentingas asmuo, neatsižvelgdamas į tai, atsakydamas į tokio rezidento prašymą, gali tas lengvatas suteikti, kai tai susiję su tomis pajamomis, jeigu toks kompetentingas asmuo nustato, kad tokių lengvatų suteikimas yra pagrįstas, atsižvelgiant į tai, jog minėtas rezidentas neatitiko 1 ir 2 dalyse pateiktų reikalavimų. Susitariančiosios Jurisdikcijos kompetentingas asmuo, kuriam kitos Susitariančiosios Jurisdikcijos rezidentas pateikė prašymą pagal pirmiau išdėstytą sakinį, prieš atmesdamas ar patenkindamas prašymą tariasi su kitos Susitariančiosios Jurisdikcijos kompetentingu asmeniu.

4. 1–3 dalys taikomos vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba tada, kai tokių nuostatų nėra), kuriomis neleidžiama suteikti lengvatų ar apribojamos lengvatos, kitu atveju suteiktinos Susitariančiosios Jurisdikcijos įmonei, kuri gauna iš kitos Susitariančiosios Jurisdikcijos pajamas, priskirtinas trečiosios šalies jurisdikcijoje įsikūrusiai įmonės nuolatinei buveinei.

5. Šalis gali pasilikti teisę:

- a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;
- b) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje nurodytos nuostatos;
- c) taikyti šį straipsnį tik toms, savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 4 dalyje pateiktos nuostatos.

6. Kiekviena Šalis, kuri nėra nustačiusi 5 straipsnio a arba b punktuose nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 4 dalyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1–3 dalių nuostatomis. Kitais atvejais 1–3 dalių nuostatomis Sutarties, kuriai taikoma Konvencija, nuostatos pakeičiamos tik tiek, kiek šios nuostatos yra nesuderinamos su tomis dalimis.

### **Mokesčių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus**

1. Sutartis, kuriai taikoma Konvencija, neturi poveikio apmokestinimui, kurį Susitariančioji Jurisdikcija taiko savo rezidentams, išskyrus kai tai susiję su lengvatomis, teikiamomis pagal Sutarties, kuriai taikoma Konvencija, nuostatas:

a) kuriomis reikalaujama, kad Susitariančioji Jurisdikcija suteiktų tos Susitariančiosios Jurisdikcijos įmonei teisę analogiškai ar atitinkamai patikslinti mokesčio, taikomo toje Susitariančiojoje Jurisdikcijoje įmonės nuolatinės buveinės pelnui ar susijusios įmonės pelnui, sumą po kitos Susitariančiosios Jurisdikcijos vadovaujantis Sutartimi, kuriai taikoma Konvencija, atlikto pradinio patikslinimo;

b) kurios gali turėti poveikį tam, kaip Susitariančioji Jurisdikcija apmokestina fizinį asmenį, kuris yra tos Susitariančiosios Jurisdikcijos rezidentas, jeigu tas asmuo gauna pajamas iš kitai Susitariančiajai Jurisdikcijai ar politiniam padaliniui arba vietos valdžios institucijai ar kitai lygiavertei jos įstaigai suteiktų paslaugų;

c) kurios gali turėti poveikį tam, kaip ta Susitariančioji Jurisdikcija apmokestina fizinį asmenį, kuris yra tos Susitariančiosios Jurisdikcijos rezidentas, jeigu tas asmuo yra taip pat studentas, verslo srities mokinys ar stažuotojas ar mokytojas, profesorius, lektorius, instruktorius, tyrėjas ar mokslininkas tyrėjas, kuris atitinka Sutarties, kuriai taikoma Konvencija, sąlygas;

d) kuriomis reikalaujama, kad Susitariančioji Jurisdikcija suteiktų galimybę atskaityti mokesť ar atleisti nuo mokesčio tos Susitariančiosios Jurisdikcijos rezidentų pajamas, kurias kita Susitariančioji Jurisdikcija vadovaudamasi Sutartimi, kuriai taikoma Konvencija, gali apmokestinti (įskaitant pelną, priskirtiną vadovaujantis Sutartimi, kuriai taikoma Konvencija, toje kitoje Susitariančiojoje Jurisdikcijoje įsikūrusiai nuolatinei buveinei);

e) kuriomis tos Susitariančiosios Jurisdikcijos rezidentai apsaugomi nuo tam tikros tos Susitariančiosios Jurisdikcijos taikomos diskriminacinės apmokestinimo praktikos;

f) kuriomis Susitariančiosios Jurisdikcijos rezidentams leidžiama reikalauti, kad tos Susitariančiosios Jurisdikcijos kompetentingas asmuo nagrinėtų apmokestinimo nesilaikant Sutarties, kuriai taikoma Konvencija, atvejus;

g) kurios gali turėti poveikį tam, kaip ta Susitariančioji Jurisdikcija apmokestina fizinį asmenį, kuris yra tos Susitariančiosios Jurisdikcijos rezidentas, kai tas asmuo yra kitos Susitariančiosios Jurisdikcijos diplomatinės atstovybės, vyriausybės atstovybės ar konsulinės įstaigos narys;

h) kuriomis nustatoma, kad pensijos ir kitos išmokos, išmokamos pagal kitos Susitariančiosios Jurisdikcijos socialinę apsaugą reglamentuojančius teisės aktus, apmokestinamos tik toje kitoje Susitariančiojoje Jurisdikcijoje;

i) kuriomis nustatoma, kad pensijos ir panašios išmokos, anuitetai, alimentai ar kitos išlaikymo išmokos, susidaranti kitoje Susitariančiojoje Jurisdikcijoje, apmokestinamos tik toje kitoje Susitariančiojoje Jurisdikcijoje; ar

j) kurios kitu atveju aiškiai apribotų Susitariančiosios Jurisdikcijos teisę apmokestinti savo rezidentus ar aiškiai nustatytų, kad Susitariančioji Jurisdikcija, kurioje susidaro pajamos, turi išimtinę teisę apmokestinti tas pajamas.

2. 1 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba tada, kai tokių

nuostatų nėra), kuriomis nustatoma, kad Sutartis, kuriai taikoma, Konvencija, nepaveiks apmokestinimo, kurį Susitariančioji Jurisdikcija taiko savo rezidentams.

3. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, jei jose jau yra 2 dalyje nurodytos nuostatos.

4. Kiekviena Šalis, kuri nėra nustačiusi 3 straipsnio a arba b punktuose nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 2 dalyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies nuostatomis. Kitais atvejais 1 dalimi Sutarties, kuriai taikoma Konvencija, nuostatos pakeičiamos tik tiek, kiek šios nuostatos yra nesuderinamos su 1 dalimi.

## IV DALIS

### NUOLATINĖS BUVEINĖS STATUSO IŠVENGIMAS

#### 12 straipsnis

#### **Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis**

1. Neatsižvelgiant į Sutarties, kuriai taikoma Konvencija, nuostatas, apibrėžiančias sąvoką „nuolatinė buveinė“, tačiau taikant 2 dalį, jeigu asmuo įmonės vardu veikia Sutarties, kuriai taikoma Konvencija, Susitariančiojoje Jurisdikcijoje ir taip veikdamas įprastai sudaro sutartis arba įprastai jam tenka pagrindinis vaidmuo sudarant sutartis, kurios įprastai sudaromos be esminių įmonės daromų pakeitimų, o šios sutartys yra sudaromos:

a) įmonės vardu; ar

b) siekiant perduoti įmonei priklausančią nuosavybę ar nuosavybę, kuria įmonė turi teisę naudotis arba suteikti teisę naudotis įmonei priklausančia nuosavybe ar nuosavybe, kuria įmonė turi teisę naudotis; ar

c) dėl įmonės paslaugų teikimo,

laikoma, kad ta įmonė turi nuolatinę buveinę toje Susitariančiojoje Jurisdikcijoje bet kokiais veiklais, kurios tas asmuo imasi įmonės vardu, nebent tokia veikla, jeigu ją vykdytų įmonė per nuolatinę Susitariančiojoje Jurisdikcijoje esančią šios įmonės veiklos vietą, nesuteiktų pagrindo laikyti, kad ta nuolatinės veiklos vieta yra nuolatinė buveinė pagal Sutartyje, kuriai taikoma Konvencija (kuri gali būti pakeista šia Konvencija), pateiktą nuolatinės buveinės apibrėžtį.

2. 1 dalis netaikoma, jeigu Sutarties, kuriai taikoma Konvencija, Susitariančiojoje Jurisdikcijoje kitos Susitariančiosios Jurisdikcijos įmonės vardu veikiantis asmuo vykdo veiklą pirmiau minėtoje Susitariančiojoje Jurisdikcijoje kaip nepriklausomas atstovas ir įprastomis tos veiklos sąlygomis veikia įmonės vardu. Tačiau jeigu asmuo veikia vien tik ar beveik vien tik vienos ar daugiau įmonių vardu, su kuriomis jis yra glaudžiai susijęs, tas asmuo, taikant šią dalį,

nelaikomas nepriklausomu atstovu jokios tokios įmonės atžvilgiu.

3. a) 1 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų, apibrėžiančių sąlygas, kuriomis įmonė laikoma turinčia nuolatinę buveinę Susitariančiojoje Jurisdikcijoje (arba asmuo laikomas nuolatinę buveinę Susitariančiojoje Jurisdikcijoje) veiklai, kurios asmuo, kuris nėra nepriklausomą statusą turintis atstovas, imasi įmonės vardu, bet tik tiek, kiek tokiomis nuostatomis reglamentuojama padėtis, kai toks asmuo toje Susitariančiojoje Jurisdikcijoje turi įgaliojimus ir paprastai jais naudojasi sudarydamas sutartis įmonės vardu.

b) 2 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad įmonė nelaikoma turinčia Susitariančiojoje Jurisdikcijoje nuolatinę buveinę veiklai, kurios nepriklausomą statusą turintis atstovas imasi įmonės vardu.

4. Šalis gali pasilikti teisę netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija.

5. Kiekviena Šalis, kuri nėra nustačiusi 4 straipsnio a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 3 dalies a punkte nurodyta nuostata, kartu nurodydama straipsnio ir dalies, kuriuose ji pateikiama, numerį. 1 dalis taikoma Sutarties, kuriai taikoma Konvencija, nuostatai tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus dėl šios nuostatos.

6. Kiekviena Šalis, kuri nėra nustačiusi 4 dalyje nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 3 dalies b punkte nurodyta nuostata, kartu nurodydama straipsnio ir dalies, kuriuose ji pateikiama, numerį. 2 dalis taikoma Sutarties, kuriai taikoma Konvencija, nuostatai tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia tokius pranešimus dėl šios nuostatos.

### **13 straipsnis**

#### **Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis**

1. Šalis gali pasirinkti taikyti 2 dalį (A galimybė) ar 3 dalį (B galimybė) arba netaikyti nė vienos galimybės.

##### **A galimybė**

2. Neatsižvelgiant į Sutarties, kuriai taikoma Konvencija, nuostatas, kuriomis apibrėžiama sąvoka „nuolatinė buveinė“, laikoma, kad sąvoka „nuolatinė buveinė“ neapima:

a) konkrečios Sutartyje, kuriai taikoma Konvencija, išvardytos veiklos (iki šia Konvencija padarytų pakeitimų), kaip veiklos, kuri nelaikoma nuolatinę buveinę, neatsižvelgiant į tai, ar toks nuolatinės buveinės statuso netaikymas grindžiamas tuo, kad ta veikla yra parengiamoji arba papildoma;

b) nuolatinės veiklos vietos išlaikymo vien tik a punkte nenurodytos veiklos įmonės vardu vykdymo tikslais;

c) nuolatinės veiklos vietos išlaikymo vien tik bet kokio a ir b punktuose nurodytos veiklos derinio tikslais,

jeigu tokia veikla ar, kai tai susiję su c punktu, bendra nuolatinės veiklos vietos veikla, yra

parengiamoji arba papildoma.

### **B galimybė**

3. Neatsižvelgiant į Sutarties, kuriai taikoma Konvencija, nuostatas, kuriomis apibrėžiama sąvoka „nuolatinė buveinė“, laikoma, kad sąvoka „nuolatinė buveinė“ neapima:

a) konkrečios Sutartyje, kuriai taikoma Konvencija (iki šia Konvencija padarytų pakeitimų), išvardytos veiklos, kaip veiklos, kuri nelaikoma nuolatine buveine, neatsižvelgiant į tai, ar toks nuolatinės buveinės statuso netaikymas grindžiamas tuo, kad ta veikla yra parengiamoji arba papildoma, išskyrus tiek, kiek ta atitinkama Sutarties, kuriai taikoma Konvencija, nuostata aiškiai nustatoma, kad ta konkreti veikla nelaikoma nuolatine buveine, jeigu ta veikla yra parengiamoji arba pagalbinė;

b) nuolatinės veiklos vietos išlaikymo vien tik a punkte nenurodytos veiklos įmonės vardu vykdymo tikslais, jeigu ta veikla yra parengiamoji arba pagalbinė;

c) nuolatinės verslo vietos išlaikymo vien tik bet kuriam šios dalies a–e punktuose išvardytos veiklos deriniui, jei dėl šio derinio nuolatinės veiklos vietos bendra veikla yra parengiamoji arba pagalbinė.

4. Sutarties, kuriai taikoma Konvencija nuostata (kuri gali būti pakeista 2 arba 3 dalimi), kurioje įvardijama konkreti veikla, kaip veikla, kuri nelaikoma nuolatine buveine, netaikoma nuolatinės veiklos vietai, kuria įmonė naudojasi ar kurią išlaiko, jei ta pati įmonė ar su ja glaudžiai susijusi įmonė vykdo veiklą toje pat ar kitoje vietoje toje pačioje Susitariančiojoje Jurisdikcijoje ir:

a) ta vieta ar kita vieta yra įmonės ar su ja glaudžiai susijusios įmonės nuolatinė buveinė pagal Sutarties, kuriai taikoma Konvencija, nuostatas, kuriomis apibrėžiama nuolatinė buveinė; ar

b) nuolatinės veiklos vietos bendra veikla, kuri yra dviejų įmonių toje pačioje vietoje arba tos pačios įmonės ar glaudžiai susijusių įmonių dviejose vietose vykdomos veiklos derinio rezultatas, nėra parengiamojo arba pagalbinio pobūdžio,

jeigu dviejų įmonių toje pačioje vietoje arba tos pačios įmonės ar glaudžiai susijusių įmonių dviejose vietose vykdoma veikla yra papildomos funkcijos, kurios yra nuoseklios ūkinės veiklos dalis.

5. a) 2 ar 3 dalis taikoma vietoj atitinkamų Sutarties, kuriai taikoma Konvencija, nuostatų dalių, kuriose įvardijama konkreti veikla, kuri nelaikoma nuolatine buveine, net jei ta veikla vykdoma per nuolatinę veiklos vietą (arba Sutarties, kuriai taikoma Konvencija, nuostatų, kurių poveikis panašus).

b) 4 dalis taikoma vietoj atitinkamų Sutarties, kuriai taikoma Konvencija, nuostatų (kurios gali būti pakeistos 2 ar 3 dalimi), jei jose įvardijama konkreti veikla, kuri nelaikoma nuolatine buveine, net jei ta veikla vykdoma per nuolatinę veiklos vietą (arba Sutarties, kuriai taikoma Konvencija, nuostatų, kurios turi panašų poveikį).

6. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti 2 dalies savo Sutartims, kurioms taikoma Konvencija, jei jose aiškiai nustatoma, kad konkrečios veiklos sąraše esanti veikla nelaikoma nuolatine buveine tik tada, jeigu kiekviena veikla yra parengiamoji arba pagalbinė;

c) netaikyti 4 dalies savo Sutartims, kurioms taikoma Konvencija.

7. Kiekviena šalis, kuri pasirenka taikyti galimybę pagal 1 dalį, praneša apie pasirinktą galimybę depozitarui. Tokiame pranešime taip pat pateikiamas jos Sutarčių, kurioms taikoma Konvencija, jei jose yra 5 dalies a punkte nurodyta nuostata, sąrašas, nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius. Galimybė Sutarties, kuriai taikoma Konvencija, nuostatai taikoma tik tada, kai visos Susitariančiosios Jurisdikcijos pasirenka taikyti tą pačią galimybę ir pateikia pranešimą dėl šios nuostatos.

8. Kiekviena Šalis, kuri nėra nustačiusi 6 dalies a ar c punktuose nurodytos išlygos ir nepasirenka taikyti galimybės pagal 1 dalį, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 5 dalies b punkte nurodyta nuostata, taip pat nurodydama straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerį. 4 dalis taikoma Sutarties, kuriai taikoma Konvencija, nuostatai tik tada, kai visos Susitariančiosios Jurisdikcijos pateikia pagal šią arba pagal 7 dalį tokius pranešimus dėl šios nuostatos.

## **14 straipsnis**

### **Sutarčių išskaidymas**

1. Tik siekiant nustatyti, ar buvo viršytas Sutarties, kuriai taikoma Konvencija, nuostatoje nurodytas laikotarpis (ar laikotarpiai), kuriuo (-iais) apibrėžiamas laikotarpis (ar laikotarpiai), kuriam (-iems) pasibaigus, konkretūs projektai ar veikla tampa nuolatine buveine:

a) jeigu Susitariančiosios Jurisdikcijos įmonė vykdo veiklą kitoje Susitariančioje Jurisdikcijoje esančioje vietoje, kuri yra statybų aikštelė, statybų ar įrengimo projektas ar kitas Sutarties, kuriai taikoma Konvencija, nuostatoje nustatytas konkretus projektas arba vykdo su ta vieta susijusią priežiūros ar konsultavimo veiklą, kai tai susiję su Sutarties, kuriai taikoma Konvencija, nuostata, kurioje nurodoma tokia veikla, ir ši veikla vykdoma per vieną ar kelis laikotarpius, kurių bendra trukmė viršija 30 dienų, tačiau neviršijant atitinkamoje Sutarties, kuriai taikoma Konvencija, nuostatoje nurodyto laikotarpio ar laikotarpių trukmės; ir

b) jeigu susijusią veiklą toje kitoje Susitariančiojoje Jurisdikcijoje vykdo (arba jeigu atitinkama Sutarties, kuriai taikoma Konvencija, nuostata taikoma susijusiai priežiūros ar konsultavimo veiklai) viena ar daugiau su pirmiau minėta įmone glaudžiai susijusių įmonių toje pačioje statybų aikštelėje, statybų ar įrengimo projekte ar kitoje atitinkamoje Sutarties, kuriai taikoma Konvencija, nuostatoje nurodytoje vietoje skirtingais laikotarpiais, kurių kiekvienas ilgesnis nei 30 dienų,

šie skirtingi laikotarpiai pridedami prie bendro laikotarpio, per kurį pirmiau minėta įmonė vykdė veiklą toje statybų aikštelėje, statybų ar įrengimo projekte ar kitoje atitinkamoje Sutarties, kuriai taikoma Konvencija, nuostatoje nurodytoje vietoje.

2. 1 dalis taikoma vietoj Sutarties, kuriai taikoma Konvencija, nuostatų arba jų nesant tiek, kiek tomis nuostatomis reglamentuojamas sutarčių išskaidymas į daug dalių siekiant išvengti laikotarpio ar laikotarpių taikymo, kai tai susiję su 1 dalyje nurodytų konkrečių projektų ar veiklos nuolatinės buveinės buvimu.

3. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija;

b) netaikyti viso šio straipsnio savo Sutarčių, kurioms taikoma Konvencija, nuostatomis, susijusioms su gamtos išteklių tyrinėjimu ar naudojimu.

4. Kiekviena Šalis, kuri nėra nustačiusi 3 straipsnio a punkte nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 2 dalyje nurodyta nuostata, kuriai netaikoma išlyga pagal 3 straipsnio b punktą, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies nuostatomis tiek, kiek nustatyta 2 dalyje. Kitais atvejais 1 dalimi Sutarties, kuriai taikoma Konvencija, nuostatos pakeičiamos tik tiek, kiek šios nuostatos yra nesuderinamos su 1 dalimi.

## **15 straipsnis**

### **Asmens, glaudžiai susijusio su įmone, apibrėžtis**

1. Taikant Sutarties, kuriai taikoma Konvencija, nuostatas, kurios keičiamos 12 straipsnio 2 dalimi (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis), 13 straipsnio 4 dalimi (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis) ar 14 straipsnio 1 dalimi (Sutarčių išskaidymas), asmuo yra glaudžiai susijęs su įmone, jeigu, remiantis visais reikšmingais faktais ir aplinkybėmis, įmonė ir asmuo kontroliuoja vienas kitą arba juos abu kontroliuoja tie patys asmenys ar įmonės. Bet kuriuo atveju asmuo laikomas glaudžiai susijusiu su įmone, jeigu kuriam nors iš jų tiesiogiai ar netiesiogiai priklauso daugiau nei 50 proc. kito asmens turtinių interesų (arba, jei tai bendrovė, bent 50 proc. visų bendrovės akcijų suteikiamų balsų ir vertės ar bendrovės nuosavybės) arba jeigu kitam asmeniui tiesiogiai ar netiesiogiai priklauso daugiau kaip 50 proc. asmens ar įmonės turtinių interesų (arba, jei tai bendrovė, bent 50 proc. visų bendrovės akcijų suteikiamų balsų ir vertės ar bendrovės nuosavybės).

2. Šalis, kuri nustatė išlygas, nurodytas 12 straipsnio 4 dalyje (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis), 13 straipsnio 6 dalies a ar c punktuose (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis) ir 14 straipsnio 3 dalyje (Sutarčių išskaidymas), gali pasilikti teisę netaikyti viso šio straipsnio Sutarčiai, kuriai taikoma Konvencija ir minėtos išlygos.

## **V DALIS**

### **GINČŲ SPRENDIMO GERINIMAS**

## **16 straipsnis**

### **Abipusio susitarimo procedūra**

1. Kai asmuo mano, kad dėl vienos arba abiejų Susitariančiųjų Jurisdikcijų veiksmų jis yra arba bus apmokestinamas nesilaikant Sutarties, kuriai taikoma Konvencija, nuostatų, jis gali, neatsižvelgiant į tų Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytas teisės gynimo priemonės, pateikti pareiškimą bet kurios Susitariančiosios Jurisdikcijos kompetentingam asmeniui. Pareiškimas turi būti pateikiamas per trejus metus, skaičiuojant nuo pirmojo pranešimo apie

veiksmus, dėl kurių atsiranda Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkantis apmokestinimas.

2. Jei kompetentingas asmuo mano, kad protestas pagrįstas, ir jei jis pats negali rasti patenkinamo sprendimo, jis stengiasi šį klausimą išspręsti abipusiu susitarimu su kitos Susitariančiosios Jurisdikcijos kompetentingu asmeniu taip, kad būtų išvengta Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkančio apmokestinimo. Bet koks pasiektas susitarimas vykdomas neatsižvelgiant į Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytus laiko apribojimus.

3. Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiu susitarimu stengiasi išspręsti bet kokius sunkumus ar abejones, kylančius aiškinant arba taikant Sutartį, kuriai taikoma Konvencija. Jie taip pat gali kartu konsultuotis, kaip išvengti dvigubo apmokestinimo Sutartyje, kuriai taikoma Konvencija, nenustatytais atvejais.

4. a) i) 1 dalies pirmas sakinytas taikomas vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (ar atitinkamų jos dalių) / (arba kai tokių nuostatų nėra), kuriomis nustatoma, kad jeigu asmuo mano, kad dėl vienos arba abiejų Susitariančiųjų Jurisdikcijų veiksmų jis yra arba bus apmokestinamas nesilaikant Sutarties, kuriai taikoma Konvencija, nuostatų, jis gali, neatsižvelgiant į tų Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytas teisės gynimo priemonės, šiuo klausimu kreiptis į Susitariančiosios Jurisdikcijos, kurios rezidentas jis yra, kompetentingą asmenį, įskaitant nuostatas, pagal kurias, jeigu to asmens pareiškimas pateikiamas pagal Sutarties, kuriai taikoma Konvencija, nuostatas, susijusias su nediskriminavimu pilietybės pagrindu, pareiškimas gali būti pateikiamas Susitariančiosios Jurisdikcijos, kurios pilietis asmuo yra, kompetentingam asmeniui.

ii) 1 dalies antras sakinytas taikomas vietoj Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateiktas per nustatytą laikotarpį, kuris yra trumpesnis nei treji metai skaičiuojant nuo pirmojo pranešimo apie veiksmus, dėl kurių atsiranda Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkantis apmokestinimas arba kai nėra Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatomas laikotarpis, per kurį turi būti pateiktas pareiškimas.

b) i) 2 dalies pirmas sakinytas taikomas, kai nėra Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad kompetentingas asmuo, kuriam 1 dalyje nurodytas asmuo pateikia pareiškimą, jei protestas jam atrodo pagrįstas ir jei jis pats negali rasti patenkinamo sprendimo, stengiasi šį klausimą išspręsti abipusiu susitarimu su kitos Susitariančiosios Jurisdikcijos kompetentingu asmeniu taip, kad būtų išvengta Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkančio apmokestinimo.

ii) 2 dalies antras sakinytas taikomas, kai nėra Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad bet koks pasiektas susitarimas turi būti įgyvendintas, neatsižvelgiant į Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytus laiko apribojimus.

c) i) 3 dalies pirmas sakinytas taikomas, kai nėra Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad Susitariančiųjų Jurisdikcijų kompetentingi asmenys stengiasi išspręsti bet kokius sunkumus ar abejones, kylančius aiškinant arba taikant Sutartį, kuriai taikoma Konvencija.

ii) 3 dalies antras sakinytas taikomas, kai nėra Sutarties, kuriai taikoma Konvencija, nuostatų, kuriomis nustatoma, kad Susitariančiųjų Jurisdikcijų kompetentingi asmenys gali kartu

konsultuotis, kaip panaikinti dvigubą apmokestinimą Sutartyje, kuriai taikoma Konvencija, nenustatytais atvejais.

5. Šalis gali pasilikti teisę:

a) netaikyti 1 dalies pirmo sakinio savo Sutartims, kurioms taikoma Konvencija, remdamasi tuo, kad ji ketina atitikti būtinuosius ginčų sprendimo pagerinimo reikalavimus pagal EBPO / G20 BEPS paketą, užtikrindama, jog pagal kiekvieną jos Sutartį, kuriai taikoma, Konvencija (kuri nėra Sutartis, kuriai taikoma Konvencija, pagal kurią asmeniui leidžiama pateikti pareiškimą bet kurios Susitariančiosios Jurisdikcijos kompetentingam asmeniui), kai asmuo mano, kad dėl vienos arba abiejų Susitariančiųjų Jurisdikcijų veiksmų jis yra arba bus apmokestinamas nesilaikant Sutarties, kuriai taikoma Konvencija, nuostatų, jis gali, neatsižvelgiant į tų Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytas teisės gynimo priemonės, šiuo klausimu kreiptis į Susitariančiosios Jurisdikcijos, kurios rezidentas jis yra, kompetentingą asmenį arba, jeigu to asmens pareiškimas pateikiamas pagal Sutarties, kuriai taikoma Konvencija, nuostatas, susijusias su nediskriminavimu pilietybės pagrindu, pareiškimas gali būti pateikiamas Susitariančiosios Jurisdikcijos, kurios pilietis asmuo yra, kompetentingam asmeniui; ir tos Susitariančiosios Jurisdikcijos kompetentingas asmuo kitos Susitariančiosios Jurisdikcijos kompetentingo asmens atžvilgiu atliks abipusio pranešimo ar konsultavimosi procedūrą, tais atvejais, kai kompetentingas asmuo, kuriam buvo pateiktas pareiškimas dėl abipusio susitarimo procedūros, nemano, kad mokesčių mokėtojo protestas yra pagrįstas;

b) netaikyti 1 dalies antro sakinio savo Sutartims, kurioms taikoma Konvencija, ir kurios nenumato, kad 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateiktas per atitinkamą laikotarpį, remdamasi tuo, kad ji ketina atitikti būtinuosius ginčų sprendimo pagerinimo reikalavimus pagal EBPO / G20 BEPS paketą, užtikrindama, jog taikant visas tokias Sutartis, kurioms taikoma Konvencija, 1 dalyje nurodytam mokesčių mokėtojui leidžiama pateikti pareiškimą per ne trumpesnę nei trejų metų laikotarpį, skaičiuojant nuo pirmojo pranešimo apie veiksmus, dėl kurių atsiranda Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkantis apmokestinimas;

c) netaikyti 2 dalies antro sakinio savo Sutartims, kurioms taikoma Konvencija, remdamasi tuo, kad taikant visas jos Sutartis, kurioms taikoma Konvencija:

i) bet koks abipusio susitarimo procedūros būdu pasiektas susitarimas vykdomas neatsižvelgiant į Susitariančiųjų Jurisdikcijų vidaus įstatymuose nustatytus laiko apribojimus; ar

ii) ji ketina atitikti būtinuosius ginčų sprendimo pagerinimo reikalavimus pagal EBPO / G20 BEPS paketą, priimdama per savo dvišales derybas dėl sutarčių, sutarties nuostatą, kuria nustatoma, kad:

A) Susitariančiosios Jurisdikcijos netikslina pelno, kuris priskirtinas vienos iš Susitariančiųjų Jurisdikcijų įmonės nuolatinei buveinei pasibaigus laikotarpiui, dėl kurio abi Susitariančiosios Jurisdikcijos susitaria, nuo mokestinių metų, kuriais pelnas būtų buvęs priskirtinas nuolatinei buveinei, pabaigos (ši nuostata netaikoma sukčiavimo, rimto aplaidumo ar tyčinio įsipareigojimų nevykdymo atveju); ir

B) Susitariančiosios Jurisdikcijos į įmonės pelną neįtraukia ir atitinkamai neapmokestina pelno, kurį įmonė būtų gavusi, tačiau dėl Sutartyje, kuriai taikoma Konvencija, nurodytų sąlygų, susijusių su asocijuotomis įmonėmis, tokio pelno negavo praėjus laikotarpiui, dėl kurio abi Susitariančiosios Jurisdikcijos susitaria, nuo mokestinių metų, kuriais įmonė būtų gavusi pelną,

pabaigos (ši nuostata netaikoma sukčiavimo, rimto aplaidumo ar tyčinio įsipareigojimų nevykdymo atveju).

6. a) Kiekviena Šalis, nepasilikusi 5 straipsnio a punkte nurodytos teisės, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 4 dalies a punkto i papunktyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies pirmu sakiniu. Kitais atvejais 1 dalies pirmas sakiny s pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek tos nuostatos yra nesuderinamos su šiuo sakiniu.

b) Kiekviena Šalis, nepasilikusi 5 dalies b punkte nurodytos teisės, praneša depozitarui apie:

i) sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose yra nuostata, nustatanti, kad 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateikiamas per nustatytą laikotarpį kuris yra trumpesnis nei treji metai skaičiuojant nuo pirmojo pranešimo apie veiksmus, dėl kurių atsiranda Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkantis apmokestinimas, taip pat nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius; Sutarties, kuriai taikoma Konvencija, nuostata pakeičiama 1 dalies antru sakiniu, jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą; kitais atvejais, atsižvelgiant į ii papunktyje pateiktą sąlygą, 1 dalies antras sakiny s pakeičia Sutarties, kuriai taikoma Konvencija, nuostatas tik tiek, kiek tos nuostatos yra nesuderinamos su 1 dalies antru sakiniu;

ii) sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose yra nuostata, nustatanti, kad 1 dalies pirmame sakinyje nurodytas pareiškimas turi būti pateikiamas per nustatytą laikotarpį kuris yra ne trumpesnis nei treji metai skaičiuojant nuo pirmojo pranešimo apie veiksmus, dėl kurių atsiranda Sutarties, kuriai taikoma Konvencija, nuostatų neatitinkantis apmokestinimas, taip pat nurodant straipsnio ir dalies, kuriuose kiekviena tokia nuostata pateikiama, numerius; 1 dalies antras sakiny s Sutarčiai, kuriai taikoma Konvencija, netaikomas, jeigu bet kuri Susitariančioji Jurisdikcija pateikė tokį pranešimą dėl tos Sutarties, kuriai taikoma Konvencija.

c) Kiekviena Šalis praneša depozitarui apie:

i) sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose nėra 4 dalies b punkto i papunktyje pateikiamos nuostatos; 2 dalies pirmas sakiny s taikomas Sutarčiai, kuriai taikoma Konvencija, tik tada, jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus dėl tos Sutarties, kuriai taikoma Konvencija;

ii) kai tai susiję su Šalimi, kuri nepasiliko 5 dalies c punkte nurodytos teisės, sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose nėra 4 dalies b punkto ii papunktyje pateikiamos nuostatos; 2 dalies antras sakiny s taikomas Sutarčiai, kuriai taikoma Konvencija, tik tada, jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus dėl tos Sutarties, kuriai taikoma Konvencija.

d) Kiekviena Šalis praneša depozitarui apie:

i) sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose nėra 4 dalies c punkto i papunktyje pateikiamos nuostatos; 3 dalies pirmas sakiny s taikomas Sutarčiai, kuriai taikoma Konvencija, tik tada, jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus dėl tos Sutarties, kuriai taikoma Konvencija;

ii) sąrašą jos Sutarčių, kurioms taikoma Konvencija, kuriose nėra 4 dalies c punkto ii papunktyje pateikiamos nuostatos; 3 dalies antras sakinyss taikomas Sutarčiai, kuriai taikoma Konvencija, tik tada, jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus dėl tos Sutarties, kuriai taikoma Konvencija.

## 17 straipsnis

### Atitinkami patikslinimai

1. Kai Susitariančioji Jurisdikcija įskaičiuoja į tos Susitariančiosios Jurisdikcijos įmonės pelną – ir atitinkamai apmokestina – pelną, kuris buvo apmokestintas kaip kitos Susitariančiosios Jurisdikcijos įmonės pelnas toje kitoje Susitariančiojoje Jurisdikcijoje, ir taip įskaičiuotas pelnas yra pelnas, kuris būtų priskirtas pirmiau minėtos Susitariančiosios Jurisdikcijos įmonei, jei tarp tų dviejų įmonių būtų sudarytos tokios sąlygos, kokios yra tarp nepriklausomų įmonių, tada ta kita Susitariančioji Jurisdikcija atitinkamai patikslina joje imamo tokio pelno mokesčio sumą. Nustatant, kaip šią sumą reikia patikslinti, atsižvelgiama į kitas Sutarties, kuriai taikoma Konvencija, nuostatas, o prireikus Susitariančiųjų Jurisdikcijų kompetentingi asmenys konsultuojasi tarpusavyje.

2. 1 dalis taikoma vietoj nuostatos (arba tada, kai tokios nuostatos nėra), kuria Susitariančiajai Jurisdikcijai nustatomas reikalavimas atitinkamai patikslinti joje imamo tos Susitariančiosios Jurisdikcijos įmonės pelno mokesčio sumą, jeigu kita Susitariančioji Jurisdikcija įskaičiuoja tą pelną į tos kitos Susitariančiosios Jurisdikcijos įmonės pelną ir atitinkamai šį pelną apmokestina, ir taip įskaičiuotas pelnas yra pelnas, kuris būtų priskirtas tos kitos Susitariančiosios Jurisdikcijos įmonei, jei tarp tų dviejų įmonių būtų sudarytos tokios sąlygos, kokios yra tarp nepriklausomų įmonių.

3. Šalis gali pasilikti teisę:

a) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, kuriose jau yra 2 dalyje pateikta nuostata;

b) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, remdamasi tuo, kad jeigu jos Sutartyje, kuriai taikoma Konvencija, nėra 2 dalyje nurodytos nuostatos:

i) ji atlieka atitinkamą 1 dalyje nurodytą patikslinimą; ar

ii) jos kompetentingas asmuo stengiasi šį klausimą išspręsti pagal Sutarties, kuriai taikoma Konvencija, nuostatas, susijusias su abipusio susitarimo procedūra;

c) kai tai susiję su Šalimi, kuri nustatė išlygą pagal 16 straipsnio 5 dalies c punkto ii papunktį (Abipusio susitarimo procedūra) netaikyti viso šio straipsnio savo Sutartims, kurioms taikoma Konvencija, remdamasi tuo, kad per savo dvišales derybas dėl sutarčių ji priima 1 dalyje pateiktą sutarties nuostatą, jeigu Susitariančiosioms Jurisdikcijoms pavyko susitarti dėl tos nuostatos ir dėl 16 straipsnio 5 dalies c punkto ii papunktyje pateiktų nuostatų (Abipusio susitarimo procedūra).

4. Kiekviena Šalis, kuri nėra nustačiusi 3 dalyje nurodytos išlygos, praneša depozitarui, ar kiekvienoje jos Sutartyje, kuriai taikoma Konvencija, yra 2 dalyje nurodyta nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu visos Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata pakeičiama 1 dalies nuostatomis. Kitais atvejais 1 dalimi Sutarties, kuriai

taikoma Konvencija, nuostatos pakeičiamos tik tiek, kiek tos nuostatos yra nesuderinamos su 1 dalimi.

## **VI DALIS**

### **ARBITRAŽAS**

#### **18 straipsnis**

##### **Pasirinkimas taikyti VI dalį**

Šalis gali pasirinkti taikyti šią dalį savo Sutartims, kurioms taikoma Konvencija, ir atitinkamai praneša apie tai depozitarui. Ši dalis taikoma dviem Sutarties, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms tik tada, jei abi Susitariančiosios Jurisdikcijos pateikė tokį pranešimą.

#### **19 straipsnis**

##### **Privalomas ir įpareigojantis arbitražas**

##### **1. Jeigu:**

a) pagal Sutarties, kuriai taikoma Konvencija, nuostatą (kuri gali būti pakeista 16 straipsnio 1 dalimi (Abipusio susitarimo procedūra)), kuria nustatoma, kad asmuo gali pateikti pareiškimą Susitariančiosios Jurisdikcijos kompetentingam asmeniui, jeigu tas asmuo mano, kad dėl vienos arba abiejų Susitariančiųjų Jurisdikcijų veiksmų jis yra arba bus apmokestinamas nesilaikant Sutarties, kuriai taikoma Konvencija (kuri gali būti pakeista Konvencija), nuostatų, asmuo pateikė pareiškimą Susitariančiosios Jurisdikcijos kompetentingam asmeniui, remdamasis tuo, kad dėl vienos arba abiejų Susitariančiųjų Jurisdikcijų veiksmų buvo apmokestintas nesilaikant Sutarties, kuriai taikoma Konvencija (kuri gali būti pakeista Konvencija), nuostatų; ir

b) kompetentingi asmenys nepajėgia susitarti, kad išspręstų klausimą vadovaudamiesi Sutarties, kuriai taikoma Konvencija (kuri gali būti pakeista 16 straipsnio 2 dalimi (Abipusio susitarimo procedūra)), nuostata, kuria nustatoma, kad kompetentingas asmuo stengiasi šį klausimą išspręsti abipusiu susitarimu su kitos Susitariančiosios Jurisdikcijos kompetentingu asmeniu per dvejų metų laikotarpį, prasidedantį atitinkamai 8 ar 9 dalyje nurodytą dieną (nebent, prieš pasibaigiant šiam laikotarpiui Susitariančiųjų Jurisdikcijų kompetentingi asmenys susitaria dėl kito su šiuo klausimu susijusio laikotarpio ir praneša apie tokį susitarimą asmeniui, kuris pateikė pareiškimą),

bet kokie neišspręsti su pareiškimu susiję klausimai pateikiami spręsti arbitražui šioje dalyje nurodytu būdu, jei asmuo to paprašo raštu, vadovaujantis bet kuriomis Susitariančiųjų Jurisdikcijų kompetentingų asmenų pagal 10 dalies nuostatas sutartomis taisyklėmis ar procedūromis.

2. Jeigu kompetentingas asmuo sustabdė 1 dalyje nurodytą abipusio susitarimo procedūrą dėl to, kad teisme ar administraciniame teisme nagrinėjamas su vienu ar daugiau panašių klausimų susijęs pareiškimas, 1 dalies b punkte nustatytas laikotarpis sustabdomas tol, kol teismas ar administracinis teismas priima galutinį sprendimą arba kol pareiškimo nagrinėjimas sustabdomas ar pareiškimas atsiimamas iš teismo. Be to, jeigu pareiškimą pateikęs asmuo ir kompetentingas asmuo

susitaria sustabdyti abipusio susitarimo procedūrą, 1 dalies b punkte nustatytas laikotarpis sustabdomas tol, kol sustabdymas neatšaukiamas.

3. Jeigu abu kompetentingi asmenys susitaria, kad tiesiogiai su nagrinėjamu klausimu susijęs asmuo laiku nepateikė jokios papildomos svarbios informacijos, kurią pateikti prasidėjus 1 dalies b punkte nustatytam laikotarpiui prašė bet kuris kompetentingas asmuo, 1 dalies b punkte nustatytas laikotarpis pratęsiamas laikui, kuris lygus laikotarpiui nuo informacijos paprašymo dienos iki tos informacijos pateikimo dienos.

4. a) Arbitražo sprendimas dėl arbitražui spręsti pateiktų klausimų įgyvendinamas pasiekiant abipusį susitarimą dėl 1 dalyje nurodyto pareiškimo. Arbitražo sprendimas yra galutinis.

b) Arbitražo sprendimas yra įpareigojantis abiem Susitariančiosioms Jurisdikcijoms, išskyrus šiuos atvejus:

i) jeigu tiesiogiai su nagrinėjamu klausimu susijęs asmuo nepriima abipusio susitarimo, kuriuo įgyvendinamas arbitražo sprendimas. Tada kompetentingi asmenys pareiškimo toliau nagrinėti negali. Laikoma, kad tiesiogiai su nagrinėjamu pareiškimu susijęs asmuo nepriima abipusio susitarimo, kuriuo įgyvendinamas arbitražo sprendimas dėl pareiškimo, jeigu bet kuris tiesiogiai su nagrinėjamu pareiškimu susijęs asmuo per 60 dienų nuo pranešimo apie abipusį susitarimą išsiuntimo asmeniui dienos neatšaukia visų abipusio susitarimo būdu, kuriuo įgyvendinamas arbitražo sprendimas, išspręstų klausimų, kad jų nenagrinėtų joks teismas ar administracinis teismas arba, laikydamasis to abipusio susitarimo, kitaip nenutraukia bet kokio su tais klausimais susijusio teismo nagrinėjimo ar nagrinėjimo administraciniame teisme;

ii) jeigu pagal vienos iš Susitariančiųjų Jurisdikcijų teismo galutinį sprendimą arbitražo sprendimas laikomas negaliojančiu. Tokiu atveju laikoma, kad prašymas nagrinėti pareiškimą arbitraže pagal 1 dalį nebuvo pateiktas ir kad arbitražo proceso nebuvo (išskyrus 21 (Arbitražo proceso konfidencialumas) ir 25 straipsnių (Arbitražo proceso išlaidos) taikymą). Tokiu atveju gali būti pateikiamas naujas prašymas dėl arbitražo, nebent kompetentingi asmenys susitaria, kad tokio naujo prašymo nebūtų leidžiama pateikti;

iii) jeigu tiesiogiai su nagrinėjamu pareiškimu susijęs asmuo siekia, kad klausimai, kurie buvo išspręsti arbitražo sprendimą įgyvendinančio abipusio susitarimo būdu, būtų nagrinėjami bet kuriame teisme ar administraciniame teisme.

5. Kompetentingas asmuo, kuris gavo pradinį prašymą dėl abipusio susitarimo procedūros, kaip nurodyta 1 dalies a punkte, per du kalendorinius mėnesius nuo prašymo gavimo:

a) nusiunčia asmeniui, kuris pateikė pareiškimą, pranešimą apie tai, kad gavo prašymą; ir

b) nusiunčia pranešimą apie prašymo gavimą, kartu su prašymo kopija, kompetentingam kitos Susitariančiosios Jurisdikcijos asmeniui.

6. Per tris kalendorinius mėnesius nuo tada, kai kompetentingas asmuo gauna prašymą dėl abipusio susitarimo procedūros (ar tokio prašymo kopiją iš kitos Susitariančiosios Jurisdikcijos kompetentingo asmens) jis arba:

a) praneša asmeniui, kuris pateikė pareiškimą, ir kitam kompetentingam asmeniui, kad gavo informaciją, būtiną esminiam pareiškimo nagrinėjimui pradėti; arba

b) paprašo šiuo tikslu iš to asmens papildomos informacijos.

7. Jeigu vadovaujantis 6 dalies b punktu, vienas ar abu kompetentingi asmenys paprašo iš

pareiškimą pateikusių asmens papildomos informacijos, būtinos pareiškimui nagrinėti iš esmės, papildomos informacijos paprašęs kompetentingas asmuo per tris kalendorinius mėnesius nuo papildomos informacijos gavimo iš to asmens, praneša tam asmeniui ir kitam kompetentingam asmeniui, kad:

- a) jis gavo prašomą informaciją; arba
- b) tam tikros prašomos informacijos vis dar trūksta.

8. Jeigu nė vienas kompetentingas asmuo nepaprašo papildomos informacijos pagal 6 dalies b punktą, 1 dalyje nurodyta pradžios data yra ta, kuri yra ankstesnė iš šių datų:

a) diena, kurią abu kompetentingi asmenys pranešė pareiškimą pateikusiam asmeniui pagal 6 dalies a punktą; ir

b) diena, kai praeina trys kalendoriniai mėnesiai nuo pranešimo pagal 5 dalies b punktą kitos Susitariančiosios Jurisdikcijos kompetentingam asmeniui.

9. Jeigu papildomos informacijos buvo paprašyta pagal 6 dalies b punktą, 1 dalyje nurodyta pradžios data yra ta, kuri yra ankstesnė iš šių datų:

a) vėliausia iš dienų, kurią papildomos informacijos paprašę kompetentingi asmenys pranešė pareiškimą pateikusiam asmeniui ir kitam kompetentingam asmeniui pagal 7 dalies a punktą; ir

b) diena, kai praeina trys kalendoriniai mėnesiai nuo tada, kai abu kompetentingi asmenys gavo visą bet kurio kompetentingo asmens prašomą informaciją iš pareiškimą pateikusių asmens.

Tačiau, jeigu vienas ar abu kompetentingi asmenys nusiunčia 7 dalies b punkte nurodytą pranešimą, toks pranešimas laikomas papildomos informacijos prašymu pagal 6 dalies b punktą.

10. Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiu susitarimu (vadovaudamosi atitinkamos Sutarties, kuriai taikoma Konvencija, su abipusio susitarimo procedūromis susijusiu straipsniu) nustato šios Konvencijos dalies nuostatų taikymo būdą, įskaitant būtiniausią informaciją, kuri reikalinga kiekvienam kompetentingam asmeniui, kad jis galėtų nagrinėti pareiškimą iš esmės. Toks susitarimas sudaromas iki dienos, kurią arbitražui gali būti pirmą kartą pateikiami neišspręsti su pareiškimu susiję klausimai ir nuo kurios jie kartkartėmis gali būti keičiami.

11. Šalis, taikydama šį straipsnį savo Sutartims, kurioms taikoma Konvencija, gali pasilikti teisę pakeisti 1 dalies b punkte nustatytą dvejų metų laikotarpį trejų metų laikotarpiu.

12. Šalis gali pasilikti teisę taikyti šias taisykles savo Sutartims, kurioms taikoma Konvencija, neatsižvelgdama į kitas šio straipsnio nuostatas:

a) bet koks klausimas, neišspręstas nagrinėjant pareiškimą abipusio susitarimo procedūros metu, kuriam kitu atveju būtų taikomas šioje Konvencijoje nustatytas arbitražo procesas, arbitražui spręsti neteikiamas, jeigu bet kurios Susitariančiųjų Jurisdikcijų teismas ar administracinis teismas jau priėmė sprendimą šiuo klausimu;

b) jei bet kuriuo momentu nuo tada, kai buvo pateiktas prašymas dėl arbitražo, ir iki tol, kol arbitrų kolegija pateikia Susitariančiųjų Jurisdikcijų kompetentingiems asmenims savo sprendimą, sprendimą dėl minėto klausimo priima vienos iš Susitariančiųjų Jurisdikcijų teismas ar administracinis teismas, arbitražo procesas nutraukiamas.

### **Arbitrų paskyrimas**

1. Išskyrus tiek, kiek Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiškai susitaria dėl kitokių taisyklių, šios Konvencijos dalies tikslais taikomos 2–4 dalys.

2. Skiriant arbitrų kolegijos narius vadovaujamosi tokiomis taisyklėmis:

a) Arbitrų kolegiją sudaro trys nariai, turintys kompetencijos ar patirties tarptautinių mokesčių srityje.

b) Kiekvienas kompetentingas asmuo paskiria vieną kolegijos narį per 60 dienų nuo arbitražo prašymo pagal 19 straipsnio 1 dalį (Privalomas ir įpareigojantis arbitražas). Du taip paskirti kolegijos nariai per 60 dienų nuo paskutinio iš jų paskyrimo paskiria trečiąjį narį, kuris atlieka arbitražo kolegijos pirmininko pareigas. Kolegijos pirmininkas nėra nė vienos Susitariančiųjų Jurisdikcijų pilietis ar nuolatinis gyventojas.

c) Kiekvienas į arbitrų kolegiją paskirtas narys paskyrimo momentu turi būti nešališkas ir nepriklausomas nuo Susitariančiųjų Jurisdikcijų kompetentingų asmenų, mokesčių administracijų ir finansų ministerijų ir nuo visų tiesiogiai su nagrinėjamu klausimu susijusių asmenų (taip pat jų patarėjų), išlaikyti savo nešališkumą ir nepriklausomumą per visą klausimo nagrinėjimo laiką ir per visą vėlesnį pagrįstos trukmės laikotarpį vengti bet kokio elgesio, kuris galėtų pakenkti arbitrų nešališkumui ir nepriklausomumui, kai tai susiję su klausimo nagrinėjimu.

3. Jeigu Susitariančiosios Jurisdikcijos kompetentingas asmuo nepaskiria arbitrų kolegijos nario 2 dalyje nustatyto būdu ir per 2 dalyje nustatytus arba Susitariančiųjų Jurisdikcijų kompetentingų asmenų sutartus laikotarpius, kolegijos narį to kompetentingo asmens vardu paskiria Ekonominio bendradarbiavimo ir plėtros organizacijos Mokesčių politikos ir administravimo centro aukščiausiasis pareigūnas, kuris nėra nė vienos Susitariančiosios Jurisdikcijos pilietis.

4. Jeigu du pradiniai arbitrų kolegijos nariai nepaskiria pirmininko 2 dalyje nustatyto būdu ir per 2 dalyje nustatytus arba Susitariančiųjų Jurisdikcijų kompetentingų asmenų sutartus laikotarpius, kolegijos pirmininką paskiria Ekonominio bendradarbiavimo ir plėtros organizacijos Mokesčių politikos ir administravimo centro aukščiausiasis pareigūnas, kuris nėra nė vienos Susitariančiosios Jurisdikcijos pilietis.

## **21 straipsnis**

### **Arbitražo proceso konfidencialumas**

1. Vien tik šios Konvencijos dalies nuostatų ir atitinkamos Sutarties, kuriai taikoma Konvencija, nuostatų, taip pat Susitariančiųjų Jurisdikcijų vidaus įstatymų, susijusių su informacijos mainais, konfidencialumu ir administracine pagalba, taikymo tikslais, arbitrų kolegijos nariai ir daugiausia trys kiekvienam nariui tenkantys darbuotojai laikomi asmenimis ar institucijomis, kuriems gali būti atskleista informacija (ir būsimiems arbitrams vien tik tiek, kiek būtina patikrinti jų gebėjimą atitikti arbitrų reikalavimus). Arbitrų kolegijos ar būsimų arbitrų gauta informacija ir kompetentingų asmenų iš arbitrų kolegijos gaunama informacija laikoma informacija, kuria pasikeičiama pagal Sutarties, kuriai taikoma Konvencija, nuostatas, susijusias su informacijos mainais ir administracine pagalba.

2. Susitariančiųjų Jurisdikcijų kompetentingi asmenys užtikrina, kad arbitrų kolegijos nariai ir jų darbuotojai, prieš pradėdami veikti arbitražo procese, raštu susitartų tvarkyti bet kokią su

arbitražo procesu susijusią informaciją laikydamiesi konfidencialumo ir informacijos neatskleidimo įsipareigojimų, apibrėžtų Sutarties, kuriai taikoma Konvencija, nuostatose dėl informacijos mainų ir administracinės pagalbos ir vadovaudamiesi galiojančiais Susitariančiųjų Jurisdikcijų įstatymais.

## **22 straipsnis**

### **Pareiškimo išsprendimas prieš pasibaigiant arbitražo procesui**

Taikant šią Konvencijos dalį ir atitinkamas Sutarties, kuriai taikoma Konvencija, nuostatas, kuriomis nustatomas pareiškimo išsprendimas abipusio susitarimo būdu, su pareiškimu susijusi abipusio susitarimo procedūra, taip pat arbitražo procesas nutraukiami, jeigu bet kuriuo momentu, po to, kai prašymas dėl arbitražo pateikiamas Susitariančiųjų Jurisdikcijų kompetentingiems asmenims ir prieš arbitražo kolegijai paskelbiant Susitariančiųjų Jurisdikcijų kompetentingiems asmenims savo sprendimą:

- a) Susitariančiųjų Jurisdikcijų kompetentingi asmenys pasiekia abipusį susitarimą dėl pareiškimo; ar
- b) pareiškimą pateikęs asmuo atsiima prašymą dėl arbitražo ar prašymą dėl abipusio susitarimo procedūros.

## **23 straipsnis**

### **Arbitražo proceso rūšys**

1. Išskyrus tiek, kiek Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiškai susitaria dėl kitokių taisyklių taikymo, taikant arbitražo procesą pagal šią Konvencijos dalį, vadovaujamas tokiais taisyklėmis:

a) pateikus pareiškimą arbitražui, kiekvienos Susitariančiosios Jurisdikcijos kompetentingas asmuo arbitrų kolegijai iki susitarimu nustatytos datos pateikia siūlomą rezoliuciją, kurioje minimi visi neišspręsti su pareiškimu susiję klausimai (klausimas) (atsižvelgdama į visus anksčiau dėl pareiškimo pasiektus Susitariančiųjų Jurisdikcijų kompetentingų asmenų tarpusavio susitarimus). Siūlomoje rezoliucijoje apsiribojama konkrečių pinigų sumų paskirstymu (pavyzdžiui, pajamų ar išlaidų) arba, jei nurodyta, didžiausiu mokesčio, kuris imamas pagal Sutartį, kuriai taikoma Konvencija, už kiekvieną patikslinimą ar panašų su pareiškimu susijusį klausimą, tarifo nustatymu. Tuo atveju, kai Susitariančiųjų Jurisdikcijų kompetentingi asmenys nepajėgia susitarti dėl klausimo, susijusio su atitinkamos Sutarties, kuriai taikoma Konvencija, nuostatos taikymo sąlygomis (toliau – ribos klausimas), pavyzdžiui, ar asmuo yra rezidentas arba ar yra nuolatinė buveinė, kompetentingi asmenys gali siūlyti alternatyvias rezoliucijas dėl klausimų, kurių išsprendimas priklauso nuo tokių ribos klausimų išsprendimo;

b) kiekvienos Susitariančiosios Jurisdikcijos kompetentingas asmuo taip pat gali pateikti svarstyti arbitrų kolegijai pagrindžiamąją nuomonę. Kiekvienas kompetentingas asmuo, kuris pateikia siūlomą rezoliuciją ar pagrindžiamąją nuomonę, pateikia jų kopijas kitam kompetentingam asmeniui iki datos, kurią siūloma rezoliucija ir pagrindžiamoji nuomonė turėjo būti pateiktos. Kiekvienas kompetentingas asmuo taip pat gali iki susitarimu nustatytos datos arbitrų kolegijai pateikti atsakomąjį dokumentą dėl kito kompetentingo asmens pateiktos siūlomos rezoliucijos ir

pagrindžiamosios nuomonės. Bet kurio atsakomojo dokumento kopija pateikiama kitam kompetentingam asmeniui iki datos, kurią turėjo būti pateikta atsakomojo dokumento kopija;

c) arbitrų kolegija pasirenka, kaip savo sprendimą, vieną iš siūlomų rezoliucijų dėl pareiškimo, kurias kompetentingi asmenys pateikė dėl kiekvieno klausimo ir bet kokio ribos klausimo, ir nepateikia sprendimo loginio pagrindo ar kokio nors kito jo paaiškinimo. Arbitražo sprendimas priimamas paprasta kolegijos narių balsų dauguma. Arbitražo kolegija pateikia savo rašytinį sprendimą Susitariančiųjų Jurisdikcijų kompetentingiems asmenims. Arbitražo sprendimas neturi precedentinės galios.

2. Šalis, taikydama šį straipsnį savo Sutartims, kurioms taikoma Konvencija, gali pasilikti teisę netaikyti 1 dalies savo Sutartims, kurioms taikoma Konvencija. Tokiu atveju, išskyrus tiek, kiek Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiškai susitaria dėl kitokių taisyklių taikymo, arbitražo procese vadovaujamosi tokiomis taisyklėmis:

a) Pateikus pareiškimą arbitražui, kiekvienos Susitariančiosios Jurisdikcijos kompetentingas asmuo, be pagrindo nedelsdamas, pateikia visiems kolegijos nariams bet kokią informaciją, kuri gali būti būtina arbitražo sprendimui priimti. Jeigu Susitariančiųjų Jurisdikcijų kompetentingi asmenys nesusitaria kitaip, sprendime neatsižvelgiama į bet kokią informaciją, kurios kompetentingi asmenys neturėjo iki tol, kol jos abi gavo prašymą dėl arbitražo.

b) Arbitrų kolegija nusprendžia dėl arbitražui pateiktų klausimų vadovaudamasi galiojančiomis Sutarties, kuriai taikoma Konvencija, nuostatomis ir, atsižvelgdama į šias nuostatas, Susitariančiųjų Jurisdikcijų vidaus įstatymų nuostatomis. Kolegijos nariai taip pat svarsto bet kokius kitus šaltinius, kuriuos Susitariančiųjų Jurisdikcijų kompetentingi asmenys abipusiu susitarimu gali aiškiai nurodyti.

c) Arbitražo sprendimas Susitariančiųjų Jurisdikcijų kompetentingiems asmenims pateikiamas raštu ir jame nurodomi teisės šaltiniai, kuriais buvo remtasi, taip pat pateikiamas sprendimo motyvų paaiškinimas. Arbitražo sprendimas priimamas paprasta jo kolegijos narių balsų dauguma. Arbitražo sprendimas neturi precedentinės galios.

3. Šalis, kuri nepasirinko 2 dalyje nurodytos išlygos, gali pasilikti teisę netaikyti pirmiau pateiktą šio straipsnio dalį savo Sutartims, kurioms taikoma Konvencija, sudarytoms su tokia teise pasirinkusiomis šalimis. Tokiu atveju kiekvienos tokios Sutarties, kuriai taikoma Konvencija, Susitariančiųjų Jurisdikcijų kompetentingi asmenys stengiasi susitarti dėl tai Sutarčiai, kuriai taikoma Konvencija, taikytinos arbitražo proceso rūšies. Kol bus pasiekta tokio susitarimo, 19 straipsnis (Privalomas ir įpareigojantis arbitražas) tokiai Sutarčiai, kuriai taikoma Konvencija, netaikomas.

4. Šalis taip pat gali pasirinkti taikyti 5 dalį savo Sutartims, kurioms taikoma Konvencija, ir atitinkamai praneša apie tai depozitarui. 5 dalis taikoma dviem Sutarties, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms, jeigu viena iš Susitariančiųjų Jurisdikcijų pateikė tokį pranešimą.

5. Prieš prasidedant arbitražo procesui, Susitariančiųjų Jurisdikcijų kompetentingi asmenys užtikrina, kad kiekvienas pareiškimą pateikęs asmuo ir jo patarėjai raštu susitartų neatskleisti jokiam kitam asmeniui jokios vykstant arbitražo procesui iš bet kurio kompetentingo asmens ar arbitrų kolegijos gautos informacijos. Abipusio susitarimo procedūra pareiškimui pagal Sutartį, kuriai taikoma Konvencija, nagrinėti, taip pat arbitražo procesas pagal šios Konvencijos dalį, nutraukiami, jeigu bet kuriuo momentu, po to, kai prašymas dėl arbitražo pateikiamas

Susitariančių Jurisdikcijų kompetentingiems asmenims ir iki tol, kol arbitražo kolegija paskelbia Susitariančių Jurisdikcijų kompetentingiems asmenims savo sprendimą, pareiškimą pateikęs asmuo ar vienas to asmens patarėjų iš esmės pažeidžia tą susitarimą.

6. Neatsižvelgiant į 4 dalį, Šalis, kuri pasirenka netaikyti 5 dalies, gali pasilikti teisę netaikyti 5 dalies vienai ar daugiau nustatytų Sutarčių, kurioms taikoma Konvencija, arba visoms savo Sutartims, kurioms taikoma Konvencija.

7. Šalis, kuri pasirenka taikyti 5 dalį, gali pasilikti teisę netaikyti šios Konvencijos dalies visoms Sutartims, kurioms taikoma Konvencija, kurių atžvilgiu kita Susitariančioji Jurisdikcija nustato išlygą pagal 6 dalį.

## **24 straipsnis**

### **Susitarimas dėl kitokios rezoliucijos**

1. Šalis, taikydama šią Konvencijos dalį savo Sutartims, kurioms taikoma Konvencija, gali pasirinkti taikyti 2 dalį ir atitinkamai praneša apie tai depozitarui. 2 dalis taikoma dviem Sutartims, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms tik tada, jei abi Susitariančiosios Jurisdikcijos pateikė tokį pranešimą.

2. Neatsižvelgiant į 19 straipsnio 4 dalį (Privalomas ir įpareigojantis arbitražas), arbitražo sprendimas pagal šią Konvencijos dalį neprivalomas Sutartims, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms ir neturi būti įgyvendinamas, jei Susitariančių Jurisdikcijų kompetentingi asmenys susitaria dėl kitokio visų neišspręstų klausimų išsprendimo per tris kalendorinius mėnesius nuo tada, kai jiems pateikiamas arbitražo sprendimas.

3. Šalis, kuri pasirenka taikyti 2 dalį, gali pasilikti teisę taikyti 2 dalį tik toms savo Sutartims, kurioms taikoma Konvencija, jei joms taikoma 23 straipsnio 2 dalis (Arbitražo proceso rūšis).

## **25 straipsnis**

### **Arbitražo proceso išlaidos**

Taikant arbitražo procesą pagal šią Konvencijos dalį, atlyginimus arbitrų kolegijos nariams ir jų išlaidas, taip pat bet kokias Susitariančių Jurisdikcijų dėl arbitražo proceso turėtas išlaidas padengia Susitariančiosios Jurisdikcijos savo kompetentingų asmenų savitarpio susitarimu nustatytu būdu. Jei tokio susitarimo nėra, kiekviena Susitariančioji Jurisdikcija padengia savo pačios ir savo paskirto kolegijos nario išlaidas. Arbitrų kolegijos pirmininko išlaidas ir kitas su arbitražo procesu susijusias išlaidas lygiomis dalimis padengia Susitariančiosios Jurisdikcijos.

## **26 straipsnis**

### **Suderinamumas**

1. Remiantis 18 straipsniu (Pasirinkimas taikyti VI dalį), šios Konvencijos dalies nuostatos taikomos vietoj Sutarties, kuriai taikoma Konvencija, nuostatų (arba tada, kai tokių nuostatų nėra), kuriomis nustatoma, kad abipusio susitarimo procedūros metu neišspręstus klausimus nagrinėja arbitražas. Kiekviena Šalis, kuri pasirenka taikyti šią Konvencijos dalį, praneša depozitarui, ar

kiekvienoje jos Sutartyje, kuriai taikoma Konvencija (išskyrus tas, kurioms taikoma 4 dalyje nustatyta išlyga), yra tokia nuostata, ir jei tokia nuostata yra, nurodo straipsnio ir dalies, kuriuose ji pateikiama, numerį. Jeigu abi Susitariančiosios Jurisdikcijos pateikė tokius pranešimus apie Sutarties, kuriai taikoma Konvencija, nuostatą, ta nuostata toms Susitariančiosioms Jurisdikcijoms pakeičiama šios Konvencijos dalies nuostatomis.

2. Bet koks abipusio susitarimo procedūros metu neišspręstas klausimas, kuriam kitu atveju būtų taikomas šioje Konvencijos dalyje nustatytas arbitražo procesas, arbitražui spręsti neteikiamas, jeigu tas klausimas priskiriamas klausimams, dėl kurių anksčiau, vadovaujantis dvišale ar daugiašale konvencija, kuria nustatoma, kad neišspręstus su abipusio susitarimo procedūra susijusius klausimus nagrinėja privalomas ir įpareigojantis arbitražas, buvo sudaryta arbitrų kolegija ar panašus organas.

3. Remiantis 1 dalimi, jokia šios Konvencijos dalies nuostata neturi poveikio platesnio pobūdžio įsipareigojimams, susijusiems su abipusio susitarimo procedūros metu neišspręstų klausimų nagrinėjimu arbitraže ir atsirandantiems dėl kitų konvencijų, kurių šalys Susitariančiosios Jurisdikcijos yra arba bus.

4. Šalis gali pasilikti teisę netaikyti šios Konvencijos dalies vienai ar daugiau nustatytų Sutarčių, kurioms taikoma Konvencija (arba visoms savo Sutartims, kurioms taikoma Konvencija), kuriose jau yra nuostata dėl abipusio susitarimo procedūros metu neišspręstų klausimų nagrinėjimo privalomame ir įpareigojančiame arbitraže.

## **VII DALIS**

### **BAIGIAMOSIOS NUOSTATOS**

#### **27 straipsnis**

##### **Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas**

1. Ši Konvencija teikiama pasirašyti nuo 2016 m. gruodžio 31 d.:
  - a) visoms valstybėms;
  - b) Džersiui (Jungtinė Didžiosios Britanijos ir Šiaurės Airijos Karalystė); Gernsiui (Jungtinė Didžiosios Britanijos ir Šiaurės Airijos Karalystė); Meno salai (Jungtinė Didžiosios Britanijos ir Šiaurės Airijos Karalystė); ir
  - c) bet kuriai kitai jurisdikcijai, kuriai Šalių ir signatarių bendru sutarimu priimtu sprendimu leidžiama tapti Konvencijos Šalimi.
2. Šią Konvenciją pasirašiusios šalys turi ją ratifikuoti, priimti ar patvirtinti.

#### **28 straipsnis**

##### **Išlygos**

1. Vadovaujantis 2 dalimi, šiai Konvencijai negali būti nustatoma jokia išlyga, išskyrus išlygas, kurios aiškiai nustatomos:
  - a) 3 straipsnio 5 dalyje (Skaidrūs subjektai);
  - b) 4 straipsnio 3 dalyje (Dvigubo rezidavimo subjektai);
  - c) 5 straipsnio 8 ir 9 dalyse (Dvigubo apmokestinimo panaikinimo metodų taikymas);
  - d) 6 straipsnio 4 dalyje (Sutarties, kuriai taikoma Konvencija, tikslas)
  - e) 7 straipsnio 15 ir 16 dalyse (Piktnaudžiavimo sutartimi prevencija);
  - f) 8 straipsnio 3 dalyje (Dividendų pervedimo sandoriai);
  - g) 9 straipsnio 6 dalyje (Kapitalo prieaugio pajamos, gaunamos perleidus subjektą, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus);
  - h) 10 straipsnio 5 dalyje (Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms);
  - i) 11 straipsnio 3 dalyje (Mokestinių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus);
  - j) 12 straipsnio 4 dalyje (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis);
  - k) 13 straipsnio 6 dalyje (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis);
  - l) 14 straipsnio 3 dalyje (Sutarčių išskaidymas);
  - m) 15 straipsnio 2 dalyje (Glaudžiai su įmone susijusio asmens apibrėžtis);

- n) 16 straipsnio 5 dalyje (Abipusio susitarimo procedūra);
- o) 17 straipsnio 3 dalyje (Atitinkami patikslinimai);
- p) 19 straipsnio 11 ir 12 dalyse (Privalomas ir įpareigojantis arbitražas);
- q) 23 straipsnio 2,3, 6 ir 7 dalyse (Arbitražo proceso rūšis);
- r) 24 straipsnio 3 dalyje (Susitarimas dėl kitokios rezoliucijos);
- s) 26 straipsnio 4 dalyje (Suderinamumas);
- t) 35 straipsnio 6 ir 7 dalyse (Įsigaliojimas);
- u) 36 straipsnio 2 dalyje (VI dalies įsigaliojimas).

2. a) Neatsižvelgiant į 1 dalį, Šalis, kuri pagal 18 straipsnį pasirenka (Pasirinkimas taikyti VI dalį) taikyti VI dalį (Arbitražas), gali nustatyti vieną ar daugiau išlygų dėl pareiškimų, kurie gali būti nagrinėjami arbitraže pagal VI dalies (Arbitražas) nuostatas, apimties. Šaliai, kuri, tapusi, pagal 18 straipsnį (Pasirinkimas taikyti VI dalį) pasirenka taikyti VI dalį (Arbitražas) vėliau nei tampa šios Konvencijos Šalimi, išlygos pagal šį punktą nustatomos tuo pat metu, kai ta Šalis pagal 18 straipsnį (Pasirinkimas taikyti VI dalį) praneša apie tai depozitarui.

b) pagal a punktą nustatytos išlygos teikiamos priimti. Laikoma, kad Šalis priėmė pagal a punktą nustatytą išlygą, jeigu ji iki dvylikos kalendorinių mėnesių laikotarpio, prasidedančio pranešimo depozitarui apie išlygą nusiuntimo dieną, pabaigos ar iki tos dienos, kurią ji deponavo savo ratifikavimo, priėmimo ar patvirtinimo dokumentą, atsižvelgiant į tai, kuri diena vėlesnė, nepranešė depozitarui apie tai, kad prieštarauja dėl išlygos. Šalis, kuri, tapusi šios Konvencijos Šalimi, pagal 18 straipsnį pasirenka (Pasirinkimas taikyti VI dalį) taikyti VI dalį (Arbitražas), gali pareikšti prieštaravimų dėl anksčiau kitų Šalių pagal a punktą nustatytų išlygų tada, kai pirmiau minėta Šalis pagal 18 straipsnį praneša apie tai depozitarui (Pasirinkimas taikyti VI dalį). Jeigu Šalis pareiškia prieštaravimą dėl pagal a punktą nustatytos išlygos, visa VI dalis (Arbitražas) netaikoma prieštaraujančiosios ir išlygą nustatančiosios šalių tarpusavio sutartims.

3. Jeigu atitinkamomis šios Konvencijos nuostatomis nenustatoma kitaip, vadovaujantis 1 ar 2 dalimi nustatyta išlyga:

a) keičia išlygą nustatančiajai Šaliai, atsižvelgiant į jos santykius su kita Šalimi, su šia išlyga susijusias šios Konvencijos nuostatas tiek, kiek jas keičia pati išlyga; ir

b) tiek pat keičia minėtas nuostatas kitai Šaliai, atsižvelgiant į jos santykius su išlygą nustatančiaja Šalimi.

4. Sutartims, kurioms taikoma Konvencija, jei jas sudarė jurisdikcija ar teritorija, už kurios tarptautinius santykius Šalis yra atsakinga, ar sudarytoms jurisdikcijos ar teritorijos vardu, taikomas išlygas, jeigu ta jurisdikcija ar teritorija nėra Konvencijos Šalis pagal 27 straipsnio 1 dalies b ir c punktus (Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas), nustato atsakinga Šalis ir jos gali skirtis nuo tos Šalies savo sutartims, kurioms taikoma Konvencija, nustatytų išlygų.

5. Išlygos nustatomos pasirašant Konvenciją ar deponuojant pagal šio straipsnio 2, 6 ir 9 dalis ir pagal 29 straipsnio 5 dalį (Pranešimai) jos ratifikavimo, priėmimo ar patvirtinimo dokumentus. Šaliai, kuri, tapusi šios Konvencijos Šalimi, pagal 18 straipsnį pasirenka (Pasirinkimas taikyti VI dalį) taikyti VI dalį (Arbitražas), šio straipsnio 1 dalies p, r, s ir t punktuose nurodytos išlygos nustatomos tuo pačiu metu, kaip tos Šalies pranešimas apie tai depozitarui pagal 18 straipsnį (Pasirinkimas taikyti VI dalį).

6. Jeigu išlygos nustatomos pasirašant Konvenciją, jos turi būti patvirtintos deponuojant Konvencijos ratifikavimo, priėmimo ar patvirtinimo dokumentą, nebent dokumente, kuriame nustatytos išlygos, aiškiai nurodoma, kad jis turi būti laikomas galutiniu pagal šio straipsnio 2, 5 ir 9 dalis ir pagal 29 straipsnio 5 dalį (Pranešimai).

7. Jeigu išlygos nėra nustatomos pasirašant Konvenciją, depozitarui tuo metu pateikiamas laikinasis numatomų išlygų sąrašas.

8. Kai tai susiję su išlygomis, nustatytomis pagal kiekvieną iš toliau pateiktų nuostatų, tuo pat metu, kai nustatomos tokios išlygos, turi būti pateikiamas sąrašas sutarčių, apie kurias buvo pranešta pagal 2 straipsnio 1 dalies a punkto ii papunktį (Sąvokų aiškinimas), jei joms taikoma atitinkamoje nuostatoje apibrėžta išlyga (o, kai tai susiję su išlyga pagal bet kurią iš toliau pateiktų nuostatų, išskyrus c, d ir n dalyse nurodytas išlygas, nurodo straipsnio ir dalies, kuriuose kiekviena atitinkama nuostata pateikiama, numerį):

- a) 3 straipsnio 5 dalies b, c, d, e ir g punktuose (Skaidrūs subjektai);
- b) 4 straipsnio 3 dalies b, c ir d punktuose (Dvigubo rezidavimo subjektai);
- c) 5 straipsnio 8 ir 9 dalyse (Dvigubo apmokestinimo panaikinimo metodų taikymas);
- d) 6 straipsnio 4 dalyje (Sutarties, kuriai taikoma Konvencija, tikslas);
- e) 7 straipsnio 15 dalies b ir c punktuose (Piktnaudžiavimo sutartimi prevencija);
- f) 8 straipsnio 3 dalies b punkto i, ii ir iii papunkčiuose (Dividendų pervedimo sandoriai);
- g) 9 straipsnio 6 dalies d, e ir f punktuose (Kapitalo prieaugio pajamos, gaunamos perleidus subjektą, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus);
- h) 10 straipsnio 5 dalies b ir c punktuose (Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms);
- i) 11 straipsnio 3 dalies b punkte (Mokestinių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus);
- j) 13 straipsnio 6 dalies b punkte (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis);
- k) 14 straipsnio 3 dalies b punkte (Sutarčių išskaidymas);
- l) 16 straipsnio 5 dalies b punkte (Abipusio susitarimo procedūra);
- m) 17 straipsnio 3 dalies a punkte (Atitinkami patikslinimai);
- n) 23 straipsnio 6 dalyje (Arbitražo proceso rūšis);
- o) 26 straipsnio 4 dalyje (Suderinamumas);

Išlygos, pateiktos a–o punktuose, netaikomos jokiai Sutarčiai, kuriai taikoma Konvencija, jei ji neįtraukta į šioje dalyje nurodytą sąrašą.

9. Bet kuri Šalis, kuri nustatė išlygą vadovaudamasi 1 ar 2 dalimi, gali bet kada ją atšaukti ar pakeisti labiau apribojančia išlyga, nusiųsdama depozitarui pranešimą. Tokia Šalis nusiunčia bet kokius papildomus pranešimus pagal 29 straipsnio 6 dalį (Pranešimai), kurių, atšaukus ar pakeitus išlygą kita išlyga, gali prireikti. Vadovaujantis 35 straipsnio 7 dalimi (Įsigaliojimas), atšaukimas ar pakeitimas įsigalioja:

a) vien tik Sutarčiai, kuriai taikoma Konvencija, sudarytai su valstybėmis ar jurisdikcijomis, kurios yra Konvencijos Šalys, kai depozitaras gauna pranešimą apie išlygos atšaukimą ar pakeitimą:

i) kai tai susiję su išlygomis dėl nuostatų, susijusių su mokesčiais, išskaitomais prie šaltinio, jeigu tokių mokesčių priežastis atsiranda kitų metų sausio 1 d. ar vėliau nuo tada, kai pasibaigia šešių kalendorinių mėnesių laikotarpis, prasidėjęs tą dieną, kai depozitaras praneša, kad gavo išlygos atšaukimo ar pakeitimo pranešimą; ir

ii) kai tai susiję su išlygomis dėl visų kitų nuostatų, susijusių su mokesčiais, taikomais mokestiniams laikotarpiams, prasidedantiems kitų metų sausio 1 d. ar vėliau nuo tada, kai baigiasi šešių kalendorinių mėnesių laikotarpis, prasidėjęs tą dieną, kai depozitaras praneša, kad gavo išlygos atšaukimo ar pakeitimo pranešimą; ir

b) kai tai susiję su Sutartimi, kuriai taikoma Konvencija, dėl kurios viena ar daugiau Susitariančiųjų Jurisdikcijų tampa šios Konvencijos Šalimi po dienos, kurią depozitaras gauna išlygos atšaukimo ar pakeitimo pranešimą: vėlesnę iš tų dienų, kurią Konvencija įsigalioja šioms Susitariančiosioms Jurisdikcijoms.

## **29 straipsnis**

### **Pranešimai**

1. Vadovaujantis šio straipsnio 5 ir 6 dalimis ir 35 straipsnio 7 dalimi (Įsigaliojimas), tuo pat metu, kai pasirašoma Konvencija ar deponuojamas Konvencijos ratifikavimo, priėmimo ar patvirtinimo dokumentas, turi būti pateikiami pranešimai pagal toliau pateikiamas nuostatas:

- a) 2 straipsnio 1 dalies a punkto ii papunktį (Sąvokų aiškinimas);
- b) 3 straipsnio 6 dalį (Skaidrūs subjektai);
- c) 4 straipsnio 4 dalį (Dvigubo rezidavimo subjektai);
- d) 5 straipsnio 10 dalį (Dvigubo apmokestinimo panaikinimo metodų taikymas);
- e) 6 straipsnio 5 ir 6 dalis (Sutarties, kuriai taikoma Konvencija, tikslas);
- f) 7 straipsnio 17 dalį (Piktnaudžiavimo sutartimi prevencija);
- g) 8 straipsnio 4 dalį (Dividendų pervedimo sandoriai);
- h) 9 straipsnio 7 ir 8 dalis (Kapitalo prieaugio pajamos, gaunamos perleidus subjektą, kurie sukuria savo vertę daugiausia iš nekilnojamojo turto, akcijas ar turtinius interesus);
- i) 10 straipsnio 6 dalį (Kovos su piktnaudžiavimu taisyklė, skirta trečiųjų šalių jurisdikcijose įsikūrusioms nuolatinėms buveinėms);
- j) 11 straipsnio 4 dalį (Mokestinių sutarčių taikymas siekiant apriboti Šalies teisę apmokestinti savo rezidentus);
- k) 12 straipsnio 5 ir 6 dalis (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant atstovavimo susitarimais ir panašiomis strategijomis);
- l) 13 straipsnio 7 ir 8 dalis (Siekis dirbtinai išvengti nuolatinės buveinės statuso pasinaudojant konkrečiai veiklai taikomomis išimtimis);
- m) 14 straipsnio 4 dalį (Sutarčių išskaidymas);

- n) 16 straipsnio 6 dalį (Abipusio susitarimo procedūra);
- o) 17 straipsnio 4 dalį (Atitinkami patikslinimai);
- p) 18 straipsnis (Pasirinkimas taikyti VI dalį);
- q) 23 straipsnio 4 dalį (Arbitražo proceso rūšis);
- r) 24 straipsnio 1 dalį (Susitarimas dėl kitokios rezoliucijos);
- s) 26 straipsnio 1 dalį (Suderinamumas); ir
- t) 35 straipsnio 1, 2, 3, 5 ir 7 dalis (Įsigaliojimas).

2. Pranešimus apie Sutartis, kurioms taikoma Konvencija, jei jas sudarė jurisdikcija ar teritorija, už kurios tarptautinius santykius Šalis yra atsakinga, ar jei jos sudarytos jurisdikcijos ar teritorijos vardu, jeigu ta jurisdikcija ar teritorija nėra Konvencijos Šalis pagal 27 straipsnio 1 dalies b ir c punktus (Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas), pateikia atsakinga Šalis ir jie gali skirtis nuo tos Šalies teikiamų pranešimų dėl savo Sutarčių, kurioms taikoma Konvencija.

3. Jeigu pranešimai pateikiami pasirašant Konvenciją, jie turi būti patvirtinti deponuojant Konvencijos ratifikavimo, priėmimo ar patvirtinimo dokumentą, nebent dokumente, kuriame nustatyti pranešimai, aiškiai nurodoma, kad jis pagal šio straipsnio 5 ir 6 dalis ir pagal 35 straipsnio 7 dalį (Įsigaliojimas) turi būti laikomas galutiniu.

4. Jeigu pranešimai pasirašant Konvenciją nepateikiami, depozitarui tuo pat metu pateikiamas laikinasis numatomų pranešimų sąrašas.

5. Šalis gali bet kada papildyti sutarčių, apie kurias turi būti pranešama pagal 2 straipsnio 1 dalies a punkto ii papunktį (Sąvokų aiškinimas), sąrašą, nusiųsdama depozitarui pranešimą. Šiame pranešime Šalis nurodo, ar sutarčiai taikoma kuri nors jos nustatyta išlyga, įvardyta 28 straipsnio 8 dalyje (Išlygos). Šalis taip pat gali nustatyti naują išlygą, nurodytą 28 straipsnio 8 dalyje (Išlygos), jeigu papildoma sutartis būtų pirmoji, kuriai būtų taikoma tokia išlyga. Šalis taip pat pateikia bet kokius papildomus pranešimus, kurių gali prireikti pagal 1 dalies b–t punktus, kad praneštų apie įtrauktas papildomas sutartis. Be to, jei dėl papildymo pirmą kartą įtraukiama mokesčių sutartis, kurią sudarė jurisdikcija ar teritorija, už kurios tarptautinius santykius Šalis yra atsakinga, ar kuri buvo sudaryta tos jurisdikcijos ar teritorijos vardu, Šalis nurodo bet kokias išlygas (nustatytas pagal 28 straipsnio 4 dalį (Išlygos)) arba pranešimus (nustatytus pagal šio straipsnio 2 dalį), taikytinus Sutarčiai, kuriai taikoma Konvencija, jei ją sudarė jurisdikcija ar teritorija ar jei ji buvo sudaryta jurisdikcijos ar teritorijos vardu. Tą dieną, kai papildoma (-os) sutartis (-ys), apie kurią (-as) pranešama pagal 2 straipsnio 1 dalies a punkto ii papunktį (Sąvokų aiškinimas), tampa sutartimis, kurioms taikoma Konvencija, 35 straipsnio nuostatomis (Įsigaliojimas) nustatoma data, kurią įsigalioja Sutarties, kuriai taikoma Konvencija, pakeitimai.

6. Šalis gali nusiųsti papildomų pranešimų pagal 1 dalies b–t punktus, nusiųsdama depozitarui pranešimą. Šie pranešimai įsigalioja:

a) Sutarčiai, kuriai taikoma Konvencija, sudarytai vien tik su valstybėmis ar jurisdikcijomis, kurios yra Konvencijos Šalys, kai depozitaras gauna papildomą pranešimą:

i) kai tai susiję su pranešimais dėl mokesčių, išskaitomų prie šaltinio, jeigu tokių mokesčių priežastis atsiranda kitų metų sausio 1 d. ar vėliau nuo tada, kai pasibaigia šešių kalendorinių mėnesių laikotarpis, prasidėjęs tą dieną, kai depozitaras praneša, kad gavo papildomą pranešimą;

ii) kai tai susiję su pranešimais dėl visų kitų nuostatų, susijusių su mokesčiais, taikomais

mokestiniais laikotarpiais, prasidedantiems kitų metų sausio 1 d. ar vėliau nuo tada, kai pasibaigia šešių kalendorinių mėnesių laikotarpis, prasidėjęs tą dieną, kai depozitaras praneša, kad gavo papildomą pranešimą;

b) kai tai susiję su Sutartimi, kuriai taikoma Konvencija, dėl kurios viena ar daugiau Susitariančiųjų Jurisdikcijų tampa šios Konvencijos Šalimi po dienos, kurią depozitaras gauna papildomą pranešimą: vėlesnę iš tų dienų, kurią Konvencija įsigalioja šioms Susitariančiosioms Jurisdikcijoms.

### **30 straipsnis**

#### **Vėlesni Sutarties, kuriai taikoma Konvencija, pakeitimai**

Šios Konvencijos nuostatos neprieštarauja jokiems vėlesniems Sutarties, kuriai taikoma Konvencija, pakeitimams, dėl kurių Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos gali susitarti.

### **31 straipsnis**

#### **Šalių konferencija**

1. Šalys gali sušaukti Šalių konferenciją, kad priimtų bet kokius sprendimus ar atliktų bet kokias funkcijas, kurių gali prireikti ar kurie gali būti tinkami pagal šios Konvencijos nuostatas.

2. Šalių konferenciją aptarnauja depozitaras.

3. Bet kuri Šalis gali pareikalauti sušaukti Šalių konferenciją, nusiųsdama depozitarui prašymą. Depozitaras praneša visoms Šalims apie bet kokią tokį prašymą. Tada depozitaras sušaukia Šalių konferenciją, jeigu prašymą per šešis kalendorinius mėnesius nuo tada, kai depozitaras praneša, kad jį gavo, palaiko trečdalis Šalių.

### **32 straipsnis**

#### **Aiškinimas ir įgyvendinimas**

1. Bet kuris klausimas dėl Sutarties, kuriai taikoma Konvencija, nuostatų, pakeistų šia Konvencija, aiškinimo ar įgyvendinimo, sprendžiamas vadovaujantis Sutarties, kuriai taikoma Konvencija, nuostata (-omis) (kuri (-ios) gali būti pakeista (-os) šia Konvencija), susijusia (-omis) su klausimų dėl Sutarties, kuriai taikoma Konvencija, aiškinimo ar taikymo išsprendimu abipusio susitarimo būdu.

2. Bet kurį klausimą dėl šios Konvencijos aiškinimo ar įgyvendinimo gali spręsti Šalių konferencija, sušaukta vadovaujantis 31 straipsnio 3 dalimi (Šalių konferencija).

### **33 straipsnis**

#### **Pakeitimas**

1. Bet kuri Šalis gali pasiūlyti šios Konvencijos pakeitimą pateikdama siūlomą pakeitimą depozitarui.

2. Šalių konferencija gali būti sušaukiama prireikus apsvarstyti siūlomą pakeitimą vadovaujantis 31 straipsnio 3 dalimi (Šalių konferencija).

### **34 straipsnis**

#### **Įsigaliojimas**

1. Ši Konvencija įsigalioja pirmąją mėnesio dieną praėjus trims kalendoriniams mėnesiams nuo penktojo ratifikavimo, priėmimo ar patvirtinimo dokumento deponavimo datos.

2. Kiekvienai signatarei, kuri ratifikuoja, priima ar patvirtina šią Konvenciją, po penktojo ratifikavimo, priėmimo ar patvirtinimo dokumento deponavimo datos, Konvencija įsigalioja pirmąją mėnesio dieną praėjus trims kalendoriniams mėnesiams nuo dienos, kurią tokia signatarė deponuoja savo ratifikavimo, priėmimo ar patvirtinimo dokumentą.

### **35 straipsnis**

#### **Taikymas**

1. Šios Konvencijos nuostatos taikomos kiekvienoje Sutarties, kuriai taikoma Konvencija, Susitariančiojoje Jurisdikcijoje:

a) kai tai susiję su mokesčiais, išskaitomais prie šaltinio iš nerezidentams sumokėtų ar įskaitytų sumų, jeigu tokių mokesčių priežastis atsiranda kitų kalendorinių metų, prasidedančių šios Konvencijos įsigaliojimo kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai dieną arba vėliau, pirmąją dieną arba vėliau, atsižvelgiant į tai, kuri diena yra vėlesnė;

b) kai tai susiję su visais kitais Susitariančiųjų Jurisdikcijų imamais mokesčiais, mokesčiams, imamiems už mokestinius laikotarpius, prasidedančius praėjus šešių kalendorinių mėnesių laikotarpiui (ar trumpesniam laikotarpiui, jei visos Susitariančiosios Jurisdikcijos praneša depozitarui, kad ketina taikyti tokį trumpesnį laikotarpį) nuo vėlesnės iš datų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai arba vėliau.

2. Šalis, vien tik norėdama pati taikyti 1 dalies a punktą ir 5 dalies a punktą, gali pasirinkti pakeisti „apmokestinamąjį laikotarpį“ „kalendoriniais metais“ ir atitinkamai praneša apie tai depozitarui.

3. Šalis, vien tik norėdama pati taikyti 1 dalies b punktą ir 5 dalies b punktą, gali pasirinkti pakeisti žodžius „mokestinius laikotarpius, prasidedančius praėjus [...] laikotarpiui arba vėliau“ žodžiais „mokestinius laikotarpius, prasidedančius kitų metų sausio 1 d. ar vėliau nuo tada, kai pasibaigia [...] laikotarpis“ ir atitinkamai praneša apie tai depozitarui.

4. Neatsižvelgiant į pirmesnes šio straipsnio nuostatas, 16 straipsnis (Abipusio susitarimo procedūra) įsigalioja pagal Sutartį, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos pareiškimo kompetentingam asmeniui pateikimo dieną, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai arba vėliau, atsižvelgiant į tai, kuri diena yra vėlesnė, išskyrus pareiškimus, kurie tą dieną nebuvo tinkami pateikti pagal Sutartį, kuriai taikoma Konvencija, iki jos pakeitimo šia Konvencija, neatsižvelgiant į mokestinį laikotarpį, su kuriuo susijęs pareiškimas.

5. Kai tai susiję su nauja Sutartimi, kuriai taikoma Konvencija, atsiradusia papildžius pagal

29 straipsnio 5 dalį (Pranešimai) sutarčių, apie kurias turi būti pranešama pagal 2 straipsnio 1 dalies a punkto ii papunktį, sąrašą (Sąvokų aiškinimas), šios Konvencijos nuostatos kiekvienai Susitariančiai Jurisdikcijai įsigalioja:

a) kai tai susiję su mokesčiais, išskaitomais prie šaltinio iš nerezidentams sumokėtų ar įskaitytų sumų, jeigu tokių mokesčių priežastis atsiranda kitų kalendorinių metų, prasidedančių praėjus 30 dienų nuo dienos, kai depozitaras praneša, kad gavo pranešimą dėl sutarčių sąrašo papildymo, ar vėliau; ir

b) kai tai susiję su visais kitais Susitariančiųjų Jurisdikcijų imamais mokesčiais, mokesčiai, imami už mokestinius laikotarpius, prasidedančius praėjus devyniems kalendoriniams mėnesiams (ar trumpesniam laikotarpiui, jei visos Susitariančiosios Jurisdikcijos praneša depozitarui, kad ketina taikyti tokį trumpesnį laikotarpį) nuo dienos, kai depozitaras praneša, kad gavo pranešimą dėl sutarčių sąrašo papildymo, ar vėliau.

6. Šalis gali pasilikti teisę taikyti 4 dalį savo Sutartims, kurioms taikoma Konvencija.

7. Šalis gali pasilikti teisę pakeisti:

i) 1 ir 4 dalyse įrašytus žodžius „vėliausią dieną, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiai Jurisdikcijai“; ir

ii) 5 dalyje įrašytus žodžius „dienos, kai depozitaras praneša, kad gavo pranešimą dėl sutarčių sąrašo papildymo“;

žodžiais „30 dienų nuo dienos, kurią depozitaras gauna paskutinį kiekvienos Susitariančiosios Jurisdikcijos, nustatančios 35 straipsnio 7 dalyje (Įsigaliojimas) nurodytą išlygą, pranešimą apie tai, kad ji užbaigė savo vidaus procedūras, būtinas šios Konvencijos nuostatomis įsigaliojti tai konkrečiai Sutarčiai, kuriai taikoma Konvencija“;

iii) 28 straipsnio (Išlygos) 9 dalies a punkte įrašytus žodžius „dieną, kai depozitaras praneša, kad gavo išlygos atšaukimo ar pakeitimo pranešimą“; ir

iv) 28 straipsnio (Išlygos) 9 dalies b punkte įrašytus žodžius „vėlesnę iš tų dienų, kurią Konvencija įsigalioja šioms Susitariančiosioms Jurisdikcijoms“;

žodžiais „30 dienų nuo dienos, kurią depozitaras gauna paskutinį kiekvienos Susitariančiosios Jurisdikcijos, nustatančios 35 straipsnio 7 dalyje (Įsigaliojimas) nurodytą išlygą, pranešimą apie tai, kad ji užbaigė savo vidaus procedūras, būtinas išlygos atšaukimui ar pakeitimui įsigaliojti tai konkrečiai Sutarčiai, kuriai taikoma Konvencija“;

v) 29 straipsnio (Pranešimai) 6 dalies a punkte įrašytus žodžius „dieną, kai depozitaras praneša, kad gavo papildomą pranešimą“; ir

vi) 29 straipsnio (Pranešimai) 6 dalies b punkte įrašytus žodžius „vėlesnę iš tų dienų, kurią Konvencija įsigalioja šioms Susitariančiosioms Jurisdikcijoms“;

žodžiais „30 dienų nuo dienos, kurią depozitaras gauna paskutinį kiekvienos Susitariančiosios Jurisdikcijos, nustatančios 35 straipsnio 7 dalyje (Įsigaliojimas) nurodytą išlygą, pranešimą apie tai, kad ji užbaigė savo vidaus procedūras, būtinas papildomam pranešimui įsigaliojti tai konkrečiai Sutarčiai, kuriai taikoma Konvencija“;

vii) 36 straipsnio (VI dalies įsigaliojimas) 1 ir 2 dalyse įrašytus žodžius „vėliausią dieną, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiai Jurisdikcijai“;

žodžiais „30 dienų nuo dienos, kurią depozitaras gauna paskutinį kiekvienos Susitariančiosios Jurisdikcijos, nustatančios 35 straipsnio 7 dalyje (Įsigaliojimas) nurodytą išlygą, pranešimą apie tai, kad ji užbaigė savo vidaus procedūras, būtinas šios Konvencijos nuostatomis įsigaliojti tai konkrečiai Sutarčiai, kuriai taikoma Konvencija“; ir

viii) 36 straipsnio (VI dalies įsigaliojimas) 3 dalyje įrašytus žodžius „dienos, kai depozitaras praneša, kad gavo pranešimą dėl sutarčių sąrašo papildymo“;

ix) 36 straipsnio (VI dalies įsigaliojimas) 4 dalyje įrašytus žodžius „dieną, kurią depozitaras praneša, kad gavo išlygos atšaukimo pranešimą“, „dieną, kurią depozitaras praneša, kad gavo išlygos pakeitimo pranešimą ir „dieną, kurią depozitaras praneša, kad gavo pranešimą apie prieštaravimo dėl išlygos atsiėmimą“; ir

x) 36 straipsnio (VI dalies įsigaliojimas) 5 dalyje įrašytus žodžius „dieną, kai depozitaras praneša, kad gavo papildomą pranešimą“

žodžiais „30 dienų nuo dienos, kurią depozitaras gauna paskutinį kiekvienos Susitariančiosios Jurisdikcijos, nustatančios 35 straipsnio 7 dalyje (Įsigaliojimas) nurodytą išlygą, pranešimą apie tai, kad ji užbaigė savo vidaus procedūras, būtinas šios VI dalies (Arbitražas) nuostatomis įsigaliojti tai konkrečiai Sutarčiai, kuriai taikoma Konvencija“;

b) Šalis, nustatanti išlygą vadovaujantis a dalimi, depozitarui ir iškart kitai (-oms) Susitariančiajai (-osioms) Jurisdikcijai (-oms) praneša apie patvirtintą savo vidaus procedūrų užbaigimą.

c) jeigu viena ar daugiau Sutarties, kuriai taikoma Konvencija, Susitariančiųjų Jurisdikcijų nustato išlygą pagal šią dalį, Konvencijos nuostatų, išlygos atšaukimo ar pakeitimo, papildomo pranešimo įsigaliojimas tai Sutarčiai, kuriai taikoma Konvencija, ar VI dalies (Arbitražas) įsigaliojimas visoms Sutarties, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms reglamentuojamas šia dalimi.

## **36 straipsnis**

### **VI dalies įsigaliojimas**

1. Neatsižvelgiant į 28 straipsnio (Išlygos) 9 dalį, 29 straipsnio (Pranešimai) 6 dalį ir 35 straipsnio (Įsigaliojimas) 1–6 dalis, VI dalies (Arbitražas) nuostatos Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai įsigalioja:

a) kai tai susiję su Susitariančiosios Jurisdikcijos kompetentingam asmeniui pateiktais pareiškimais (kaip nurodyta 19 straipsnio (Privalomas ir įpareigojantis arbitražas) 1 dalies a punkte), dieną, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai arba vėliau, atsižvelgiant į tai, kuri diena yra vėlesnė; ir

b) kai tai susiję su pareiškimais, pateiktais Susitariančiosios Jurisdikcijos kompetentingam asmeniui iki vėlesnės iš dienų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiajai Jurisdikcijai, dieną, kurią abi Susitariančiosios Jurisdikcijos pranešė depozitarui, kad pasiekė abipusį susitarimą pagal 19 straipsnio (Privalomas ir įpareigojantis arbitražas) 10 dalį, kartu pranešdamos datą ar datas, kada tokie pareiškimai, vadovaujantis minėto abipusio susitarimo sąlygomis, bus laikomi pateiktais Susitariančiosios Jurisdikcijos kompetentingam asmeniui (kaip nurodyta 19 straipsnio (Privalomas ir įpareigojantis arbitražas)

1 dalies a punkte).

2. Šalis gali pasilikti teisę taikyti VI dalį (Arbitražas) pareiškimui, pateiktam Susitariančiosios Jurisdikcijos kompetentingam asmeniui iki vėlesnės iš datų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiąjai Jurisdikcijai, tik tiek, kiek abiejų Susitariančiųjų Jurisdikcijų kompetentingi asmenys susitaria, kad minėta dalis bus taikoma tam konkrečiam pareiškimui.

3. Atsižvelgiant į naują Sutartį, kuriai taikoma Konvencija, atsiradusią papildžius pagal 29 straipsnio 5 dalį (Pranešimai) sutarčių, apie kurias turi būti pranešama pagal 2 straipsnio 1 dalies a punkto ii papunktį, sąrašą (Sąvokų aiškinimas), šio straipsnio 1 ir 2 dalyse pateikti žodžiai „vėlesnės iš datų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiąjai Jurisdikcijai“, pakeičiami žodžiais „dienos, kai depozitaras praneša, kad gavo pranešimą dėl sutarčių sąrašo papildymo“.

4. Vadovaujantis 26 straipsnio (Suderinamumas) 4 dalimi nustatytos išlygos atšaukimas ar pakeitimas pagal 28 straipsnio (Išlygos) 9 dalį arba prieštaravimo dėl pagal 28 straipsnio (Išlygos) 2 dalį nustatytos išlygos atsiėmimas, dėl kurio dvi Sutarties, kuriai taikoma Konvencija, Susitariančiosios Jurisdikcijos tarpusavyje taiko VI dalį (Arbitražas), įsigalioja vadovaujantis šio straipsnio 1 dalies a ir b punktais, išskyrus tai, kad žodžiai „vėlesnės iš datų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiąjai Jurisdikcijai“ atitinkamai pakeičiami žodžiais „dieną, kurią depozitaras praneša, kad gavo išlygos atšaukimo pranešimą“, „dieną, kurią depozitaras praneša, kad gavo išlygos pakeitimo pranešimą“ ar „dieną, kurią depozitaras praneša, kad gavo pranešimą apie prieštaravimo dėl išlygos atsiėmimą“.

5. Pagal 29 straipsnio (Pranešimai) 1 dalies p punktą pateiktas papildomas pranešimas įsigalioja vadovaujantis 1 dalies a ir b punktais, išskyrus tai, kad šio straipsnio 1 ir 2 dalyse pateikti žodžiai „vėlesnės iš datų, kurią ši Konvencija įsigalioja kiekvienai Sutarties, kuriai taikoma Konvencija, Susitariančiąjai Jurisdikcijai“, pakeičiami žodžiais „dienos, kai depozitaras praneša, kad gavo papildomą pranešimą“.

### **37 straipsnis**

#### **Pasitraukimas**

1. Bet kuri Šalis gali bet kada pasitraukti iš šios Konvencijos, nusiųsdama depozitarui pranešimą.

2. Pasitraukimas vadovaujantis 1 dalimi įsigalioja dieną, kai depozitaras gauną pranešimą. Šiai Konvencijai įsigaliojus visoms Sutarties, kuriai taikoma Konvencija, Susitariančiosioms Jurisdikcijoms, iki Šalies pasitraukimo iš Konvencijos įsigaliojimo datos, ta Sutartis, kuriai taikoma Konvencija, yra pakeičiama šia Konvencija.

### **38 straipsnis**

#### **Ryšys su protokolais**

1. Ši Konvencija gali būti papildyta vienu ar daugiau protokolų.
2. Kad valstybė ar jurisdikcija taptų protokolo šalimi, ji taip pat turi būti šios Konvencijos Šalis.

3. Protokolas šios Konvencijos Šaliai neprivalomas, nebent vadovaujantis protokolo nuostatomis ji tampa protokolo šalimi.

### **39 straipsnis**

#### **Depozitaras**

1. Šios Konvencijos ir bet kokių vadovaujantis 38 straipsniu (Ryšys su protokolais) sudarytų protokolų depozitaras yra Ekonominio bendradarbiavimo ir plėtros organizacijos generalinis sekretorius.

2. Depozitaras per vieną kalendorinį mėnesį praneša Šalims ir signatarėms apie:

a) bet kokią Konvencijos pasirašymą vadovaujantis 27 straipsniu (Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas);

b) bet kokio ratifikavimo, priėmimo ar patvirtinimo dokumento deponavimą vadovaujantis 27 straipsniu (Pasirašymas ir ratifikavimas, priėmimas ar patvirtinimas);

c) bet kokią išlygą ar išlygos atšaukimą arba pakeitimą kita išlyga vadovaujantis 28 straipsniu (Išlygos);

d) bet kokią vadovaujantis 29 straipsniu (Pranešimai) pateiktą pranešimą ar papildomą pranešimą;

e) bet kokią vadovaujantis 33 straipsniu (Pakeitimai) siūlomą šios Konvencijos pakeitimą;

f) bet kokią pasitraukimą iš Konvencijos pagal 37 straipsnį (Pasitraukimas);

g) bet kurią kitą su šia Konvencija susijusį pranešimą.

3. Depozitaras tvarko ir užtikrina viešą prieigą prie sąrašų, kuriuose pateikiama:

a) Sutartys, kurioms taikoma Konvencija;

b) Šalių nustatytos išlygos; ir

c) Šalių pateikti pranešimai.

Tai patvirtindami, toliau nurodyti tinkamai įgalioti asmenys pasirašė šią Konvenciją.

Priimta 2016 metų lapkričio 24 dieną Paryžiuje anglų ir prancūzų kalbomis. Abu tekstai yra autentiški ir vienu egzemplioriumi deponuojami Ekonominio bendradarbiavimo ir plėtros organizacijos archyvuose.

MULTILATERAL CONVENTION TO IMPLEMENT  
TAX TREATY RELATED MEASURES TO  
PREVENT BASE EROSION AND PROFIT  
SHIFTING

CONVENTION MULTILATÉRALE POUR LA MISE  
EN ŒUVRE DES MESURES RELATIVES AUX  
CONVENTIONS FISCALES POUR PRÉVENIR  
L'ÉROSION DE LA BASE D'IMPOSITION ET LE  
TRANSFERT DE BÉNÉFICES

The Parties to this Convention,

Recognising that governments lose substantial corporate tax revenue because of aggressive international tax planning that has the effect of artificially shifting profits to locations where they are subject to non-taxation or reduced taxation;

Mindful that base erosion and profit shifting (hereinafter referred to as “BEPS”) is a pressing issue not only for industrialised countries but also for emerging economies and developing countries;

Recognising the importance of ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created;

Welcoming the package of measures developed under the OECD/G20 BEPS project (hereinafter referred to as the “OECD/G20 BEPS package”);

Noting that the OECD/G20 BEPS package included tax treaty-related measures to address certain hybrid mismatch arrangements, prevent treaty abuse, address artificial avoidance of permanent establishment status, and improve dispute resolution;

Conscious of the need to ensure swift, co-ordinated and consistent implementation of the treaty-related BEPS measures in a multilateral context;

Noting the need to ensure that existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements 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 those agreements for the indirect benefit of residents of third jurisdictions);

Recognising the need for an effective mechanism to implement agreed changes in a synchronised and efficient manner across the network of existing agreements for the avoidance of double taxation on income without the need to bilaterally renegotiate each such agreement;

Have agreed as follows:

Les Parties à la présente Convention,

Reconnaissant que les gouvernements subissent d'importantes pertes de recettes au titre de l'impôt sur les bénéfices des sociétés liées à la mise en place de planifications fiscales agressives ayant pour conséquence de transférer artificiellement des bénéfices vers des destinations où ils ne sont pas imposés ou sont soumis à une imposition réduite ;

Conscientes que les problématiques liées à l'érosion de la base d'imposition et au transfert de bénéfices (ci-après dénommés « BEPS ») revêtent un caractère d'urgence non seulement pour les pays industrialisés, mais également pour les économies émergentes et les pays en développement ;

Reconnaissant qu'il est important de s'assurer que les bénéfices soient imposés là où s'exercent réellement les activités économiques qui génèrent ces bénéfices et là où la valeur est créée ;

Se félicitant de l'ensemble des mesures élaborées dans le cadre du projet BEPS de l'OCDE et du G20 (ci-après dénommé « l'ensemble des rapports BEPS de l'OCDE et du G20 ») ;

Notant que l'ensemble des rapports BEPS de l'OCDE et du G20 comprend des mesures relatives aux conventions fiscales visant à lutter contre certains dispositifs hybrides, à prévenir l'utilisation abusive des conventions fiscales, à lutter contre les mesures destinées à éviter artificiellement le statut d'établissement stable et à améliorer le règlement des différends ;

Conscientes de la nécessité d'assurer une mise en œuvre rapide, coordonnée et cohérente des mesures BEPS relatives aux conventions fiscales dans un contexte multilatéral ;

Notant la nécessité de veiller à ce que les conventions conclues en vue d'éviter la double imposition en matière de revenu soient interprétées dans le but d'éliminer la double imposition à l'égard des impôts visés par ces conventions, sans pour autant créer de possibilités de non-imposition ou d'imposition réduite via des pratiques d'évasion fiscale ou de fraude fiscale/évitement fiscal (résultant notamment de la mise en place de stratégies de chalandage fiscal destinées à obtenir des allègements prévus dans ces conventions au bénéfice indirect de résidents de juridictions tierces) ;

Reconnaissant la nécessité de créer un mécanisme efficace pour mettre en œuvre les modifications adoptées, de façon synchronisée et efficiente, dans l'ensemble du réseau de conventions existantes conclues en vue d'éviter la double imposition en matière de revenu, et ce, sans renégocier chacune de ces conventions au niveau bilatéral ;

Conviennent de ce qui suit :

**PART I.**  
**SCOPE AND INTERPRETATION OF TERMS**

***Article 1 – Scope of the Convention***

This Convention modifies all Covered Tax Agreements as defined in subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms).

***Article 2 – Interpretation of Terms***

1. For the purpose of this Convention, the following definitions apply:
  - a) The term “Covered Tax Agreement” means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):
    - i) that is in force between two or more:
      - A) Parties; and/or
      - B) jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible; and
    - ii) with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention.
  - b) The term “Party” means:
    - i) A State for which this Convention is in force pursuant to Article 34 (Entry into Force); or
    - ii) A jurisdiction which has signed this Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval) and for which this Convention is in force pursuant to Article 34 (Entry into Force).
  - c) The term “Contracting Jurisdiction” means a party to a Covered Tax Agreement.
  - d) The term “Signatory” means a State or jurisdiction which has signed this Convention but for which the Convention is not yet in force.
2. As regards the application of this Convention at any time by a Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the relevant Covered Tax Agreement.

**PARTIE I.**  
**CHAMP D'APPLICATION ET INTERPRÉTATION DES TERMES**

***Article 1 – Champ d'application de la Convention***

La présente Convention modifie toutes les Conventions fiscales couvertes telles que définies à l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes).

***Article 2 – Interprétation des termes***

1. Aux fins de la présente Convention, les définitions suivantes s'appliquent :
  - a) L'expression « Convention fiscale couverte » désigne un accord conclu en vue d'éviter la double imposition en matière d'impôts sur le revenu (que cet accord porte ou non sur d'autres impôts) :
    - i) qui est en vigueur entre deux ou plusieurs :
      - A) Parties ; et/ou
      - B) juridictions ou territoires, ayant conclu un accord susmentionné et dont les relations internationales relèvent de la responsabilité d'une Partie ; et
    - ii) pour lequel chacune de ces Parties a formulé une notification au Dépositaire indiquant cet accord ainsi que tous les instruments le modifiant ou l'accompagnant (identifiés par leur titre, les noms des parties, la date de signature et, si applicable au moment de la notification, la date d'entrée en vigueur) comme un accord qu'elle souhaite voir visé par la présente Convention.
  - b) Le terme « Partie » désigne :
    - i) un État pour lequel la présente Convention est en vigueur en vertu de l'article 34 (Entrée en vigueur) ; ou
    - ii) une juridiction qui a signé la présente Convention en vertu des alinéas b) ou c) du paragraphe 1 de l'article 27 (Signature et ratification, acceptation ou approbation) et pour laquelle la présente Convention est en vigueur en vertu de l'article 34 (Entrée en vigueur).
  - c) L'expression « Juridiction contractante » désigne une partie à une Convention fiscale couverte.
  - d) Le terme « Signataire » désigne un État ou une juridiction qui a signé la présente Convention mais pour lequel la Convention n'est pas encore en vigueur.
2. Pour l'application de la présente Convention à un moment donné par une Partie, tout terme ou expression qui n'y est pas défini a, sauf si le contexte exige une interprétation différente, le sens que lui attribue à ce moment la Convention fiscale couverte concernée.

## **PART II.**

### **HYBRID MISMATCHES**

#### ***Article 3 – Transparent Entities***

1. For the purposes of a Covered Tax Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting Jurisdiction shall be considered to be income of a resident of a Contracting Jurisdiction but only to the extent that the income is treated, for purposes of taxation by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction.
2. Provisions of a Covered Tax Agreement that require a Contracting Jurisdiction to exempt from income tax or provide a deduction or credit equal to the income tax paid with respect to income derived by a resident of that Contracting Jurisdiction which may be taxed in the other Contracting Jurisdiction according to the provisions of the Covered Tax Agreement shall not apply to the extent that such provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction.
3. With respect to Covered Tax Agreements for which one or more Parties has made the reservation described in subparagraph a) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents), the following sentence will be added at the end of paragraph 1: "In no case shall the provisions of this paragraph be construed to affect a Contracting Jurisdiction's right to tax the residents of that Contracting Jurisdiction."
4. Paragraph 1 (as it may be modified by paragraph 3) shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that they address whether income derived by or through entities or arrangements that are treated as fiscally transparent under the tax law of either Contracting Jurisdiction (whether through a general rule or by identifying in detail the treatment of specific fact patterns and types of entities or arrangements) shall be treated as income of a resident of a Contracting Jurisdiction.
5. A Party may reserve the right:
  - a) for the entirety of this Article not to apply to its Covered Tax Agreements;
  - b) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4;
  - c) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which denies treaty benefits in the case of income derived by or through an entity or arrangement established in a third jurisdiction;
  - d) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements;
  - e) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements and denies treaty benefits in the case of income derived by or through an entity or arrangement established in a third jurisdiction;

## **PARTIE II.**

### **DISPOSITIFS HYBRIDES**

#### ***Article 3 – Entités transparentes***

1. Au sens d'une Convention fiscale couverte, le revenu perçu par ou via une entité ou un dispositif considéré comme totalement ou partiellement transparent sur le plan fiscal selon la législation fiscale de l'une des Juridictions contractantes est considéré comme étant le revenu d'un résident d'une Juridiction contractante, mais uniquement dans la mesure où ce revenu est traité, aux fins de l'imposition par cette Juridiction contractante, comme le revenu d'un résident de cette Juridiction contractante.
2. Les dispositions d'une Convention fiscale couverte qui imposent à une Juridiction contractante d'exempter de l'impôt sur le revenu ou d'accorder une déduction ou un crédit égal au montant de l'impôt sur le revenu payé au titre d'un revenu perçu par un résident de cette Juridiction contractante qui est imposable dans l'autre Juridiction contractante en vertu des dispositions de la Convention fiscale couverte ne s'appliquent pas dans la mesure où ces dispositions permettent l'imposition par cette autre Juridiction contractante uniquement parce que le revenu est également un revenu perçu par un résident de cette autre Juridiction contractante.
3. S'agissant des Conventions fiscales couvertes pour lesquelles une ou plusieurs Parties ont émis la réserve prévue à l'alinéa a) du paragraphe 3 de l'article 11 (Application des conventions fiscales pour limiter le droit d'une Partie d'imposer ses propres résidents), la phrase suivante est ajoutée à la fin du paragraphe 1 : « En aucun cas les dispositions du présent paragraphe ne doivent être interprétées comme affectant le droit d'une Juridiction contractante d'imposer les résidents de cette Juridiction contractante. »
4. Le paragraphe 1 (tel que susceptible d'être modifié par le paragraphe 3) s'applique à la place ou en l'absence des dispositions d'une Convention fiscale couverte qui stipulent qu'un revenu perçu par ou via une entité ou un dispositif considéré comme fiscalement transparent selon la législation fiscale de l'une des Juridictions contractantes (par l'application d'une règle générale ou de règles détaillant le traitement applicable à des situations de faits spécifiques ou des types d'entités ou de dispositifs) doit être considéré comme le revenu d'un résident d'une Juridiction contractante.
5. Une Partie peut se réserver le droit :
  - a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
  - b) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition décrite au paragraphe 4 ;
  - c) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition décrite au paragraphe 4 qui refuse l'octroi des avantages prévus par la convention dans le cas où un revenu est perçu par ou via une entité ou un dispositif établi dans une juridiction tierce ;
  - d) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition décrite au paragraphe 4 qui détaille le traitement applicable à des situations de faits spécifiques ou des types d'entités ou de dispositifs ;
  - e) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition décrite au paragraphe 4 qui détaille le traitement applicable à des situations de faits spécifiques ou des types d'entités ou de dispositifs et qui refuse l'octroi des avantages conventionnels dans le cas où le revenu est perçu par ou via une entité ou un dispositif établi dans une juridiction tierce ;

- f) for paragraph 2 not to apply to its Covered Tax Agreements;
- g) for paragraph 1 to apply only to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specific fact patterns and types of entities or arrangements.

6. Each Party that has not made a reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 4 that is not subject to a reservation under subparagraphs c) through e) of paragraph 5, and if so, the article and paragraph number of each such provision. In the case of a Party that has made the reservation described in subparagraph g) of paragraph 5, the notification pursuant to the preceding sentence shall be limited to Covered Tax Agreements that are subject to that reservation. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (as it may be modified by paragraph 3) to the extent provided in paragraph 4. In other cases, paragraph 1 (as it may be modified by paragraph 3) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (as it may be modified by paragraph 3).

#### ***Article 4 – Dual Resident Entities***

1. Where by reason of the provisions of a Covered Tax Agreement a person other than an individual is a resident of more than one Contracting Jurisdiction, the competent authorities of the Contracting Jurisdictions shall endeavour to determine by mutual agreement the Contracting Jurisdiction of which such person shall be deemed to be a resident for the purposes of the Covered Tax Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Jurisdictions.

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions in cases in which that person would otherwise be treated as a resident of more than one Contracting Jurisdiction. Paragraph 1 shall not apply, however, to provisions of a Covered Tax Agreement specifically addressing the residence of companies participating in dual-listed company arrangements.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;
- c) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by denying treaty benefits without requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;

- f) de ne pas appliquer le paragraphe 2 à ses Conventions fiscales couvertes ;
- g) d'appliquer le paragraphe 1 uniquement à ses Conventions fiscales couvertes qui contiennent déjà une disposition décrite au paragraphe 4 qui détaille le traitement de situations de faits spécifiques ou le type d'entités ou de dispositifs.

6. Toute Partie qui n'a pas émis de réserve prévue aux alinéas a) ou b) du paragraphe 5 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 4 et qui ne font pas l'objet d'une réserve prévue aux alinéas c) à e) du paragraphe 5, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. La notification de la Partie qui a émis la réserve prévue à l'alinéa g) du paragraphe 5 est limitée aux Conventions fiscales couvertes visées par cette réserve. Lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une telle notification relative à une disposition de cette Convention fiscale couverte, cette disposition est remplacée par le paragraphe 1 (tel que susceptible d'être modifié par le paragraphe 3) dans les conditions prévues au paragraphe 4. Dans les autres cas, le paragraphe 1 (tel que susceptible d'être modifié par le paragraphe 3) prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1 (tel que susceptible d'être modifié par le paragraphe 3).

#### ***Article 4 – Entités ayant une double résidence***

1. Lorsque, en vertu des dispositions d'une Convention fiscale couverte, une personne autre qu'une personne physique est un résident de plusieurs Juridictions contractantes, les autorités compétentes des Juridictions contractantes s'efforcent de déterminer d'un commun accord la Juridiction contractante de laquelle cette personne est réputée être un résident aux fins de la Convention fiscale couverte, eu égard au lieu où se situe son siège de direction effective, au lieu où elle a été constituée en société ou en toute autre forme juridique, et à tout autre facteur pertinent. En l'absence d'un tel accord entre les Juridictions contractantes, cette personne ne pourra prétendre à aucun des allègements ou exonérations de l'impôt prévus par la Convention fiscale couverte, sauf dans la mesure et selon les modalités convenues par les autorités compétentes des Juridictions contractantes.

2. Le paragraphe 1 s'applique à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui prévoit des règles permettant de déterminer si une personne autre qu'une personne physique est considérée comme un résident de l'une des Juridictions contractantes dans les situations où cette personne serait autrement considérée comme un résident de plus d'une des Juridictions contractantes. Le paragraphe 1 ne s'applique pas aux dispositions de Conventions fiscales couvertes qui traitent de la résidence de sociétés participant à des structures à double cotation.

3. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
- b) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui règlent déjà les situations dans lesquelles une personne autre qu'une personne physique est un résident de plusieurs Juridictions contractantes en demandant aux autorités compétentes des Juridictions contractantes de s'efforcer de déterminer d'un commun accord la seule Juridiction contractante dont cette personne est réputée être un résident ;
- c) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui règlent déjà les situations dans lesquelles une personne autre qu'une personne physique est un résident de plusieurs Juridictions contractantes en refusant les avantages conventionnels sans demander aux autorités compétentes des Juridictions contractantes de s'efforcer de déterminer d'un commun accord la seule Juridiction contractante dont cette personne est considérée être un résident ;

- d) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence, and that set out the treatment of that person under the Covered Tax Agreement where such an agreement cannot be reached;
- e) to replace the last sentence of paragraph 1 with the following text for the purposes of its Covered Tax Agreements: “In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement.”;
- f) for the entirety of this Article not to apply to its Covered Tax Agreements with Parties that have made the reservation described in subparagraph e).

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2 that is not subject to a reservation under subparagraphs b) through d) of paragraph 3, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

#### ***Article 5 – Application of Methods for Elimination of Double Taxation***

1. A Party may choose to apply either paragraphs 2 and 3 (Option A), paragraphs 4 and 5 (Option B), or paragraphs 6 and 7 (Option C), or may choose to apply none of the Options. Where each Contracting Jurisdiction to a Covered Tax Agreement chooses a different Option (or where one Contracting Jurisdiction chooses to apply an Option and the other chooses to apply none of the Options), the Option chosen by each Contracting Jurisdiction shall apply with respect to its own residents.

##### ***Option A***

2. Provisions of a Covered Tax Agreement that would otherwise exempt income derived or capital owned by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction for the purpose of eliminating double taxation shall not apply where the other Contracting Jurisdiction applies the provisions of the Covered Tax Agreement 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, the first-mentioned Contracting Jurisdiction shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in that other Contracting Jurisdiction. 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 that other Contracting Jurisdiction.

3. Paragraph 2 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income or capital described in that paragraph.

- d) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui règlent déjà les situations dans lesquelles une personne autre qu'une personne physique est un résident de plusieurs Juridictions contractantes en demandant aux autorités compétentes des Juridictions contractantes de s'efforcer de déterminer d'un commun accord la seule Juridiction contractante dont cette personne est réputée être un résident, et qui prévoient le traitement de cette personne aux fins de la Convention fiscale couverte lorsqu'un tel accord ne peut être trouvé ;
- e) de remplacer la dernière phrase du paragraphe 1 par la phrase suivante pour l'application de ses Conventions fiscales couvertes : « En l'absence d'un tel accord, cette personne ne pourra prétendre à aucun des allègements ou exonérations de l'impôt prévus par la Convention fiscale couverte. » ;
- f) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes conclues avec des Parties qui ont émis la réserve prévue à l'alinéa e).

4. Toute Partie qui n'a pas émis de réserve prévue à l'alinéa a) du paragraphe 3 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 2 et qui ne font pas l'objet d'une réserve prévue aux alinéas b) à d) du paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ont formulé une telle notification relative à une disposition d'une Convention fiscale couverte, cette disposition est remplacée par le paragraphe 1. Dans les autres cas, le paragraphe 1 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1.

#### ***Article 5 – Application des méthodes d'élimination de la double imposition***

1. Une Partie peut choisir d'appliquer les paragraphes 2 et 3 (Option A), les paragraphes 4 et 5 (Option B) ou les paragraphes 6 et 7 (Option C), ou peut choisir de n'appliquer aucune de ces options. Lorsque chaque Juridiction contractante ayant conclu une Convention fiscale couverte choisit une option différente (ou lorsqu'une Juridiction contractante choisit d'appliquer une option et l'autre décide de n'en appliquer aucune), l'option choisie par chaque Juridiction contractante s'applique à ses propres résidents.

##### ***Option A***

2. Les dispositions d'une Convention fiscale couverte qui auraient pour effet d'exempter d'impôt le revenu ou la fortune d'un résident d'une Juridiction contractante dans cette Juridiction contractante aux fins d'éliminer la double imposition, ne s'appliquent pas lorsque l'autre Juridiction contractante applique les dispositions de la Convention fiscale couverte pour exempter d'impôt ce revenu ou cette fortune ou pour limiter le taux auquel ce revenu ou cette fortune est imposé. Dans ce dernier cas, la première Juridiction contractante accorde sur l'impôt qu'elle perçoit sur le revenu ou la fortune de ce résident une déduction d'un montant égal à l'impôt payé dans cette autre Juridiction contractante. Cette déduction ne peut toutefois excéder la fraction de l'impôt, calculé avant déduction, correspondant aux éléments de revenu ou de fortune imposables dans cette autre Juridiction contractante.

3. Le paragraphe 2 s'applique à une Convention fiscale couverte qui exigerait par ailleurs d'une Juridiction contractante qu'elle exempte d'impôt le revenu ou la fortune décrit dans ce paragraphe.

### ***Option B***

4. Provisions of a Covered Tax Agreement that would otherwise exempt income derived by a resident of a Contracting Jurisdiction from tax in that Contracting Jurisdiction for the purpose of eliminating double taxation because such income is treated as a dividend by that Contracting Jurisdiction shall not apply where such income gives rise to a deduction for the purpose of determining the taxable profits of a resident of the other Contracting Jurisdiction under the laws of that other Contracting Jurisdiction. In such case, the first-mentioned Contracting Jurisdiction shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other Contracting Jurisdiction. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to such income which may be taxed in that other Contracting Jurisdiction.

5. Paragraph 4 shall apply to a Covered Tax Agreement that would otherwise require a Contracting Jurisdiction to exempt income described in that paragraph.

### ***Option C***

6. a) Where a resident of a Contracting Jurisdiction derives income or owns capital which may be taxed in the other Contracting Jurisdiction in accordance with the provisions of a Covered Tax Agreement (except to the extent that these provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction), the first-mentioned Contracting Jurisdiction shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Contracting Jurisdiction;
- ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other Contracting Jurisdiction.

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

b) Where in accordance with any provision of the Covered Tax Agreement income derived or capital owned by a resident of a Contracting Jurisdiction is exempt from tax in that Contracting Jurisdiction, such Contracting Jurisdiction 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.

7. Paragraph 6 shall apply in place of provisions of a Covered Tax Agreement that, for purposes of eliminating double taxation, require a Contracting Jurisdiction to exempt from tax in that Contracting Jurisdiction income derived or capital owned by a resident of that Contracting Jurisdiction which, in accordance with the provisions of the Covered Tax Agreement, may be taxed in the other Contracting Jurisdiction.

8. A Party that does not choose to apply an Option under paragraph 1 may reserve the right for the entirety of this Article not to apply with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements).

9. A Party that does not choose to apply Option C may reserve the right, with respect to one or more identified Covered Tax Agreements (or with respect to all of its Covered Tax Agreements), not to permit the other Contracting Jurisdiction(s) to apply Option C.

### ***Option B***

4. Les dispositions d'une Convention fiscale couverte qui auraient pour effet d'exempter d'impôt dans une Juridiction contractante un revenu d'un résident de cette Juridiction contractante aux fins d'éliminer la double imposition du fait que ce revenu est considéré comme un dividende par cette Juridiction contractante ne s'appliquent pas lorsque ce revenu donne lieu à une déduction pour la détermination des bénéfices imposables d'un résident de l'autre Juridiction contractante en vertu de la législation de cette autre Juridiction contractante. En pareil cas, la première Juridiction contractante accorde sur l'impôt qu'elle perçoit sur le revenu de ce résident une déduction d'un montant égal à l'impôt payé sur le revenu en cause dans cette autre Juridiction contractante. Cette déduction ne peut toutefois excéder la fraction de l'impôt sur le revenu, calculé avant déduction, correspondant à ce revenu imposable dans cette autre Juridiction contractante.

5. Le paragraphe 4 s'applique à une Convention fiscale couverte qui exigerait par ailleurs d'une Juridiction contractante qu'elle exempte d'impôt le revenu décrit dans ce paragraphe.

### ***Option C***

6. a) Lorsqu'un résident d'une Juridiction contractante reçoit des revenus ou possède de la fortune qui sont imposables dans l'autre Juridiction contractante conformément aux dispositions d'une Convention fiscale couverte (sauf dans la mesure où ces dispositions permettent l'imposition par cette autre Juridiction contractante uniquement parce que le revenu est également un revenu reçu par un résident de cette autre Juridiction contractante), la première Juridiction contractante accorde :

- i) sur l'impôt qu'elle perçoit sur les revenus de ce résident, une déduction d'un montant égal à l'impôt payé sur le revenu en cause dans cette autre Juridiction contractante ;
- ii) sur l'impôt qu'elle perçoit sur la fortune de ce résident, une déduction d'un montant égal à l'impôt payé sur la fortune en cause dans cette autre Juridiction contractante.

Cette déduction ne peut toutefois excéder la fraction de l'impôt sur le revenu ou de l'impôt sur la fortune, calculé avant déduction, correspondant aux revenus ou à la fortune imposables dans cette autre Juridiction contractante.

b) Lorsque, conformément à une disposition quelconque d'une Convention fiscale couverte, les revenus qu'un résident d'une Juridiction contractante reçoit ou la fortune qu'il possède sont exempts d'impôt dans cette Juridiction contractante, celle-ci peut néanmoins, pour calculer le montant de l'impôt sur le reste des revenus ou de la fortune de ce résident, tenir compte de ces revenus ou de cette fortune exemptés.

7. Le paragraphe 6 s'applique à la place des dispositions d'une Convention fiscale couverte qui, aux fins d'éliminer la double imposition, prévoient qu'une Juridiction contractante exempte d'impôt le revenu qu'un résident de cette Juridiction contractante reçoit ou la fortune qu'il possède qui, conformément aux dispositions de la Convention fiscale couverte, est imposable dans l'autre Juridiction contractante.

8. Une Partie qui ne choisit pas d'appliquer l'une des options prévues au paragraphe 1 peut se réserver le droit de ne pas appliquer l'intégralité du présent article à l'une ou plusieurs de ses Conventions fiscales couvertes identifiées (ou à toutes ses Conventions fiscales couvertes).

9. Une Partie qui ne choisit pas d'appliquer l'Option C peut se réserver le droit, aux fins d'une ou de plusieurs de ses Conventions fiscales couvertes identifiées (ou aux fins de toutes ses Conventions fiscales couvertes), de ne pas permettre à l'autre ou aux autres Juridictions contractantes d'appliquer l'Option C.

10. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depositary of its choice of Option. Such notification shall also include:

- a) in the case of a Party that chooses to apply Option A, the list of its Covered Tax Agreements which contain a provision described in paragraph 3, as well as the article and paragraph number of each such provision;
- b) in the case of a Party that chooses to apply Option B, the list of its Covered Tax Agreements which contain a provision described in paragraph 5, as well as the article and paragraph number of each such provision;
- c) in the case of a Party that chooses to apply Option C, the list of its Covered Tax Agreements which contain a provision described in paragraph 7, as well as the article and paragraph number of each such provision.

An Option shall apply with respect to a provision of a Covered Tax Agreement only where the Party that has chosen to apply that Option has made such a notification with respect to that provision.

10. Toute Partie qui choisit d'appliquer l'une des options prévues au paragraphe 1 notifie au Dépositaire l'option choisie, ainsi que :

- a) dans le cas où une Partie choisit d'appliquer l'Option A, la liste de ses Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée ;
- b) dans le cas où une Partie choisit d'appliquer l'Option B, la liste de ses Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 5, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée ;
- c) dans le cas où une Partie choisit d'appliquer l'Option C, la liste de ses Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 7, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée.

Une option s'applique à une disposition d'une Convention fiscale couverte uniquement si la Partie qui choisit d'appliquer cette option a formulé une notification à l'égard de cette disposition.

**PART III.**  
**TREATY ABUSE**

***Article 6 – Purpose of a Covered Tax Agreement***

1. A Covered Tax Agreement shall be modified to include the following preamble text:  
“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),”.
2. The text described in paragraph 1 shall be included in a Covered Tax Agreement in place of or in the absence of preamble language of the Covered Tax Agreement referring to an intent to eliminate double taxation, whether or not that language also refers to the intent not to create opportunities for non-taxation or reduced taxation.
3. A Party may also choose to include the following preamble text with respect to its Covered Tax Agreements that do not contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters:  
“Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,”.
4. A Party may reserve the right for paragraph 1 not to apply to its Covered Tax Agreements that already contain preamble language describing the intent of the Contracting Jurisdictions to eliminate double taxation without creating opportunities for non-taxation or reduced taxation, whether that language is limited to cases of tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Covered Tax Agreement for the indirect benefit of residents of third jurisdictions) or applies more broadly.
5. Each Party shall notify the Depositary of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains preamble language described in paragraph 2, and if so, the text of the relevant preambular paragraph. Where all Contracting Jurisdictions have made such a notification with respect to that preamble language, such preamble language shall be replaced by the text described in paragraph 1. In other cases, the text described in paragraph 1 shall be included in addition to the existing preamble language.
6. Each Party that chooses to apply paragraph 3 shall notify the Depositary of its choice. Such notification shall also include the list of its Covered Tax Agreements that do not already contain preamble language referring to a desire to develop an economic relationship or to enhance co-operation in tax matters. The text described in paragraph 3 shall be included in a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply that paragraph and have made such a notification with respect to the Covered Tax Agreement.

### PARTIE III.

#### UTILISATION ABUSIVE DES CONVENTIONS FISCALES

##### *Article 6 – Objet d'une Convention fiscale couverte*

1. Une Convention fiscale couverte est modifiée pour inclure le texte du préambule suivant :  
« Entendant éliminer la double imposition à l'égard d'impôts visés par la présente Convention, et ce, sans créer de possibilités de non-imposition ou d'imposition réduite via des pratiques d'évasion ou de fraude fiscale/évitement fiscal\* (résultant notamment de la mise en place de stratégies de chalandage fiscal destinées à obtenir des allègements prévus dans la présente convention au bénéfice indirect de résidents de juridictions tierces), ».
2. Le texte mentionné au paragraphe 1 est inséré dans une Convention fiscale couverte à la place ou en l'absence de texte au préambule de cette Convention faisant référence à l'intention d'éliminer la double imposition, que ce dernier fasse également référence, ou non, à l'intention de ne pas créer de possibilités de non-imposition ou d'imposition réduite.
3. Une Partie peut également choisir d'inclure le texte suivant dans le préambule de ses Conventions fiscales couvertes qui ne font pas référence au souhait des Parties de promouvoir leurs relations économiques ou d'améliorer leur coopération en matière fiscale :  
« Soucieux de promouvoir leurs relations économiques et d'améliorer leur coopération en matière fiscale, ».
4. Une Partie peut se réserver le droit de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà un préambule faisant référence à l'intention des Juridictions contractantes d'éliminer la double imposition sans créer de possibilités de non-imposition ou d'imposition réduite, et ce, que ce préambule vise uniquement les pratiques d'évasion ou de fraude fiscale/évitement fiscal (résultant notamment de la mise en place de stratégies de chalandage fiscal destinées à obtenir des allègements prévus dans la présente convention au bénéfice indirect de résidents de juridictions tierces) ou qu'il s'applique plus largement.
5. Toute Partie notifie au Dépositaire les Conventions fiscales couvertes, autres que celles qui font l'objet d'une réserve prévue au paragraphe 4, qui contiennent un préambule tel que décrit au paragraphe 2, en indiquant le texte des paragraphes concernés. Lorsque toutes les Juridictions contractantes ont formulé cette notification à l'égard d'un préambule d'une Convention fiscale couverte, ce dernier est remplacé par le texte du paragraphe 1. Dans les autres cas, le texte mentionné au paragraphe 1 est ajouté au préambule existant.
6. Toute Partie qui choisit d'appliquer le paragraphe 3 notifie au Dépositaire son choix ainsi que la liste de ses Conventions fiscales couvertes qui ne contiennent pas déjà le texte relatif au développement des relations économiques et à l'amélioration de la coopération en matière fiscale. Le texte mentionné au paragraphe 3 est inséré dans une Convention fiscale couverte uniquement si toutes les Juridictions contractantes d'une Convention fiscale couverte choisissent d'appliquer ce paragraphe et notifient ce choix pour la Convention fiscale couverte.

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\* Certaines juridictions traduisent le terme anglais « tax avoidance » par « évitement fiscal ».

## *Article 7 – Prevention of Treaty Abuse*

1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement 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 the Covered Tax Agreement.
2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.
3. A Party that has not made the reservation described in subparagraph a) of paragraph 15 may also choose to apply paragraph 4 with respect to its Covered Tax Agreements.
4. Where a benefit under a Covered Tax Agreement is denied to a person under provisions of the Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits, the competent authority of the Contracting Jurisdiction that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement. The competent authority of the Contracting Jurisdiction to which a request has been made under this paragraph by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before rejecting the request.
5. Paragraph 4 shall apply to provisions of a Covered Tax Agreement (as it may be modified by this Convention) that deny all or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits.
6. A Party may also choose to apply the provisions contained in paragraphs 8 through 13 (hereinafter referred to as the “Simplified Limitation on Benefits Provision”) to its Covered Tax Agreements by making the notification described in subparagraph c) of paragraph 17. The Simplified Limitation on Benefits Provision shall apply with respect to a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply it.
7. In cases where some but not all of the Contracting Jurisdictions to a Covered Tax Agreement choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, then, notwithstanding the provisions of that paragraph, the Simplified Limitation on Benefits Provision shall apply with respect to the granting of benefits under the Covered Tax Agreement:
  - a) by all Contracting Jurisdictions, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly; or

## ***Article 7 – Prévenir l'utilisation abusive des conventions***

1. Nonobstant toute disposition d'une Convention fiscale couverte, un avantage au titre de la Convention fiscale couverte ne sera pas accordé au titre d'un élément de revenu ou de fortune s'il est raisonnable de conclure, compte tenu de l'ensemble des faits et circonstances propres à la situation, que l'octroi de cet avantage était l'un des objets principaux d'un montage ou d'une transaction ayant permis, directement ou indirectement, de l'obtenir, à moins qu'il soit établi que l'octroi de cet avantage dans ces circonstances serait conforme à l'objet et au but des dispositions pertinentes de cette Convention fiscale couverte.
2. Le paragraphe 1 s'applique à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui refusent tout ou partie des avantages qui seraient prévus par la Convention fiscale couverte lorsque l'objet principal ou l'un des objets principaux d'un montage ou d'une transaction, ou de toute personne concernée par un montage ou une transaction, était d'obtenir ces avantages.
3. Une Partie qui n'a pas émis la réserve prévue à l'alinéa a) du paragraphe 15 peut également choisir d'appliquer le paragraphe 4 à ses Conventions fiscales couvertes.
4. Lorsqu'une Juridiction contractante refuse à une personne l'octroi de tout ou partie des avantages prévus par une Convention fiscale couverte, en application des dispositions de cette même convention (telles que susceptibles d'être modifiées par la présente Convention), lorsque l'objet principal ou l'un des objets principaux d'un montage ou d'une transaction, ou de toute personne concernée par un montage ou une transaction, est d'obtenir ces avantages, l'autorité compétente de cette Juridiction contractante qui aurait normalement accordé cet avantage doit néanmoins considérer que cette personne peut prétendre à cet avantage ou à d'autres avantages au titre d'un élément de revenu ou de fortune spécifique si cette autorité compétente, à la demande de cette personne et après examen des faits et circonstances pertinents, conclut que ces avantages auraient été octroyés à cette personne en l'absence de la transaction ou du montage. L'autorité compétente de la Juridiction contractante à laquelle un résident de l'autre Juridiction contractante a adressé une demande, en vertu du présent paragraphe, doit consulter l'autorité compétente de cette autre Juridiction contractante avant de rejeter la demande.
5. Le paragraphe 4 s'applique aux dispositions d'une Convention fiscale couverte (telles que susceptibles d'être modifiées par la présente Convention) qui refusent d'accorder tout ou partie des avantages qui seraient prévus par cette Convention fiscale couverte lorsque l'objet principal ou l'un des objets principaux d'un montage ou d'une transaction, ou de toute personne concernée par un montage ou une transaction, était d'obtenir ces avantages.
6. Une Partie peut également choisir d'appliquer à ses Conventions fiscales couvertes les dispositions prévues aux paragraphes 8 à 13 (ci-après dénommées la « règle simplifiée de limitation des avantages ») en formulant une notification décrite à l'alinéa c) du paragraphe 17. La règle simplifiée de limitation des avantages ne s'applique à l'égard d'une Convention fiscale couverte que si toutes les Juridictions contractantes choisissent de l'appliquer.
7. Dans les cas où seulement certaines Juridictions contractantes qui ont conclu une Convention fiscale couverte choisissent d'appliquer la règle simplifiée de limitation des avantages en vertu du paragraphe 6, alors, nonobstant les dispositions de ce paragraphe, la règle simplifiée de limitation des avantages s'applique à l'octroi des avantages prévus par une Convention fiscale couverte :
  - a) par toutes les Juridictions contractantes, si toutes les Juridictions contractantes qui ne choisissent pas d'appliquer la règle simplifiée de limitation des avantages en vertu du paragraphe 6, acceptent cette application en optant pour le présent alinéa et le notifient au Dépositaire ; ou

- b) only by the Contracting Jurisdictions that choose to apply the Simplified Limitation on Benefits Provision, if all of the Contracting Jurisdictions that do not choose pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision agree to such application by choosing to apply this subparagraph and notifying the Depository accordingly.

***Simplified Limitation on Benefits Provision***

8. Except as otherwise provided in the Simplified Limitation on Benefits Provision, a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall not be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement, other than a benefit under provisions of the Covered Tax Agreement:

- a) which determine the residence of a person other than an individual which is a resident of more than one Contracting Jurisdiction by reason of provisions of the Covered Tax Agreement that define a resident of a Contracting Jurisdiction;
- b) which provide that a Contracting Jurisdiction will grant to an enterprise of that Contracting Jurisdiction a corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of an associated enterprise; or
- c) which allow residents of a Contracting Jurisdiction to request that the competent authority of that Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement,

unless such resident is a “qualified person”, as defined in paragraph 9 at the time that the benefit would be accorded.

9. A resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be a qualified person at a time when a benefit would otherwise be accorded by the Covered Tax Agreement if, at that time, the resident is:

- a) an individual;
- b) that Contracting Jurisdiction, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting Jurisdiction, political subdivision or local authority;
- c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- d) a person, other than an individual, that:
  - i) is a non-profit organisation of a type that is agreed to by the Contracting Jurisdictions through an exchange of diplomatic notes; or
  - ii) is an entity or arrangement established in that Contracting Jurisdiction that is treated as a separate person under the taxation laws of that Contracting Jurisdiction and:
    - A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting Jurisdiction or one of its political subdivisions or local authorities; or
    - B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision A);

- b) par les seules Juridictions contractantes qui choisissent d'appliquer la règle simplifiée de limitation des avantages, à condition que l'ensemble des Juridictions contractantes qui ne choisissent pas d'appliquer la règle simplifiée de limitation des avantages en vertu du paragraphe 6, acceptent cette application en optant pour le présent alinéa et le notifient au Dépositaire.

***Règle simplifiée de limitation des avantages***

8. Sauf dispositions contraires de la règle simplifiée de limitation des avantages, un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte ne peut bénéficier d'un avantage qui serait par ailleurs accordé par la Convention fiscale couverte, autre qu'un avantage prévu par les dispositions de la Convention fiscale couverte :

- a) qui déterminent la résidence d'une personne autre qu'une personne physique qui est un résident de plus d'une Juridiction contractante en vertu des dispositions de la Convention fiscale couverte qui définissent un résident d'une Juridiction contractante ;
- b) qui prévoient qu'une Juridiction contractante accorde à une entreprise de cette Juridiction contractante un ajustement corrélatif à la suite d'un ajustement initial auquel a procédé l'autre Juridiction contractante, conformément à la Convention fiscale couverte, du montant de l'impôt perçu dans la première Juridiction contractante sur les bénéfices d'une entreprise associée ; ou
- c) qui permettent aux résidents d'une Juridiction contractante de demander que l'autorité compétente de cette Juridiction contractante examine les cas d'imposition non conformes à la Convention fiscale couverte,

sauf si ce résident est une « personne admissible » telle que définie au paragraphe 9 au moment où l'avantage serait accordé.

9. Un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte est une personne admissible au moment où un bénéfice serait par ailleurs accordé par cette Convention fiscale couverte si, au moment considéré, le résident est :

- a) une personne physique ;
- b) cette Juridiction contractante, ses subdivisions politiques ou ses collectivités locales, une agence ou une personne morale de droit public de cette Juridiction contractante, de ses subdivisions politiques ou collectivités locales ;
- c) une société ou une autre entité, si la principale catégorie de ses actions fait régulièrement l'objet de transactions sur un ou plusieurs marchés boursiers reconnus ;
- d) une personne, autre qu'une personne physique, qui est :
  - i) un organisme sans but lucratif relevant d'une catégorie agréée par les Juridictions contractantes au moyen d'un échange de notes diplomatiques ; ou
  - ii) une entité ou un dispositif constitué dans cette Juridiction contractante qui est considéré comme une personne distincte au regard de la législation fiscale de cette Juridiction contractante et :
    - A) qui est constitué et géré exclusivement ou presque exclusivement dans le but d'administrer ou de verser des prestations de retraite et des prestations accessoires ou auxiliaires à des personnes physiques et qui est réglementé au sens de la législation de cette Juridiction contractante, une de ses subdivisions politiques ou une de ses collectivités locales ; ou
    - B) qui est constitué et géré exclusivement ou presque exclusivement dans le but d'investir des fonds pour le compte d'entités ou de dispositifs mentionnés au A) ;

- e) a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit would otherwise be accorded, persons who are residents of that Contracting Jurisdiction and that are entitled to benefits of the Covered Tax Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.
10. a) A resident of a Contracting Jurisdiction to a Covered Tax Agreement will be entitled to benefits of the Covered Tax Agreement with respect to an item of income derived from the other Contracting Jurisdiction, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting Jurisdiction, and the income derived from the other Contracting Jurisdiction emanates from, or is incidental to, that business. For purposes of the Simplified Limitation on Benefits Provision, the term “active conduct of a business” shall not include the following activities or any combination thereof:
- i) operating as a holding company;
  - ii) providing overall supervision or administration of a group of companies;
  - iii) providing group financing (including cash pooling); or
  - iv) making or managing investments, unless these activities are carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business as such.
- b) If a resident of a Contracting Jurisdiction to a Covered Tax Agreement derives an item of income from a business activity conducted by that resident in the other Contracting Jurisdiction, or derives an item of income arising in the other Contracting Jurisdiction from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned Contracting Jurisdiction to which the item is related is substantial in relation to the same activity or a complementary business activity carried on by the resident or such connected person in the other Contracting Jurisdiction. Whether a business activity is substantial for the purposes of this subparagraph shall be determined based on all the facts and circumstances.
- c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall be deemed to be conducted by such resident.
11. A resident of a Contracting Jurisdiction to a Covered Tax Agreement that is not a qualified person shall also be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement with respect to an item of income if, on at least half of the days of any twelve-month period that includes the time when the benefit would otherwise be accorded, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the beneficial interests of the resident.

- e) une personne, autre qu'une personne physique, si pendant au moins la moitié des jours au cours d'une période de douze mois incluant la date à laquelle l'avantage serait par ailleurs accordé, des personnes qui sont résidentes de cette Juridiction contractante et qui ont droit aux avantages de la Convention fiscale couverte en vertu des alinéas a) à d), possèdent, directement ou indirectement, au moins 50 pour cent des actions de cette personne.
10. a) Un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte aura droit aux avantages prévus par cette Convention fiscale couverte concernant un élément de revenu provenant de l'autre Juridiction contractante, que ce résident soit ou non une personne admissible, s'il est engagé dans l'exercice effectif d'une activité d'entreprise dans la première Juridiction contractante, et si ce revenu émane de cette activité ou s'il en constitue un élément accessoire. Aux fins de la présente règle simplifiée de limitation des avantages, l'expression « l'exercice effectif d'une activité d'entreprise » ne comprend pas les activités suivantes ou l'exercice combiné de telles activités :
- i) société holding ;
  - ii) supervision ou administration générale d'un groupe d'entreprises ;
  - iii) activité de financement de groupe (y compris la gestion centralisée de trésorerie) ;  
ou
  - iv) réalisation ou gestion d'investissements, sauf si ces activités sont exercées par une banque, une compagnie d'assurance ou un opérateur sur titres agréé dans le cadre ordinaire de son activité.
- b) Si un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte tire un élément de revenu d'une activité d'entreprise qu'il exerce dans l'autre Juridiction contractante, ou reçoit d'une personne liée un élément de revenu provenant de cette autre Juridiction contractante, les conditions énoncées à l'alinéa a) sont considérées comme remplies concernant ce revenu seulement si l'activité d'entreprise exercée par le résident dans la première Juridiction contractante, à laquelle le revenu se rapporte, présente un caractère substantiel par rapport aux activités d'entreprise identiques ou complémentaires exercées par le résident ou par cette personne liée dans l'autre Juridiction contractante. Aux fins de l'application du présent alinéa, le caractère substantiel de l'activité d'entreprise est déterminé en tenant compte de l'ensemble des faits et circonstances propres à chaque cas.
- c) Aux fins de l'application du présent paragraphe, les activités exercées par des personnes liées à un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte sont réputées être exercées par ce résident.
11. Un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte qui n'est pas une personne admissible peut néanmoins bénéficier d'un avantage qui serait par ailleurs accordé par cette Convention fiscale couverte au titre d'un élément de revenu si, pendant au moins la moitié des jours au cours d'une période de douze mois incluant la date à laquelle l'avantage serait par ailleurs accordé, des personnes qui sont des bénéficiaires équivalents détiennent, directement ou indirectement, au moins 75 pour cent des droits ou participations effectifs dans ce résident.

12. If a resident of a Contracting Jurisdiction to a Covered Tax Agreement is neither a qualified person pursuant to the provisions of paragraph 9, nor entitled to benefits under paragraph 10 or 11, the competent authority of the other Contracting Jurisdiction may, nevertheless, grant the benefits of the Covered Tax Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of the Covered Tax Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under the Covered Tax Agreement. Before either granting or denying a request made under this paragraph by a resident of a Contracting Jurisdiction, the competent authority of the other Contracting Jurisdiction to which the request has been made shall consult with the competent authority of the first-mentioned Contracting Jurisdiction.

13. For the purposes of the Simplified Limitation on Benefits Provision:

- a) the term “recognised stock exchange” means:
  - i) any stock exchange established and regulated as such under the laws of either Contracting Jurisdiction; and
  - ii) any other stock exchange agreed upon by the competent authorities of the Contracting Jurisdictions;
- b) the term “principal class of shares” means the class or classes of shares of a company which represents the majority of the aggregate vote and value of the company or the class or classes of beneficial interests of an entity which represents in the aggregate a majority of the aggregate vote and value of the entity;
- c) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting Jurisdiction to a Covered Tax Agreement under the domestic law of that Contracting Jurisdiction, the Covered Tax Agreement or any other international instrument which are equivalent to, or more favourable than, benefits to be accorded to that item of income under the Covered Tax Agreement; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;
- d) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;
- e) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

12. Lorsqu'un résident d'une Juridiction contractante ayant conclu une Convention fiscale couverte ne remplit pas les conditions lui permettant d'être une personne admissible en vertu du paragraphe 9, ou de bénéficier des avantages en vertu du paragraphe 10 ou 11, l'autorité compétente de l'autre Juridiction contractante peut néanmoins accorder les avantages prévus par cette Convention fiscale couverte, ou des avantages au titre d'un élément de revenu spécifique, en tenant compte de l'objet et du but de cette Convention fiscale couverte, mais uniquement si le résident démontre auprès de cette autorité compétente, que ni la création, l'acquisition ou la maintenance, ni l'exercice de ses activités n'avaient comme un de ses principaux objectifs de bénéficier des avantages de la Convention fiscale couverte. Avant d'accepter ou de rejeter une demande présentée par un résident d'une Juridiction contractante en vertu du présent paragraphe, l'autorité compétente de l'autre Juridiction contractante à laquelle la demande a été adressée consulte l'autorité compétente de la première Juridiction contractante.

13. Aux fins de l'application de la règle simplifiée de limitation des avantages :

- a) l'expression « marché boursier reconnu » désigne :
  - i) tout marché boursier établi et réglementé selon la législation de l'une des Juridictions contractantes ; et
  - ii) tout autre marché boursier que les autorités compétentes des Juridictions contractantes conviennent de reconnaître ;
- b) l'expression « principale catégorie d'actions » désigne la catégorie ou les catégories d'actions d'une société qui représentent la majorité du total des droits de vote et de la valeur de la société, ou la catégorie ou les catégories de droits ou participations effectifs dans une entité qui, conjointement, représentent la majorité du total des droits de vote et de la valeur de l'entité ;
- c) l'expression « bénéficiaire équivalent » désigne toute personne qui pourrait prétendre à des avantages équivalents ou plus favorables au titre d'un élément de revenu, octroyé par une Juridiction contractante, ayant conclu une Convention fiscale couverte, en vertu de son droit interne, de cette Convention fiscale couverte ou de tout autre accord international que les avantages accordés à cet élément de revenu par cette Convention fiscale couverte. Pour déterminer si une personne est un bénéficiaire équivalent au titre de dividendes, cette personne est réputée détenir le même capital dans la société qui paie les dividendes que celui détenu par la société qui réclame l'avantage au titre des dividendes ;
- d) s'agissant des entités qui ne sont pas des sociétés, le terme « actions » désigne des droits ou participations comparables à des actions ;
- e) deux personnes sont considérées comme des « personnes liées » si l'une d'elles possède, directement ou indirectement, au moins 50 pour cent des droits ou participations effectifs dans l'autre (ou, dans le cas d'une société, au moins 50 pour cent du total des droits de vote et de la valeur des actions de la société) ou si une autre personne possède, directement ou indirectement, au moins 50 pour cent des droits ou participations effectifs dans chacune d'elles (ou, dans le cas d'une société, au moins 50 pour cent du total des droits de vote et de la valeur des actions de la société). Dans tous les cas, une personne est considérée comme liée à une autre personne si, au vu de l'ensemble des faits et circonstances propres à chaque cas, l'une est sous le contrôle de l'autre ou elles sont toutes deux sous le contrôle d'une même personne ou de plusieurs mêmes personnes.

14. The Simplified Limitation on Benefits Provision shall apply in place of or in the absence of provisions of a Covered Tax Agreement that would limit the benefits of the Covered Tax Agreement (or that would limit benefits other than a benefit under the provisions of the Covered Tax Agreement relating to residence, associated enterprises or non-discrimination or a benefit that is not restricted solely to residents of a Contracting Jurisdiction) only to a resident that qualifies for such benefits by meeting one or more categorical tests.

15. A Party may reserve the right:

- a) for paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to adopt a combination of a detailed limitation on benefits provision and either rules to address conduit financing structures or a principal purpose test, thereby meeting the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package; in such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard;
- b) for paragraph 1 (and paragraph 4, in the case of a Party that has chosen to apply that paragraph) not to apply to its Covered Tax Agreements that already contain provisions that deny all of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits;
- c) for the Simplified Limitation on Benefits Provision not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 14.

16. Except where the Simplified Limitation on Benefits Provision applies with respect to the granting of benefits under a Covered Tax Agreement by one or more Parties pursuant to paragraph 7, a Party that chooses pursuant to paragraph 6 to apply the Simplified Limitation on Benefits Provision may reserve the right for the entirety of this Article not to apply with respect to its Covered Tax Agreements for which one or more of the other Contracting Jurisdictions has not chosen to apply the Simplified Limitation on Benefits Provision. In such cases, the Contracting Jurisdictions shall endeavour to reach a mutually satisfactory solution which meets the minimum standard for preventing treaty abuse under the OECD/G20 BEPS package.

17. a) Each Party that has not made the reservation described in subparagraph a) of paragraph 15 shall notify the Depositary of whether each of its Covered Tax Agreements that is not subject to a reservation described in subparagraph b) of paragraph 15 contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 (and where applicable, paragraph 4). In other cases, paragraph 1 (and where applicable, paragraph 4) shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1 (and where applicable, paragraph 4). A Party making a notification under this subparagraph may also include a statement that while such Party accepts the application of paragraph 1 alone as an interim measure, it intends where possible to adopt a limitation on benefits provision, in addition to or in replacement of paragraph 1, through bilateral negotiation.

14. La règle simplifiée de limitation des avantages s'applique à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui limiteraient l'octroi des avantages prévus par la Convention fiscale couverte (ou qui limiteraient l'octroi d'avantages autres qu'un avantage prévu par les dispositions d'une Convention fiscale couverte, relatives à la résidence, aux entreprises associées ou à la non-discrimination, ou d'un avantage qui n'est pas réservé qu'aux résidents d'une Juridiction contractante) uniquement à un résident qui remplit un ou plusieurs des critères donnant droit à ces avantages.

15. Une Partie peut se réserver le droit :

- a) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes si elle a l'intention d'adopter une règle détaillée de limitation des avantages complétée par des mécanismes visant les sociétés-relais ou par une règle du critère des objets principaux et de satisfaire ainsi la norme minimale visant à prévenir l'utilisation abusive des conventions fiscales définie dans le cadre du Projet BEPS de l'OCDE et du G20 ; dans ce cas, les Juridictions contractantes s'efforcent de parvenir à une solution mutuellement satisfaisante qui soit conforme à la norme minimale ;
- b) de ne pas appliquer le paragraphe 1 (et le paragraphe 4, dans le cas d'une Partie qui choisit d'appliquer ce paragraphe) à ses Conventions fiscales couvertes qui contiennent déjà des dispositions qui refusent d'accorder tous les avantages qui seraient par ailleurs accordés par cette Convention fiscale couverte si l'objet principal ou l'un des objets principaux d'un montage ou d'une transaction, ou de toute personne concernée par un montage ou une transaction, était d'obtenir ces avantages ;
- c) de ne pas appliquer la règle simplifiée de limitation des avantages à ses Conventions fiscales couvertes qui contiennent déjà les dispositions décrites au paragraphe 14.

16. Sauf dans les cas où la règle simplifiée de limitation des avantages s'applique, en vertu du paragraphe 7, pour l'octroi d'avantages prévus par une Convention fiscale couverte, par une ou plusieurs Parties, une Partie qui choisit d'appliquer la règle simplifiée de limitation des avantages en vertu du paragraphe 6 peut se réserver le droit de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes pour lesquels une ou plusieurs autres Juridictions contractantes n'ont pas choisi d'appliquer la règle simplifiée de limitation des avantages. Dans ce cas, les Juridictions contractantes s'efforcent de parvenir à une solution mutuellement satisfaisante qui soit conforme à la norme minimale visant à prévenir l'utilisation abusive des conventions définie dans le cadre du Projet BEPS de l'OCDE et du G20.

17. a) Toute Partie qui n'a pas émis la réserve prévue à l'alinéa a) du paragraphe 15 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 2 et qui ne font pas l'objet d'une réserve prévue à l'alinéa b) du paragraphe 15, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions ont formulé une telle notification à l'égard d'une disposition d'une Convention fiscale couverte, celle-ci est remplacée par les dispositions du paragraphe 1 (et lorsqu'il est applicable, le paragraphe 4). Dans les autres cas, le paragraphe 1 (et lorsqu'il est applicable, le paragraphe 4) prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1 (et lorsqu'il est applicable, le paragraphe 4). Une Partie qui formule une notification à l'égard du présent alinéa peut également inclure une déclaration précisant que, bien que cette Partie accepte l'application du seul paragraphe 1 de manière provisoire, elle a l'intention, si cela est possible, d'adopter une règle de limitation des avantages dans le cadre de négociations bilatérales, en ajout ou en remplacement de ce paragraphe 1.

- b) Each Party that chooses to apply paragraph 4 shall notify the Depositary of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification.
- c) Each Party that chooses to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6 shall notify the Depositary of its choice. Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.
- d) Each Party that does not choose to apply the Simplified Limitation on Benefits Provision pursuant to paragraph 6, but chooses to apply either subparagraph a) or b) of paragraph 7 shall notify the Depositary of its choice of subparagraph. Unless such Party has made the reservation described in subparagraph c) of paragraph 15, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 14, as well as the article and paragraph number of each such provision.
- e) Where all Contracting Jurisdictions have made a notification under subparagraph c) or d) with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the Simplified Limitation on Benefits Provision. In other cases, the Simplified Limitation on Benefits Provision shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the Simplified Limitation on Benefits Provision.

#### ***Article 8 – Dividend Transfer Transactions***

1. Provisions of a Covered Tax Agreement that exempt dividends paid by a company which is a resident of a Contracting Jurisdiction from tax or that limit the rate at which such dividends may be taxed, provided that the beneficial owner or the recipient is a company which is a resident of the other Contracting Jurisdiction and which owns, holds or controls more than a certain amount of the capital, shares, stock, voting power, voting rights or similar ownership interests of the company paying the dividends, shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).
2. The minimum holding period provided in paragraph 1 shall apply in place of or in the absence of a minimum holding period in provisions of a Covered Tax Agreement described in paragraph 1.
3. A Party may reserve the right:
  - a) for the entirety of this Article not to apply to its Covered Tax Agreements;
  - b) for the entirety of this Article not to apply to its Covered Tax Agreements to the extent that the provisions described in paragraph 1 already include:
    - i) a minimum holding period;
    - ii) a minimum holding period shorter than a 365 day period; or
    - iii) a minimum holding period longer than a 365 day period.

- b) Toute Partie qui choisit d'appliquer le paragraphe 4 notifie son choix au Dépositaire. Le paragraphe 4 s'applique à une Convention fiscale couverte seulement si toutes les Juridictions contractantes formulent une notification à cet égard.
- c) Toute Partie qui décide d'appliquer la règle simplifiée de limitation des avantages conformément au paragraphe 6 notifie son choix au Dépositaire. La notification doit inclure la liste des Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 14, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée, sauf si cette Partie a émis la réserve prévue à l'alinéa c) du paragraphe 15.
- d) Toute Partie qui n'opte pas pour l'application de la règle simplifiée de limitation des avantages conformément au paragraphe 6, mais qui choisit d'appliquer les alinéas a) ou b) du paragraphe 7, notifie au Dépositaire l'alinéa choisi. La notification doit inclure la liste des Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 14, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée, sauf si cette Partie a émis la réserve prévue à l'alinéa c) du paragraphe 15.
- e) Lorsque toutes les Juridictions contractantes ont formulé une notification prévue aux alinéas c) ou d) relative à une disposition d'une Convention fiscale couverte, cette disposition est remplacée par la règle simplifiée de limitation des avantages. Dans les autres cas, la règle simplifiée de limitation des avantages prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec la règle simplifiée de limitation des avantages.

#### ***Article 8 – Transactions relatives au transfert de dividendes***

1. Les dispositions d'une Convention fiscale couverte qui prévoient une exemption d'impôt sur les dividendes payés par une société qui est un résident d'une Juridiction contractante ou qui limitent le taux d'imposition de ces dividendes, sous réserve que le bénéficiaire effectif ou le destinataire du paiement soit une société qui est un résident de l'autre Juridiction contractante et qui possède, détient ou contrôle, dans la société qui paie les dividendes, plus d'un certain montant du capital, des actions, des titres, des droits de vote ou des droits ou participations similaires, ne s'appliquent que si les conditions de détention énoncées dans ces dispositions sont satisfaites tout au long d'une période de 365 jours incluant le jour du paiement des dividendes (il n'est pas tenu compte, aux fins du calcul de cette période, des changements de détention qui résulteraient directement d'une réorganisation, telle qu'une fusion ou une scission de la société qui détient les actions ou qui paie les dividendes).
2. La période minimale de détention prévue au paragraphe 1 s'applique à la place ou en l'absence d'une période minimale de détention dans les dispositions d'une Convention fiscale couverte décrites au paragraphe 1.
3. Une Partie peut se réserver le droit :
  - a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
  - b) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes dans la mesure où les dispositions mentionnées au paragraphe 1 prévoient déjà :
    - i) une période minimale de détention ;
    - ii) une période minimale de détention inférieure à 365 jours ; ou
    - iii) une période minimale de détention supérieure à 365 jours.

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 1 that is not subject to a reservation described in subparagraph b) of paragraph 3, and if so, the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision.

***Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property***

1. Provisions of a Covered Tax Agreement providing that gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction (or provided that more than a certain part of the property of the entity consists of such immovable property (real property)):

- a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and
- b) 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.

2. The period provided in subparagraph a) of paragraph 1 shall apply in place of or in the absence of a time period for determining whether the relevant value threshold in provisions of a Covered Tax Agreement described in paragraph 1 was met.

3. A Party may also choose to apply paragraph 4 with respect to its Covered Tax Agreements.

4. For purposes of a Covered Tax Agreement, gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting Jurisdiction if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other Contracting Jurisdiction.

5. Paragraph 4 shall apply in place of or in the absence of provisions of a Covered Tax Agreement providing that gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction, or provided that more than a certain part of the property of the entity consists of such immovable property (real property).

4. Toute Partie qui n'a pas émis de réserve prévue à l'alinéa a) du paragraphe 3 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 1 et qui ne font pas l'objet d'une réserve prévue à l'alinéa b) du paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Le paragraphe 1 s'applique à une disposition d'une Convention fiscale couverte seulement lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une telle notification relative à la disposition concernée.

***Article 9 – Gains en capital tirés de l'aliénation d'actions, de droits ou de participations dans des entités tirant leur valeur principalement de biens immobiliers***

1. Les dispositions d'une Convention fiscale couverte qui prévoient que les gains qu'un résident d'une Juridiction contractante tire de l'aliénation d'actions ou d'autres droits ou participations dans une entité sont imposables dans l'autre Juridiction contractante à condition que ces actions, droits ou participations tirent plus d'une certaine partie de leur valeur de biens immobiliers (immeubles) situés dans cette autre Juridiction (ou qui prévoient que plus d'une certaine partie des biens de l'entité soit constituée de tels biens immobiliers (immeubles)) :

- a) s'appliquent si le seuil de valeur pertinent est atteint à un moment donné au cours des 365 jours qui précèdent l'aliénation ; et
- b) s'appliquent à des actions ou à des droits ou participations similaires, tels que des droits ou participations dans une société de personnes, une fiducie (ou un trust) (dans la mesure où ces actions, droits ou participations ne sont pas déjà couverts), en plus des actions, droits ou participations déjà couverts par les dispositions.

2. La période prévue à l'alinéa a) du paragraphe 1 s'applique à la place ou en l'absence d'une période définie pour déterminer si le seuil de valeur pertinent prévu par les dispositions d'une Convention fiscale couverte mentionnées au paragraphe 1 a été atteint.

3. Une Partie peut également choisir d'appliquer le paragraphe 4 à ses Conventions fiscales couvertes.

4. Pour l'application d'une Convention fiscale couverte, les gains qu'un résident d'une Juridiction contractante tire de l'aliénation d'actions ou de droits ou participations similaires, tels que des droits ou participations dans une société de personnes, une fiducie (ou un trust), sont imposables dans l'autre Juridiction contractante si, à tout moment au cours des 365 jours qui précèdent l'aliénation, ces actions, droits ou participations similaires tirent directement ou indirectement plus de 50 pour cent de leur valeur de biens immobiliers (immeubles) situés dans cette autre Juridiction contractante.

5. Le paragraphe 4 s'applique à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui prévoient que les gains qu'un résident d'une Juridiction contractante tire de l'aliénation d'actions ou d'autres droits ou participations dans une entité sont imposables dans l'autre Juridiction contractante à condition que ces actions, droits ou participations tirent plus d'une certaine partie de leur valeur de biens immobiliers (immeubles) situés dans cette autre Juridiction Contractante, ou que plus d'une certaine partie de la propriété de l'entité soit constituée de tels biens immobiliers (immeubles).

6. A Party may reserve the right:
- a) for paragraph 1 not to apply to its Covered Tax Agreements;
  - b) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements;
  - c) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements;
  - d) for subparagraph a) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that includes a period for determining whether the relevant value threshold was met;
  - e) for subparagraph b) of paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision of the type described in paragraph 1 that applies to the alienation of interests other than shares;
  - f) for paragraph 4 not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 5.
7. Each Party that has not made the reservation described in subparagraph a) of paragraph 6 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 1, and if so, the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision.
8. Each Party that chooses to apply paragraph 4 shall notify the Depository of its choice. Paragraph 4 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification. In such case, paragraph 1 shall not apply with respect to that Covered Tax Agreement. In the case of a Party that has not made the reservation described in subparagraph f) of paragraph 6 and has made the reservation described in subparagraph a) of paragraph 6, such notification shall also include the list of its Covered Tax Agreements which contain a provision described in paragraph 5, as well as the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement under this paragraph or paragraph 7, that provision shall be replaced by the provisions of paragraph 4. In other cases, paragraph 4 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 4.

#### ***Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions***

1. Where:
- a) an enterprise of a Contracting Jurisdiction to a Covered Tax Agreement derives income from the other Contracting Jurisdiction and the first-mentioned Contracting Jurisdiction treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
  - b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting Jurisdiction,

the benefits of the Covered Tax Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting Jurisdiction on that item of income if that permanent establishment were situated in the first-mentioned Contracting Jurisdiction. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting Jurisdiction, notwithstanding any other provisions of the Covered Tax Agreement.

6. Une Partie peut se réserver le droit :
- a) de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes ;
  - b) de ne pas appliquer l'alinéa a) du paragraphe 1 à ses Conventions fiscales couvertes ;
  - c) de ne pas appliquer l'alinéa b) du paragraphe 1 à ses Conventions fiscales couvertes ;
  - d) de ne pas appliquer l'alinéa a) du paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition telle que décrite au paragraphe 1 qui prévoit une période visant à déterminer si le seuil de valeur pertinent a été atteint ;
  - e) de ne pas appliquer l'alinéa b) du paragraphe 1 à ses Conventions fiscales couvertes qui contiennent déjà une disposition telle que décrite au paragraphe 1 qui s'applique à l'aliénation de droits ou participations autres que des actions ;
  - f) de ne pas appliquer le paragraphe 4 à ses Conventions fiscales couvertes qui contiennent déjà les dispositions décrites au paragraphe 5.
7. Toute Partie qui n'a pas émis la réserve prévue à l'alinéa a) du paragraphe 6 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 1, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Le paragraphe 1 ne s'applique à l'égard d'une disposition d'une Convention fiscale couverte que lorsque toutes les Juridictions Contractantes ont formulé une notification y afférente.
8. Toute Partie qui choisit d'appliquer le paragraphe 4 du présent article notifie son choix au Dépositaire. Le paragraphe 4 ne s'applique à une Convention fiscale couverte que si l'ensemble des Juridictions contractantes le choisit. Dans ce cas, le paragraphe 1 ne s'applique pas à cette Convention fiscale couverte. Dans le cas d'une Partie qui n'a pas émis la réserve prévue à l'alinéa f) du paragraphe 6 et qui a émis la réserve prévue à l'alinéa a) du paragraphe 6, cette notification inclut également la liste des Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 5, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une notification relative à une disposition de la Convention fiscale couverte conformément au présent paragraphe ou au paragraphe 7, celle-ci est remplacée par les dispositions du paragraphe 4. Dans les autres cas, le paragraphe 4 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 4.

***Article 10 – Règle anti-abus visant les établissements stables situés dans des juridictions tierces***

1. Lorsque :
- a) une entreprise d'une Juridiction contractante ayant conclu une Convention fiscale couverte tire un revenu de l'autre Juridiction contractante et que la première Juridiction contractante considère ce revenu comme étant attribuable à un établissement stable de cette entreprise situé dans une juridiction tierce ; et que
  - b) les bénéfices attribuables à cet établissement stable sont exonérés d'impôt dans la première Juridiction contractante,

les avantages accordés par la Convention fiscale couverte ne s'appliquent pas à tout élément de revenu au titre duquel l'impôt dans la juridiction tierce est inférieur à 60 pour cent de l'impôt qui serait dû dans la première Juridiction contractante sur cet élément de revenu si cet établissement stable était situé dans la première Juridiction contractante. Dans ce cas, tout élément de revenu auquel s'appliquent les dispositions du présent paragraphe reste imposable conformément à la législation de l'autre Juridiction contractante, nonobstant toute autre disposition de la Convention fiscale couverte.

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

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

4. Paragraphs 1 through 3 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that deny or limit benefits that would otherwise be granted to an enterprise of a Contracting Jurisdiction which derives income from the other Contracting Jurisdiction that is attributable to a permanent establishment of the enterprise situated in a third jurisdiction.

5. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 4;
- c) for this Article to apply only to its Covered Tax Agreements that already contain the provisions described in paragraph 4.

6. Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 5 shall notify the Depository of whether each of its Covered Tax Agreements contains a provision described in paragraph 4, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraphs 1 through 3. In other cases, paragraphs 1 through 3 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with those paragraphs.

#### ***Article 11 – Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents***

1. A Covered Tax Agreement shall not affect the taxation by a Contracting Jurisdiction of its residents, except with respect to the benefits granted under provisions of the Covered Tax Agreement:

- a) which require that Contracting Jurisdiction to grant to an enterprise of that Contracting Jurisdiction a correlative or corresponding adjustment following an initial adjustment made by the other Contracting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of a permanent establishment of the enterprise or the profits of an associated enterprise;

2. Le paragraphe 1 ne s'applique pas si le revenu tiré de l'autre Juridiction contractante tel qu'il est décrit dans le paragraphe 1 est lié ou constitue un élément annexe ou accessoire à l'exercice effectif d'une activité d'entreprise exercée par l'intermédiaire de l'établissement stable (autre que l'activité consistant à réaliser, gérer ou simplement détenir des placements pour le compte de l'entreprise, à moins qu'il ne s'agisse d'activités bancaires, d'assurance ou d'activités portant sur des valeurs mobilières exercées respectivement par une banque, une compagnie d'assurance ou un opérateur sur titres agréé).

3. Si les avantages prévus par une Convention fiscale couverte sont refusés en vertu du paragraphe 1 pour un élément de revenu tiré par un résident d'une Juridiction contractante, l'autorité compétente de l'autre Juridiction contractante peut néanmoins accorder ces avantages pour cet élément de revenu si, en réponse à une demande de ce résident, cette autorité compétente considère que l'octroi de ces avantages est justifié au regard des motifs pour lesquels ce résident n'a pas satisfait les conditions des paragraphes 1 et 2. L'autorité compétente de la Juridiction contractante à laquelle une demande a été faite en vertu de la phrase précédente par un résident de l'autre Juridiction contractante consulte l'autorité compétente de cette autre Juridiction contractante avant d'accepter ou de rejeter la demande.

4. Les paragraphes 1 à 3 s'appliquent à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui refusent ou limitent les avantages qui seraient octroyés à une entreprise d'une Juridiction contractante qui tire un revenu de l'autre Juridiction contractante qui est attribuable à un établissement stable de cette entreprise situé dans une juridiction tierce.

5. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
- b) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui contiennent déjà les dispositions mentionnées au paragraphe 4 ;
- c) d'appliquer le présent article uniquement à ses Conventions fiscales couvertes qui contiennent déjà les dispositions mentionnées au paragraphe 4.

6. Toute Partie qui n'a pas émis de réserve prévue aux alinéas a) ou b) du paragraphe 5 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 4, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ont formulé une telle notification à l'égard d'une disposition d'une Convention fiscale couverte, cette disposition est remplacée par celles des paragraphes 1 à 3. Dans les autres cas, les paragraphes 1 à 3 prévalent sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec ces paragraphes.

#### ***Article 11 – Application des conventions fiscales pour limiter le droit d'une Partie d'imposer ses propres résidents***

1. Une Convention fiscale couverte n'affecte pas l'imposition par une Juridiction contractante de ses résidents, sauf en ce qui concerne les avantages accordés en vertu de dispositions de cette Convention fiscale couverte :

- a) qui prévoient qu'une Juridiction contractante accorde à une entreprise de cette Juridiction un ajustement corrélatif après un ajustement initial auquel a procédé l'autre Juridiction contractante, conformément à la Convention fiscale couverte, du montant de l'impôt perçu dans la première Juridiction contractante sur les bénéfices d'un établissement stable de l'entreprise ou sur les bénéfices d'une entreprise associée ;

- b) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual derives income in respect of services rendered to the other Contracting Jurisdiction or a political subdivision or local authority or other comparable body thereof;
  - c) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction if that individual is also a student, business apprentice or trainee, or a teacher, professor, lecturer, instructor, researcher or research scholar who meets the conditions of the Covered Tax Agreement;
  - d) which require that Contracting Jurisdiction to provide a tax credit or tax exemption to residents of that Contracting Jurisdiction with respect to the income that the other Contracting Jurisdiction may tax in accordance with the Covered Tax Agreement (including profits that are attributable to a permanent establishment situated in that other Contracting Jurisdiction in accordance with the Covered Tax Agreement);
  - e) which protect residents of that Contracting Jurisdiction against certain discriminatory taxation practices by that Contracting Jurisdiction;
  - f) which allow residents of that Contracting Jurisdiction to request that the competent authority of that or either Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement;
  - g) which may affect how that Contracting Jurisdiction taxes an individual who is a resident of that Contracting Jurisdiction when that individual is a member of a diplomatic mission, government mission or consular post of the other Contracting Jurisdiction;
  - h) which provide that pensions or other payments made under the social security legislation of the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction;
  - i) which provide that pensions and similar payments, annuities, alimony payments or other maintenance payments arising in the other Contracting Jurisdiction shall be taxable only in that other Contracting Jurisdiction; or
  - j) which otherwise expressly limit a Contracting Jurisdiction's right to tax its own residents or provide expressly that the Contracting Jurisdiction in which an item of income arises has the exclusive right to tax that item of income.
2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement stating that the Covered Tax Agreement would not affect the taxation by a Contracting Jurisdiction of its residents.
3. A Party may reserve the right:
- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
  - b) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain the provisions described in paragraph 2.
4. Each Party that has not made the reservation described in subparagraph a) or b) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

- b) qui peuvent affecter la manière dont cette Juridiction contractante impose une personne physique qui est un résident de cette Juridiction contractante si cette personne tire un revenu au titre de services rendus à l'autre Juridiction contractante ou à l'une de ses subdivisions politiques, collectivités locales ou autres institutions comparables ;
- c) qui peuvent affecter la manière dont cette Juridiction contractante impose une personne physique qui est un résident de cette Juridiction Contractante si cette personne est également un étudiant, apprenti ou stagiaire, ou un enseignant, professeur, conférencier, instructeur, chercheur ou maître de recherche qui remplit les conditions de la Convention fiscale couverte ;
- d) qui prévoient que cette Juridiction contractante accorde un crédit d'impôt ou une exemption d'impôt aux résidents de cette Juridiction contractante au titre de revenus que l'autre Juridiction contractante peut imposer conformément à la Convention fiscale couverte (y compris les bénéfices attribuables à un établissement stable situé dans cette autre Juridiction contractante conformément à la Convention fiscale couverte) ;
- e) qui protègent les résidents de cette Juridiction contractante contre certaines pratiques de discrimination fiscale appliquées par cette Juridiction contractante ;
- f) qui permettent aux résidents de cette Juridiction contractante de demander que l'autorité compétente de cette Juridiction contractante ou de l'une ou l'autre des Juridictions contractantes, examine les cas d'imposition non conformes à la Convention fiscale couverte ;
- g) qui peuvent affecter l'imposition par cette Juridiction contractante d'une personne physique qui est un résident de cette Juridiction contractante lorsque cette personne est un membre d'une mission diplomatique, d'une mission gouvernementale ou d'un poste consulaire de l'autre Juridiction contractante ;
- h) qui prévoient que les pensions ou autres sommes payées en application de la législation de l'autre Juridiction contractante en matière de sécurité sociale ne sont imposables que dans cette autre Juridiction contractante ;
- i) qui prévoient que les pensions et paiements similaires, rentes, pensions alimentaires ou autres allocations d'entretien provenant de l'autre Juridiction contractante ne sont imposables que dans cette autre Juridiction contractante ; ou
- j) qui limitent expressément le droit d'une Juridiction contractante d'imposer ses propres résidents ou qui prévoient expressément qu'une Juridiction contractante d'où provient un élément de revenu a le droit exclusif d'imposer cet élément de revenu.

2. Le paragraphe 1 s'applique à la place ou en l'absence de dispositions d'une Convention fiscale couverte prévoyant que la présente Convention n'affecterait pas l'imposition par une Juridiction contractante de ses résidents.

3. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
- b) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui contiennent déjà les dispositions décrites au paragraphe 2.

4. Toute Partie qui n'a pas émis de réserve prévue aux alinéas a) ou b) du paragraphe 3 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent des dispositions décrites au paragraphe 2, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes d'une Convention fiscale couverte ont formulé une telle notification à l'égard d'une disposition d'une Convention fiscale couverte, cette disposition est remplacée par le paragraphe 1. Dans les autres cas, le paragraphe 1 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1.

**PART IV.**  
**AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS**

***Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies***

1. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, but subject to paragraph 2, where a person is acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting Jurisdiction in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting Jurisdiction, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the Covered Tax Agreement (as it may be modified by this Convention).

2. Paragraph 1 shall not apply where the person acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise of the other Contracting Jurisdiction carries on business in the first-mentioned Contracting Jurisdiction as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

- 3.
  - a) Paragraph 1 shall apply in place of provisions of a Covered Tax Agreement that describe the conditions under which an enterprise shall be deemed to have a permanent establishment in a Contracting Jurisdiction (or a person shall be deemed to be a permanent establishment in a Contracting Jurisdiction) in respect of an activity which a person other than an agent of an independent status undertakes for the enterprise, but only to the extent that such provisions address the situation in which such person has, and habitually exercises, in that Contracting Jurisdiction an authority to conclude contracts in the name of the enterprise.
  - b) Paragraph 2 shall apply in place of provisions of a Covered Tax Agreement that provide that an enterprise shall not be deemed to have a permanent establishment in a Contracting Jurisdiction in respect of an activity which an agent of an independent status undertakes for the enterprise.

4. A Party may reserve the right for the entirety of this Article not to apply to its Covered Tax Agreements.

## PARTIE IV.

### MESURES VISANT À ÉVITER LE STATUT D'ÉTABLISSEMENT STABLE

#### *Article 12 – Mesures visant à éviter artificiellement le statut d'établissement stable par des accords de commissionnaire et autres stratégies similaires*

1. Nonobstant les dispositions d'une Convention fiscale couverte qui définissent l'expression « établissement stable » mais sous réserve du paragraphe 2, lorsqu'une personne agit dans une Juridiction contractante ayant conclu une Convention fiscale couverte, pour le compte d'une entreprise et, ce faisant, conclut habituellement des contrats ou joue habituellement le rôle principal menant à la conclusion de contrats qui, de façon routinière, sont conclus sans modification importante par l'entreprise, et que ces contrats sont :

- a) au nom de l'entreprise ; ou
- b) pour le transfert de la propriété de biens appartenant à cette entreprise ou pour la concession du droit d'utiliser de tels biens ou des biens que l'entreprise a le droit d'utiliser ; ou
- c) pour la prestation de services par cette entreprise,

cette entreprise est considérée comme ayant un établissement stable dans cette Juridiction contractante pour toutes les activités que cette personne exerce pour l'entreprise, à moins que ces activités, si elles étaient exercées par l'entreprise par l'intermédiaire d'une installation fixe d'affaires de cette entreprise située dans cette Juridiction contractante, ne conduiraient pas à considérer cette installation fixe d'affaires comme un établissement stable, selon la définition d'établissement stable contenue dans la Convention fiscale couverte (telle que susceptible d'être modifiée par la présente Convention).

2. Le paragraphe 1 ne s'applique pas lorsque la personne qui agit dans une Juridiction contractante ayant conclu une Convention fiscale couverte, pour le compte d'une entreprise de l'autre Juridiction contractante exerce dans la première Juridiction contractante une activité d'entreprise comme agent indépendant et agit pour l'entreprise dans le cadre ordinaire de cette activité. Toutefois, lorsqu'une personne agit exclusivement ou presque exclusivement pour le compte d'une ou de plusieurs entreprises auxquelles elle est étroitement liée, cette personne n'est pas considérée comme un agent indépendant au sens du présent paragraphe en ce qui concerne chacune de ces entreprises.

- 3.
  - a) Le paragraphe 1 s'applique à la place des dispositions d'une Convention fiscale couverte qui énoncent les conditions dans lesquelles une entreprise est considérée comme ayant un établissement stable dans une Juridiction contractante (ou qu'une personne est considérée comme étant un établissement stable dans une Juridiction contractante) pour une activité qu'une personne autre qu'un agent jouissant d'un statut indépendant exerce pour l'entreprise, mais uniquement dans la mesure où ces dispositions traitent de la situation dans laquelle cette personne dispose, dans cette Juridiction contractante, de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise.
  - b) Le paragraphe 2 s'applique à la place des dispositions d'une Convention fiscale couverte qui prévoient qu'une entreprise n'est pas considérée comme ayant un établissement stable dans une Juridiction contractante pour une activité qu'un agent jouissant d'un statut indépendant exerce pour l'entreprise.

4. Une Partie peut se réserver le droit de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes.

5. Each Party that has not made a reservation described in paragraph 4 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in subparagraph a) of paragraph 3, as well as the article and paragraph number of each such provision. Paragraph 1 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision.

6. Each Party that has not made a reservation described in paragraph 4 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in subparagraph b) of paragraph 3, as well as the article and paragraph number of each such provision. Paragraph 2 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that provision.

### ***Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions***

1. A Party may choose to apply paragraph 2 (Option A) or paragraph 3 (Option B) or to apply neither Option.

#### ***Option A***

2. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

#### ***Option B***

3. Notwithstanding the provisions of a Covered Tax Agreement that define the term “permanent establishment”, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in the Covered Tax Agreement (prior to modification by this Convention) as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character, except to the extent that the relevant provision of the Covered Tax Agreement provides explicitly that a specific activity shall be deemed not to constitute a permanent establishment provided that the activity is of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a), provided that this activity is of a preparatory or auxiliary character;

5. Toute Partie qui n'a pas émis de réserve prévue au paragraphe 4 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite à l'alinéa a) du paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Le paragraphe 1 s'applique à une disposition d'une Convention fiscale couverte lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une notification relative de cette disposition.

6. Toute Partie qui n'a pas émis de réserve prévue au paragraphe 4 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite à l'alinéa b) du paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Le paragraphe 2 s'applique à une disposition d'une Convention fiscale couverte lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une telle notification relative à cette disposition.

***Article 13 – Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques***

1. Une Partie peut choisir d'appliquer le paragraphe 2 (Option A) ou le paragraphe 3 (Option B) ou de n'appliquer aucune de ces options.

***Option A***

2. Nonobstant les dispositions d'une Convention fiscale couverte qui définissent l'expression « établissement stable », on considère qu'il n'y a pas d'« établissement stable » dans les cas suivants :

- a) les activités spécifiquement énumérées dans la Convention fiscale couverte (avant qu'elle ne soit modifiée par la présente Convention) et considérées comme ne constituant pas un établissement stable, que cette exception relative au statut d'établissement stable soit ou non subordonnée au fait que l'activité revête un caractère préparatoire ou auxiliaire ;
- b) une installation fixe d'affaires utilisée aux seules fins d'exercer, pour l'entreprise, toute activité non visée à l'alinéa a) ;
- c) une installation fixe d'affaires utilisée aux seules fins de l'exercice cumulé d'activités visées aux alinéas a) et b),

à condition que l'activité concernée ou, dans le cas de l'alinéa c), l'activité d'ensemble de l'installation fixe d'affaires, revête un caractère préparatoire ou auxiliaire.

***Option B***

3. Nonobstant les dispositions d'une Convention fiscale couverte qui définissent l'expression « établissement stable », on considère qu'il n'y a pas d'« établissement stable » dans les cas suivants :

- a) les activités spécifiquement énumérées dans la Convention fiscale couverte (avant qu'elle ne soit modifiée par la présente Convention) et considérées comme ne constituant pas un établissement stable, que cette exception relative au statut d'établissement stable soit ou non subordonnée au fait que l'activité revête un caractère préparatoire ou auxiliaire, sauf dans la mesure où la disposition de la Convention fiscale couverte prévoit expressément qu'une activité spécifique est considérée comme ne constituant pas un établissement stable si cette activité revêt un caractère préparatoire ou auxiliaire ;
- b) une installation fixe d'affaires utilisée aux seules fins d'exercer, pour l'entreprise, toute autre activité non visée à l'alinéa a), à condition qu'elle revête un caractère préparatoire ou auxiliaire ;

- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. A provision of a Covered Tax Agreement (as it may be modified by paragraph 2 or 3) that lists specific activities deemed not to constitute a permanent establishment shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting Jurisdiction and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of a Covered Tax Agreement defining a permanent establishment; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

- 5.
  - a) Paragraph 2 or 3 shall apply in place of the relevant parts of provisions of a Covered Tax Agreement that list specific activities that are deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business (or provisions of a Covered Tax Agreement that operate in a comparable manner).
  - b) Paragraph 4 shall apply to provisions of a Covered Tax Agreement (as they may be modified by paragraph 2 or 3) that list specific activities that are deemed not to constitute a permanent establishment even if the activity is carried on through a fixed place of business (or provisions of a Covered Tax Agreement that operate in a comparable manner).
- 6. A Party may reserve the right:
  - a) for the entirety of this Article not to apply to its Covered Tax Agreements;
  - b) for paragraph 2 not to apply to its Covered Tax Agreements that explicitly state that a list of specific activities shall be deemed not to constitute a permanent establishment only if each of the activities is of a preparatory or auxiliary character;
  - c) for paragraph 4 not to apply to its Covered Tax Agreements.

7. Each Party that chooses to apply an Option under paragraph 1 shall notify the Depositary of its choice of Option. Such notification shall also include the list of its Covered Tax Agreements which contain a provision described in subparagraph a) of paragraph 5, as well as the article and paragraph number of each such provision. An Option shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have chosen to apply the same Option and have made such a notification with respect to that provision.

- c) une installation fixe d'affaires utilisée aux seules fins de l'exercice cumulé d'activités visées aux alinéas a) et b) du présent paragraphe ; à condition que l'activité d'ensemble de l'installation fixe d'affaires résultant de ce cumul revête un caractère préparatoire ou auxiliaire.

4. Une disposition d'une Convention fiscale couverte (telle que susceptible d'être modifiée par le paragraphe 2 ou le paragraphe 3) qui énumère des activités spécifiques dont l'exercice est considéré comme ne constituant pas un établissement stable, ne s'applique pas à une installation fixe d'affaires utilisée ou détenue par une entreprise si la même entreprise ou une entreprise étroitement liée exerce des activités d'entreprise dans la même installation ou dans une autre installation dans la même Juridiction contractante et :

- a) lorsque l'une de ces installations constitue un établissement stable pour l'entreprise ou pour l'entreprise étroitement liée en vertu des dispositions de cette Convention fiscale couverte définissant un établissement stable ; ou
- b) lorsque l'activité d'ensemble résultant du cumul des activités exercées par les deux entreprises dans la même installation, ou par la même entreprise ou des entreprises étroitement liées dans les deux installations, ne revêt pas un caractère préparatoire ou auxiliaire,

à condition que les activités d'entreprise exercées par les deux entreprises dans la même installation, ou par la même entreprise ou des entreprises étroitement liées dans les deux installations, constituent des fonctions complémentaires qui s'inscrivent dans un ensemble cohérent d'activités d'entreprise.

- 5. a) Le paragraphe 2 ou le paragraphe 3 s'applique à la place des parties pertinentes des dispositions d'une Convention fiscale couverte qui énumèrent des activités spécifiques dont l'exercice est considéré comme ne constituant pas un établissement stable même si elles sont exercées par l'intermédiaire d'une installation fixe d'affaires (ou des dispositions d'une Convention fiscale couverte qui ont un effet comparable).
- b) Le paragraphe 4 s'applique aux dispositions d'une Convention fiscale couverte (telles que susceptibles d'être modifiées par les paragraphes 2 ou 3) qui énumèrent des activités spécifiques dont l'exercice est considéré comme ne constituant pas un établissement stable même si elles sont exercées par l'intermédiaire d'une installation fixe d'affaires (ou des dispositions d'une Convention fiscale couverte qui ont un effet comparable).

6. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
- b) de ne pas appliquer le paragraphe 2 à ses Conventions fiscales couvertes qui prévoient expressément une liste d'activités spécifiques qui doivent être considérées comme ne constituant pas un établissement stable uniquement si chacune de ces activités revêt un caractère préparatoire ou auxiliaire ;
- c) de ne pas appliquer le paragraphe 4 à ses Conventions fiscales couvertes.

7. Toute Partie qui choisit d'appliquer une option en application du paragraphe 1 notifie au Dépositaire son choix d'option. Cette notification inclut également la liste des Conventions fiscales couvertes qui contiennent une disposition décrite à l'alinéa a) du paragraphe 5, ainsi que les numéros de l'article et du paragraphe de chaque disposition concernée. Une option ne s'applique à une disposition d'une Convention fiscale couverte que si toutes les Juridictions contractantes ont choisi d'appliquer la même option et ont formulé une telle notification relative à cette disposition.

8. Each Party that has not made a reservation described in subparagraph a) or c) of paragraph 6 and does not choose to apply an Option under paragraph 1 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in subparagraph b) of paragraph 5, as well as the article and paragraph number of each such provision. Paragraph 4 shall apply with respect to a provision of a Covered Tax Agreement only where all Contracting Jurisdictions have made a notification with respect to that provision under this paragraph or paragraph 7.

#### ***Article 14 – Splitting-up of Contracts***

1. For the sole purpose of determining whether the period (or periods) referred to in a provision of a Covered Tax Agreement that stipulates a period (or periods) of time after which specific projects or activities shall constitute a permanent establishment has been exceeded:

- a) where an enterprise of a Contracting Jurisdiction carries on activities in the other Contracting Jurisdiction at a place that constitutes a building site, construction project, installation project or other specific project identified in the relevant provision of the Covered Tax Agreement, or carries on supervisory or consultancy activities in connection with such a place, in the case of a provision of a Covered Tax Agreement that refers to such activities, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period or periods referred to in the relevant provision of the Covered Tax Agreement; and
- b) where connected activities are carried on in that other Contracting Jurisdiction at (or, where the relevant provision of the Covered Tax Agreement applies to supervisory or consultancy activities, in connection with) the same building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction or installation project, or other place identified in the relevant provision of the Covered Tax Agreement.

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that such provisions address the division of contracts into multiple parts to avoid the application of a time period or periods in relation to the existence of a permanent establishment for specific projects or activities described in paragraph 1.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements;
- b) for the entirety of this Article not to apply with respect to provisions of its Covered Tax Agreements relating to the exploration for or exploitation of natural resources.

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2 that is not subject to a reservation under subparagraph b) of paragraph 3, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1 to the extent provided in paragraph 2. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

8. Toute Partie qui n'a pas émis de réserve prévue aux alinéas a) ou c) du paragraphe 6 et qui n'a pas choisi d'option en application du paragraphe 1 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite à l'alinéa b) du paragraphe 5, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Le paragraphe 4 ne s'applique à une disposition d'une Convention fiscale couverte que si toutes les Juridictions contractantes ont formulé une notification relative à cette disposition en vertu du présent paragraphe ou du paragraphe 7.

#### ***Article 14 – Fractionnement de contrats***

1. À seule fin de déterminer si la période (ou les périodes) visée(s) dans une disposition d'une Convention fiscale couverte qui prévoit une période (ou des périodes) au-delà de laquelle (ou desquelles) des projets ou des activités spécifiques constituent un établissement stable a (ont) été dépassé(es) :

- a) lorsqu'une entreprise d'une Juridiction contractante exerce des activités dans l'autre Juridiction contractante à un endroit qui constitue un chantier de construction ou de montage, ou tout autre projet spécifique mentionné dans la disposition pertinente de la Convention fiscale couverte, ou exerce des activités de surveillance ou de conseil qui sont liées à cet endroit, dans le cas d'une disposition d'une Convention fiscale couverte qui mentionne de telles activités, et que ces activités sont exercées pendant une ou des périodes qui, au total, dépassent 30 jours mais ne dépassent pas la période ou les périodes indiquées dans la disposition pertinente de la Convention fiscale couverte ; et
- b) lorsque des activités connexes sont exercées dans cette autre Juridiction contractante (ou lorsque la disposition pertinente de la Convention fiscale couverte s'applique à des activités de surveillance ou de conseil, en lien avec cet endroit) sur le même chantier de construction ou de montage ou à tout autre endroit identifié dans la disposition pertinente de la Convention fiscale couverte pendant différentes périodes de plus de 30 jours chacune, par une ou plusieurs entreprises étroitement liées à la première entreprise,

ces différentes périodes sont ajoutées à la période totale pendant laquelle la première entreprise a exercé des activités sur ce chantier de construction ou de montage ou à tout autre endroit identifié dans la disposition pertinente de la Convention fiscale couverte.

2. Le paragraphe 1 s'applique à la place ou en l'absence des dispositions d'une Convention fiscale couverte dans la mesure où ces dispositions portent sur le fractionnement de contrats en plusieurs parties pour éviter de dépasser une période ou des périodes relatives à l'existence d'un établissement stable pour des projets ou des activités spécifiques décrites au paragraphe 1.

3. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes ;
- b) de ne pas appliquer l'intégralité du présent article aux dispositions de ses Conventions fiscales couvertes relatives à l'exploration ou l'exploitation de ressources naturelles.

4. Toute Partie qui n'a pas émis de réserve prévue à l'alinéa a) du paragraphe 3 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 2 et qui ne font pas l'objet d'une réserve prévue à l'alinéa b) du paragraphe 3, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une telle notification relative à une disposition de la Convention fiscale couverte, cette disposition est remplacée par le paragraphe 1 dans les conditions prévues au paragraphe 2. Dans les autres cas, le paragraphe 1 prévaut sur les dispositions de la Convention fiscale couverte seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1.

### ***Article 15 – Definition of a Person Closely Related to an Enterprise***

1. For the purposes of the provisions of a Covered Tax Agreement that are modified by paragraph 2 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies), paragraph 4 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), or paragraph 1 of Article 14 (Splitting-up of Contracts), a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

2. A Party that has made the reservations described in paragraph 4 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies), subparagraph a) or c) of paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), and subparagraph a) of paragraph 3 of Article 14 (Splitting-up of Contracts) may reserve the right for the entirety of this Article not to apply to the Covered Tax Agreements to which those reservations apply.

### ***Article 15 – Définition d'une personne étroitement liée à une entreprise***

1. Aux fins des dispositions d'une Convention fiscale couverte modifiées par le paragraphe 2 de l'article 12 (Mesures visant à éviter artificiellement le statut d'établissement stable par des accords de commissionnaire et autres stratégies similaires), le paragraphe 4 de l'article 13 (Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques), ou le paragraphe 1 de l'article 14 (Fractionnement de contrats), une personne est étroitement liée à une entreprise si, compte tenu de l'ensemble des faits et circonstances pertinents, l'une est sous le contrôle de l'autre ou toutes deux sont sous le contrôle des mêmes personnes ou entreprises. Dans tous les cas, une personne est considérée comme étroitement liée à une entreprise si l'une détient directement ou indirectement plus de 50 pour cent des droits ou participations effectifs dans l'autre (ou, dans le cas d'une société, plus de 50 pour cent du total des droits de vote et de la valeur des actions de la société ou des droits ou participations effectifs dans les capitaux propres de la société), ou si une autre personne détient directement ou indirectement plus de 50 pour cent des droits ou participations effectifs (ou, dans le cas d'une société, plus de 50 pour cent du total des droits de vote et de la valeur des actions de la société ou des droits ou participations effectifs dans les capitaux propres de la société) dans la personne et l'entreprise.

2. Une Partie qui a émis les réserves prévues au paragraphe 4 de l'article 12 (Mesures visant à éviter artificiellement le statut d'établissement stable par des accords de commissionnaire et autres stratégies similaires), aux alinéas a) ou c) du paragraphe 6 de l'article 13 (Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques) et à l'alinéa a) du paragraphe 3 de l'article 14 (Fractionnement de contrats) peut se réserver le droit de ne pas appliquer l'intégralité du présent article aux Conventions fiscales couvertes auxquelles ces réserves s'appliquent.

**PART V.**  
**IMPROVING DISPUTE RESOLUTION**

***Article 16 – Mutual Agreement Procedure***

1. Where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of either Contracting Jurisdiction. 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 Covered Tax 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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.
3. The competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.
4.
  - a)
    - i) The first sentence of paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement (or parts thereof) that provide that where a person considers that the actions of one or both of the Contracting Jurisdiction result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, present the case to the competent authority of the Contracting Jurisdiction of which that person is a resident including provisions under which, if the case presented by that person comes under the provisions of a Covered Tax Agreement relating to non-discrimination based on nationality, the case may be presented to the competent authority of the Contracting Jurisdiction of which that person is a national.
    - ii) The second sentence of paragraph 1 shall apply in place of provisions of a Covered Tax Agreement that provide that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, or in the absence of a provision of a Covered Tax Agreement describing the time period within which such a case must be presented.
  - b)
    - i) The first sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authority that is presented with the case by the person referred to in paragraph 1 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 Jurisdiction, with a view to the avoidance of taxation which is not in accordance with the Covered Tax Agreement.
    - ii) The second sentence of paragraph 2 shall apply in the absence of provisions of a Covered Tax Agreement providing that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.

**PARTIE V.**  
**AMÉLIORER LE RÈGLEMENT DES DIFFÉRENDS**

***Article 16 – Procédure amiable***

1. Lorsqu'une personne estime que les mesures prises par une Juridiction contractante ou par les deux Juridictions contractantes entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la Convention fiscale couverte, elle peut, indépendamment des recours prévus par le droit interne de ces Juridictions contractantes, soumettre son cas à l'autorité compétente de l'une ou l'autre des Juridictions contractantes. Le cas doit être soumis dans les trois ans qui suivent la première notification de la mesure qui entraîne une imposition non conforme aux dispositions de la Convention fiscale couverte.
2. L'autorité compétente s'efforce, si cette réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'y apporter une solution satisfaisante, de résoudre le cas par voie d'accord amiable avec l'autorité compétente de l'autre Juridiction contractante, en vue d'éviter une imposition non conforme à la Convention fiscale couverte. L'accord est appliqué quels que soient les délais prévus par le droit interne des Juridictions contractantes.
3. Les autorités compétentes des Juridictions contractantes s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la Convention fiscale couverte. Elles peuvent également se concerter en vue d'éliminer la double imposition dans les cas non prévus par la Convention fiscale couverte.
4.
  - a)
    - i) La première phrase du paragraphe 1 s'applique à la place ou en l'absence des dispositions (ou parties de dispositions) d'une Convention fiscale couverte qui prévoient que, lorsqu'une personne estime que les mesures prises par l'une ou l'autre des Juridictions contractantes ou par les deux entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la Convention fiscale couverte, cette personne peut, indépendamment des recours prévus par le droit interne de ces Juridictions contractantes, soumettre son cas à l'autorité compétente de la Juridiction contractante dont elle est un résident, y compris les dispositions en vertu desquelles, si le cas qu'elle soumet relève des dispositions relatives à la non-discrimination fondée sur la nationalité d'une Convention fiscale couverte, le cas peut être soumis à l'autorité compétente de la Juridiction contractante dont elle possède la nationalité.
    - ii) La deuxième phrase du paragraphe 1 s'applique à la place des dispositions d'une Convention fiscale couverte qui prévoient qu'un cas mentionné dans la première phrase du paragraphe 1 doit être soumis dans un délai spécifique inférieur à trois ans à compter de la première notification de la mesure qui entraîne une imposition non conforme aux dispositions de la Convention fiscale couverte, ou en l'absence de disposition d'une Convention fiscale couverte établissant un délai pour la présentation d'un tel cas.
  - b)
    - i) La première phrase du paragraphe 2 s'applique en l'absence de dispositions d'une Convention fiscale couverte qui prévoient que l'autorité compétente à laquelle la personne mentionnée au paragraphe 1 soumet son cas s'efforce, si la réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'y apporter une solution satisfaisante, de résoudre le cas par voie d'accord amiable avec l'autorité compétente de l'autre Juridiction contractante, en vue d'éviter une imposition non conforme à la Convention fiscale couverte.
    - ii) La deuxième phrase du paragraphe 2 s'applique en l'absence de dispositions d'une Convention fiscale couverte qui prévoient que l'accord est appliqué quels que soient les délais prévus par le droit interne des Juridictions contractantes.

- c)
    - i) The first sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Covered Tax Agreement.
    - ii) The second sentence of paragraph 3 shall apply in the absence of provisions of a Covered Tax Agreement that provide that the competent authorities of the Contracting Jurisdictions may also consult together for the elimination of double taxation in cases not provided for in the Covered Tax Agreement.
- 5. A Party may reserve the right:
  - a) for the first sentence of paragraph 1 not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified;
  - b) for the second sentence of paragraph 1 not to apply to its Covered Tax Agreements that do not provide that the case referred to in the first sentence of paragraph 1 must be presented within a specific time period on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by ensuring that for the purposes of all such Covered Tax Agreements the taxpayer referred to in paragraph 1 is allowed to present the case within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement;
  - c) for the second sentence of paragraph 2 not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements:
    - i) any agreement reached via the mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Jurisdictions; or
    - ii) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:

- c)
    - i) La première phrase du paragraphe 3 s'applique en l'absence de dispositions d'une Convention fiscale couverte qui prévoient que les autorités compétentes des Juridictions contractantes s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la Convention fiscale couverte.
    - ii) La deuxième phrase du paragraphe 3 s'applique en l'absence de dispositions d'une Convention fiscale couverte qui prévoient que les autorités compétentes des Juridictions contractantes peuvent également se concerter en vue d'éliminer la double imposition dans les cas non prévus par la Convention fiscale couverte.
- 5. Une Partie peut se réserver le droit :
  - a) de ne pas appliquer la première phrase du paragraphe 1 à ses Conventions fiscales couvertes, au motif qu'elle a l'intention de satisfaire la norme minimale relative à l'amélioration du règlement des différends définie dans le cadre du Projet BEPS de l'OCDE et du G20 en garantissant qu'aux fins de chacune de ses Conventions fiscales couvertes (autre qu'une Convention fiscale couverte qui permet à une personne de soumettre son cas à l'autorité compétente de l'une ou l'autre des Juridictions contractantes), lorsqu'une personne estime que les mesures prises par une Juridiction contractante ou par les deux Juridictions contractantes entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la Convention fiscale couverte, cette personne peut, indépendamment des recours prévus par le droit interne de ces Juridictions contractantes, soumettre son cas à l'autorité compétente de la Juridiction contractante dont la personne est un résident ou, si le cas relève de la disposition d'une Convention fiscale couverte relative à la non-discrimination fondée sur la nationalité, à la Juridiction contractante dont elle possède la nationalité ; et l'autorité compétente de cette Juridiction contractante engage un processus bilatéral de notification ou de consultation avec l'autorité compétente de l'autre Juridiction contractante pour les cas où l'autorité compétente saisie d'un cas de procédure amiable considère que la réclamation du contribuable n'est pas fondée ;
  - b) de ne pas appliquer la deuxième phrase du paragraphe 1 à ses Conventions fiscales couvertes qui ne prévoient pas que le cas mentionné dans la première phrase du paragraphe 1 doit être soumis dans un délai spécifique, au motif qu'elle a l'intention de satisfaire la norme minimale relative à l'amélioration du règlement des différends définie dans le cadre du Projet BEPS de l'OCDE et du G20 en garantissant qu'aux fins de toutes ses Conventions fiscales couvertes, la personne mentionnée au paragraphe 1 est autorisée à soumettre son cas dans un délai d'au moins trois ans à compter de la première notification de la mesure qui entraîne une imposition non conforme aux dispositions de la Convention fiscale couverte ;
  - c) de ne pas appliquer la deuxième phrase du paragraphe 2 à ses Conventions fiscales couvertes, au motif qu'aux fins de toutes ses Conventions fiscales couvertes :
    - i) l'accord obtenu par voie d'accord amiable est appliqué quels que soient les délais prévus par le droit interne des Juridictions contractantes ; ou
    - ii) elle a l'intention de satisfaire à la norme minimale relative à l'amélioration du règlement des différends définie dans le cadre du Projet BEPS de l'OCDE et du G20 en acceptant, lors des négociations de ses conventions bilatérales, une disposition prévoyant que :

- A) the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and
  - B) the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default).
- 6.
  - a) Each Party that has not made a reservation described in subparagraph a) of paragraph 5 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in clause i) of subparagraph a) of paragraph 4, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the first sentence of paragraph 1. In other cases, the first sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with that sentence.
  - b) Each Party that has not made the reservation described in subparagraph b) of paragraph 5 shall notify the Depositary of:
    - i) the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; a provision of a Covered Tax Agreement shall be replaced by the second sentence of paragraph 1 where all Contracting Jurisdictions have made such a notification with respect to that provision; in other cases, subject to clause ii), the second sentence of paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with the second sentence of paragraph 1;
    - ii) the list of its Covered Tax Agreements which contain a provision that provides that a case referred to in the first sentence of paragraph 1 must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement, as well as the article and paragraph number of each such provision; the second sentence of paragraph 1 shall not apply to a Covered Tax Agreement where any Contracting Jurisdiction has made such a notification with respect to that Covered Tax Agreement.

- A) les Juridictions contractantes ne procèdent à aucun ajustement des bénéfices qui sont attribuables à un établissement stable d'une entreprise de l'une des Juridictions contractantes au-delà d'un délai convenu par les deux Juridictions contractantes, qui commence à compter de la fin de la période imposable au cours de laquelle les bénéfices auraient dû être attribués à l'établissement stable (la présente disposition ne s'applique pas en cas de fraude, négligence grave ou manquement délibéré) ; et
  - B) les Juridictions contractantes s'abstiennent d'inclure dans les bénéfices d'une entreprise, et d'imposer en conséquence, des bénéfices qui aurait dû être réalisés par cette entreprise, mais qui ne l'ont pas été en raison des conditions mentionnées dans une disposition de la Convention fiscale couverte relative aux entreprises associées, au-delà d'un délai convenu par les deux Juridictions contractantes, qui commence à compter de la fin de la période imposable au cours duquel ces bénéfices auraient dû être réalisés par l'entreprise (la présente disposition ne s'applique pas en cas de fraude, négligence grave ou manquement délibéré).
- 6.
  - a) Toute Partie qui n'a pas émis la réserve prévue à l'alinéa a) du paragraphe 5 notifie au Dépositaire les Conventions fiscales couvertes qui contiennent une disposition décrite au point i) de l'alinéa a) du paragraphe 4, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une notification relative à une disposition de la Convention fiscale couverte, cette disposition est remplacée par la première phrase du paragraphe 1. Dans les autres cas, la première phrase du paragraphe 1 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec cette phrase.
  - b) Toute Partie qui n'a pas émis la réserve prévue à l'alinéa b) du paragraphe 5 notifie au Dépositaire :
    - i) la liste de ses Conventions fiscales couvertes qui contiennent une disposition qui prévoit que le cas mentionné à la première phrase du paragraphe 1 doit être soumis dans un délai spécifique, inférieur à trois ans, à compter de la première notification de la mesure qui entraîne une imposition non conforme aux dispositions de la Convention fiscale couverte, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée ; lorsque toutes les Juridictions contractantes ayant conclu une Convention fiscale couverte ont formulé une telle notification relative à une disposition de la Convention fiscale couverte, cette disposition est remplacée par la deuxième phrase du paragraphe 1 ; dans les autres cas, sous réserve du point ii), la deuxième phrase du paragraphe 1 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec la deuxième phrase du paragraphe 1 ;
    - ii) la liste de ses Conventions fiscales couvertes qui contiennent une disposition qui prévoit que le cas mentionné à la première phrase du paragraphe 1 doit être soumis dans un délai spécifique, d'au moins trois ans, à compter de la première notification de la mesure qui a entraîné une imposition non conforme aux dispositions de la Convention fiscale couverte, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée ; la deuxième phrase du paragraphe 1 ne s'applique pas à une Convention fiscale couverte dès lors qu'une Juridiction contractante a formulé une telle notification relative à cette Convention fiscale couverte.

- c) Each Party shall notify the Depositary of:
  - i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph b) of paragraph 4; the first sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;
  - ii) in the case of a Party that has not made the reservation described in subparagraph c) of paragraph 5, the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph b) of paragraph 4; the second sentence of paragraph 2 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.
- d) Each Party shall notify the Depositary of:
  - i) the list of its Covered Tax Agreements which do not contain a provision described in clause i) of subparagraph c) of paragraph 4; the first sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement;
  - ii) the list of its Covered Tax Agreements which do not contain a provision described in clause ii) of subparagraph c) of paragraph 4; the second sentence of paragraph 3 shall apply to a Covered Tax Agreement only where all Contracting Jurisdictions have made such a notification with respect to that Covered Tax Agreement.

#### ***Article 17 – Corresponding Adjustments***

1. Where a Contracting Jurisdiction includes in the profits of an enterprise of that Contracting Jurisdiction — and taxes accordingly — profits on which an enterprise of the other Contracting Jurisdiction has been charged to tax in that other Contracting Jurisdiction and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting Jurisdiction 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 the Covered Tax Agreement and the competent authorities of the Contracting Jurisdictions shall if necessary consult each other.

2. Paragraph 1 shall apply in place of or in the absence of a provision that requires a Contracting Jurisdiction to make an appropriate adjustment to the amount of the tax charged therein on the profits of an enterprise of that Contracting Jurisdiction where the other Contracting Jurisdiction includes those profits in the profits of an enterprise of that other Contracting Jurisdiction and taxes those profits accordingly, and the profits so included are profits which would have accrued to the enterprise of that other Contracting Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises.

3. A Party may reserve the right:

- a) for the entirety of this Article not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 2;

- c) Toute Partie notifie au Dépositaire :
  - i) la liste de ses Conventions fiscales couvertes qui ne contiennent pas une disposition décrite au point i) de l'alinéa b) du paragraphe 4 ; la première phrase du paragraphe 2 s'applique à une Convention fiscale couverte dès lors que toutes les Juridictions contractantes ont formulé une telle notification relative à cette Convention fiscale couverte ;
  - ii) pour les cas où une Partie n'a pas émis la réserve prévue à l'alinéa c) du paragraphe 5, la liste de ses Conventions fiscales couvertes qui ne contiennent pas une disposition décrite au point ii) de l'alinéa b) du paragraphe 4 ; la deuxième phrase du paragraphe 2 s'applique à une Convention fiscale couverte dès lors que toutes les Juridictions contractantes ont formulé une telle notification relative à cette Convention fiscale couverte.
- d) Toute Partie notifie au Dépositaire :
  - i) la liste de ses Conventions fiscales couvertes qui ne contiennent pas une disposition décrite au point i) de l'alinéa c) du paragraphe 4 ; la première phrase du paragraphe 3 s'applique à une Convention fiscale couverte dès lors que toutes les Juridictions contractantes ont formulé une telle notification relative à cette Convention fiscale couverte ;
  - ii) la liste de ses Conventions fiscales couvertes qui ne contiennent pas une disposition décrite au point ii) de l'alinéa c) du paragraphe 4 ; la deuxième phrase du paragraphe 3 s'applique à une Convention fiscale couverte dès lors que toutes les Juridictions contractantes ont formulé une telle notification relative à cette Convention fiscale couverte.

#### ***Article 17 – Ajustements corrélatifs***

1. Lorsqu'une Juridiction contractante inclut dans les bénéfices d'une entreprise de cette Juridiction contractante — et impose en conséquence — des bénéfices sur lesquels une entreprise de l'autre Juridiction contractante a été imposée dans cette autre Juridiction contractante, et que les bénéfices ainsi inclus sont des bénéfices qui auraient été réalisés par l'entreprise de la première Juridiction contractante si les conditions convenues entre les deux entreprises avaient été celles qui auraient été convenues entre des entreprises indépendantes, l'autre Juridiction contractante procède à un ajustement approprié du montant de l'impôt qui y a été perçu sur ces bénéfices. Pour déterminer cet ajustement, il est tenu compte des autres dispositions de la Convention fiscale couverte et, si nécessaire, les autorités compétentes des Juridictions contractantes se consultent.

2. Le paragraphe 1 s'applique à la place ou en l'absence d'une disposition qui impose à une Juridiction contractante de procéder à un ajustement approprié du montant de l'impôt qui y a été perçu sur les bénéfices d'une entreprise de cette Juridiction contractante lorsque l'autre Juridiction contractante inclut ces bénéfices dans les bénéfices d'une entreprise de cette autre Juridiction contractante, et les impose en conséquence, et que les bénéfices ainsi inclus sont des bénéfices qui auraient été réalisés par l'entreprise de cette autre Juridiction contractante si les conditions convenues entre les deux entreprises avaient été celles qui auraient été convenues entre des entreprises indépendantes.

3. Une Partie peut se réserver le droit :

- a) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes qui contiennent déjà une disposition mentionnée au paragraphe 2 ;

- b) for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in the absence of a provision referred to in paragraph 2 in its Covered Tax Agreement:
  - i) it shall make the appropriate adjustment referred to in paragraph 1; or
  - ii) its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure;
- c) in the case of a Party that has made a reservation under clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure), for the entirety of this Article not to apply to its Covered Tax Agreements on the basis that in its bilateral treaty negotiations it shall accept a treaty provision of the type contained in paragraph 1, provided that the Contracting Jurisdictions were able to reach agreement on that provision and on the provisions described in clause ii) of subparagraph c) of paragraph 5 of Article 16 (Mutual Agreement Procedure).

4. Each Party that has not made a reservation described in paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

- b) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes au motif qu'en l'absence de dispositions décrites au paragraphe 2 à ses Conventions fiscales couvertes :
    - i) elle procède à l'ajustement corrélatif approprié tel que mentionné au paragraphe 1 ; ou
    - ii) son autorité compétente s'efforce de régler le différend conformément aux dispositions d'une Convention fiscale couverte relative à la procédure amiable ;
  - c) de ne pas appliquer l'intégralité du présent article à ses Conventions fiscales couvertes lorsqu'elle a émis la réserve prévue au point ii) de l'alinéa c) du paragraphe 5 de l'article 16 (Procédure amiable), au motif qu'elle prévoit d'adopter, par le biais de négociations bilatérales, une disposition conventionnelle s'inspirant du paragraphe 1 et que les Juridictions contractantes parviennent à un accord sur cette disposition et celle du point ii) de l'alinéa c) du paragraphe 5 de l'article 16 (Procédure amiable).
4. Toute Partie qui n'a pas émis de réserve prévue au paragraphe 3 notifie au Dépositaire chacune de ses Conventions fiscales couvertes qui contiennent une disposition décrite au paragraphe 2, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque toutes les Juridictions contractantes ont formulé une telle notification relative à une disposition d'une Convention fiscale couverte, cette disposition est remplacée par le paragraphe 1. Dans les autres cas, le paragraphe 1 prévaut sur les dispositions des Conventions fiscales couvertes seulement dans la mesure où ces dispositions sont incompatibles avec le paragraphe 1.

## **PART VI.**

### **ARBITRATION**

#### ***Article 18 – Choice to Apply Part VI***

A Party may choose to apply this Part with respect to its Covered Tax Agreements and shall notify the Depositary accordingly. This Part shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement only where both Contracting Jurisdictions have made such a notification.

#### ***Article 19 – Mandatory Binding Arbitration***

1. Where:
  - a) under a provision of a Covered Tax Agreement (as it may be modified by paragraph 1 of Article 16 (Mutual Agreement Procedure)) that provides that a person may present a case to a competent authority of a Contracting Jurisdiction where that person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement (as it may be modified by the Convention), a person has presented a case to the competent authority of a Contracting Jurisdiction on the basis that the actions of one or both of the Contracting Jurisdictions have resulted for that person in taxation not in accordance with the provisions of the Covered Tax Agreement (as it may be modified by the Convention); and
  - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to a provision of a Covered Tax Agreement (as it may be modified by paragraph 2 of Article 16 (Mutual Agreement Procedure)) that provides that the competent authority shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting Jurisdiction, within a period of two years beginning on the start date referred to in paragraph 8 or 9, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting Jurisdictions have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the Contracting Jurisdictions pursuant to the provisions of paragraph 10.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1, the period provided in subparagraph b) of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

## **PARTIE VI.**

### **ARBITRAGE**

#### ***Article 18 – Choix d'appliquer la partie VI***

Une Partie peut choisir d'appliquer la présente partie à ses Conventions fiscales couvertes et le notifie au Dépositaire. Cette partie s'applique entre deux Juridictions contractantes à l'égard d'une Convention fiscale couverte uniquement lorsque les deux Juridictions contractantes ont formulé une telle notification.

#### ***Article 19 – Arbitrage obligatoire et contraignant***

1. Lorsque :

- a) en application d'une disposition d'une Convention fiscale couverte (telle que susceptible d'être modifiée par le paragraphe 1 de l'article 16 (Procédure amiable)) qui dispose qu'une personne peut soumettre son cas à une autorité compétente d'une Juridiction contractante dès lors que cette personne estime que les mesures prises par une Juridiction contractante ou par les deux Juridictions contractantes entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la Convention fiscale couverte (telle que susceptible d'être modifiée par la présente Convention), une personne a soumis son cas à l'autorité compétente d'une Juridiction contractante au motif que les mesures prises par une Juridiction contractante ou par les deux Juridictions contractantes ont entraîné pour elle une imposition non conforme aux dispositions de la Convention fiscale couverte (telle que susceptible d'être modifiée par la présente Convention) ; et que
- b) les autorités compétentes ne parviennent pas à un accord permettant de résoudre le cas conformément à une disposition d'une Convention fiscale couverte (telle que susceptible d'être modifiée par le paragraphe 2 de l'article 16 (Procédure amiable)) qui dispose que l'autorité compétente s'efforce de résoudre le cas avec l'autorité compétente de l'autre Juridiction contractante, dans un délai de deux ans à compter de la date de début mentionnée au paragraphe 8 ou 9, selon le cas (sauf si, avant l'expiration de ce délai, les autorités compétentes des Juridictions contractantes sont convenues d'un délai différent pour ce cas et en ont informé la personne qui a soumis le cas),

les questions non résolues soulevées par ce cas doivent, si la personne en fait la demande par écrit, être soumises à l'arbitrage selon les modalités énoncées dans la présente partie, conformément aux règles ou aux procédures convenues par les autorités compétentes des Juridictions contractantes en application des dispositions du paragraphe 10.

2. Lorsqu'une autorité compétente a suspendu la procédure amiable mentionnée au paragraphe 1 parce qu'un cas portant sur une ou plusieurs questions identiques est en instance devant un tribunal judiciaire ou administratif, le délai prévu à l'alinéa b) du paragraphe 1 cesse de courir jusqu'à ce que ce tribunal judiciaire ou administratif rende une décision définitive ou que le cas soit suspendu ou retiré. De plus, lorsque la personne qui soumet le cas et une autorité compétente ont convenu de suspendre la procédure amiable, le délai prévu à l'alinéa b) du paragraphe 1 cesse de courir jusqu'à la levée de cette suspension.

3. Lorsque les deux autorités compétentes conviennent qu'une personne directement concernée par le cas n'a pas communiqué en temps opportun les informations pertinentes complémentaires requises par l'une ou l'autre des autorités compétentes après le début du délai prévu à l'alinéa b) du paragraphe 1, le délai prévu à l'alinéa b) du paragraphe 1 est prolongé d'une durée égale à celle séparant la date à laquelle ces informations ont été demandées et la date à laquelle elles ont été communiquées.

4.
  - a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.
  - b) The arbitration decision shall be binding on both Contracting Jurisdictions except in the following cases:
    - i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
    - ii) if a final decision of the courts of one of the Contracting Jurisdictions holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings)). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.
    - iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.
5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 shall, within two calendar months of receiving the request:
  - a) send a notification to the person who presented the case that it has received the request; and
  - b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting Jurisdiction.
6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting Jurisdiction) it shall either:
  - a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
  - b) request additional information from that person for that purpose.

4.
  - a) La décision de la commission d'arbitrage concernant les questions soumises à l'arbitrage est mise en œuvre par le biais de l'accord amiable concernant le cas mentionné au paragraphe 1. La décision de la commission d'arbitrage est définitive.
  - b) La décision de la commission d'arbitrage est contraignante pour les deux Juridictions contractantes sauf dans les situations suivantes :
    - i) une personne directement concernée par le cas n'accepte pas l'accord amiable qui met en œuvre la décision de la commission d'arbitrage. Dans un tel cas, le cas ne peut faire l'objet d'un examen complémentaire par les autorités compétentes. L'accord mettant en œuvre la décision de la commission d'arbitrage concernant le cas est considéré comme n'étant pas accepté par une personne directement concernée par le cas lorsque dans les 60 jours suivant la notification de l'accord amiable à la personne directement concernée par le cas, cette personne ne retire pas ou ne met pas un terme définitif à toute action devant un tribunal judiciaire ou administratif ou à toute autre procédure administrative ou juridictionnelle en cours et relative à l'une des questions soumises à l'arbitrage et résolues par l'accord amiable, d'une manière conforme à cet accord amiable.
    - ii) une décision définitive des tribunaux de l'une des Juridictions contractantes déclare que la décision de la commission d'arbitrage est invalide. En pareil cas, la demande d'arbitrage couverte au paragraphe 1 est considérée comme n'ayant pas été formulée et la procédure d'arbitrage est considérée comme n'ayant pas eu lieu (sauf aux fins de l'article 21 (Confidentialité de la procédure d'arbitrage) et de l'article 25 (Coûts de la procédure d'arbitrage)). Dans ce cas, une nouvelle demande d'arbitrage peut être soumise, à moins que les autorités compétentes conviennent que cette nouvelle demande n'est pas permise.
    - iii) une personne directement concernée par le cas intente une action contentieuse au sujet d'une des questions résolues par l'accord amiable mettant en œuvre la décision de la commission d'arbitrage.
5. L'autorité compétente qui reçoit la demande initiale de procédure amiable telle que mentionnée à l'alinéa a) du paragraphe 1 doit, dans un délai de deux mois calendaires à compter de la réception de cette demande :
  - a) envoyer une notification à la personne qui a soumis le cas confirmant la réception de la demande ; et
  - b) envoyer une notification de la demande, accompagnée d'une copie de cette demande, à l'autorité compétente de l'autre Juridiction contractante.
6. Dans un délai de trois mois calendaires suivant la réception par une autorité compétente de la demande de procédure amiable (ou de la copie de la demande de celle-ci provenant de l'autorité compétente de l'autre Juridiction contractante), cette autorité compétente :
  - a) notifie à la personne qui a soumis le cas et à l'autre autorité compétente qu'elle a reçu les informations nécessaires pour procéder à un examen approfondi du cas ; ou
  - b) demande à cette personne des informations complémentaires à cet effet.

7. Where pursuant to subparagraph b) of paragraph 6, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting Jurisdiction pursuant to subparagraph b) of paragraph 5.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6.

10. The competent authorities of the Contracting Jurisdictions shall by mutual agreement (pursuant to the article of the relevant Covered Tax Agreement regarding procedures for mutual agreement) settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

11. For purposes of applying this Article to its Covered Tax Agreements, a Party may reserve the right to replace the two-year period set forth in subparagraph b) of paragraph 1 with a three-year period.

12. A Party may reserve the right for the following rules to apply with respect to its Covered Tax Agreements notwithstanding the other provisions of this Article:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by this Convention shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting Jurisdiction;
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting Jurisdictions, the arbitration process shall terminate.

7. Lorsque, en application de l'alinéa b) du paragraphe 6, l'une des autorités compétentes, ou les deux, ont demandé à la personne qui a soumis le cas des informations complémentaires nécessaires pour procéder à un examen approfondi, l'autorité compétente qui a demandé ces informations complémentaires doit, dans un délai de trois mois calendaires suivant la réception de ces informations complémentaires de cette personne, informer cette personne et l'autre autorité compétente :

- a) qu'elle a reçu les informations demandées ; ou
- b) que certaines des informations demandées sont toujours manquantes.

8. Lorsqu'aucune des autorités compétentes n'a demandé d'information complémentaire conformément à l'alinéa b) du paragraphe 6, la date de début indiquée au paragraphe 1 est la première des deux dates suivantes :

- a) la date à laquelle les deux autorités compétentes ont informé la personne qui a soumis le cas conformément à l'alinéa a) du paragraphe 6 ; et
- b) la date qui suit de trois mois calendaires la date à laquelle la notification a été envoyée à l'autorité compétente de l'autre Juridiction contractante conformément à l'alinéa b) du paragraphe 5.

9. Lorsque des informations complémentaires ont été demandées conformément à l'alinéa b) du paragraphe 6, la date de début mentionnée au paragraphe 1 est la première des deux dates suivantes :

- a) la dernière des dates à laquelle les autorités compétentes qui ont demandé des informations complémentaires ont informé la personne qui a soumis le cas ainsi que l'autre autorité compétente conformément à l'alinéa a) du paragraphe 7 ; et
- b) la date qui suit de trois mois calendaires la date à laquelle les deux autorités compétentes ont reçu l'ensemble des informations demandées par l'une ou l'autre des autorités compétentes de la personne qui a soumis le cas.

Toutefois, si l'une des autorités compétentes, ou les deux, transmettent la notification couverte à l'alinéa b) du paragraphe 7, cette notification doit être considérée comme une demande d'informations complémentaires au sens de l'alinéa b) du paragraphe 6.

10. Les autorités compétentes des Juridictions contractantes doivent, par accord amiable (en vertu de l'article de la Convention fiscale couverte concernée relatif à la procédure amiable), s'entendre sur les modalités d'application des dispositions de la présente partie, y compris sur le minimum d'informations requis pour que chaque autorité compétente puisse procéder à un examen approfondi du cas. Cet accord doit être conclu avant la date à laquelle les questions non résolues d'un cas sont susceptibles d'être soumises à l'arbitrage et pourra être modifié par la suite.

11. Aux fins de l'application du présent article à ses Conventions fiscales couvertes, une Partie peut se réserver le droit de remplacer le délai de deux ans mentionné à l'alinéa b) du paragraphe 1 par un délai de trois ans.

12. Nonobstant les autres dispositions du présent article, une Partie peut se réserver le droit d'appliquer les règles suivantes à ses Conventions fiscales couvertes :

- a) toute question non résolue et soulevée par un cas examiné en procédure amiable qui entre dans le champ d'application de la procédure d'arbitrage prévue par la présente Convention ne doit pas être soumise à l'arbitrage si un tribunal judiciaire ou administratif de l'une ou l'autre des Juridictions contractantes a déjà rendu une décision sur cette question ;
- b) si, à tout moment après qu'une demande d'arbitrage a été formulée et avant que la commission d'arbitrage ait communiqué sa décision aux autorités compétentes des Juridictions contractantes, un tribunal judiciaire ou administratif de l'une ou l'autre des Juridictions contractantes rend une décision concernant cette question soumise à l'arbitrage, la procédure d'arbitrage prend fin.

## ***Article 20 – Appointment of Arbitrators***

1. Except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, paragraphs 2 through 4 shall apply for the purposes of this Part.
2. The following rules shall govern the appointment of the members of an arbitration panel:
  - a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
  - b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 (Mandatory Binding Arbitration). The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting Jurisdiction.
  - c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting Jurisdictions and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.
3. In the event that the competent authority of a Contracting Jurisdiction fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting Jurisdictions, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting Jurisdiction.
4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting Jurisdictions, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting Jurisdiction.

## ***Article 21 – Confidentiality of Arbitration Proceedings***

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of the relevant Covered Tax Agreement and of the domestic laws of the Contracting Jurisdictions related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of the Covered Tax Agreement related to the exchange of information and administrative assistance.

## ***Article 20 – Désignation des arbitres***

1. À moins que les autorités compétentes des Juridictions contractantes conviennent de règles différentes, les paragraphes 2 à 4 s'appliquent à la procédure d'arbitrage prévue par la présente partie.
2. Les règles ci-après régissent la désignation des membres de la commission d'arbitrage :
  - a) La commission d'arbitrage se compose de trois personnes physiques possédant une expertise ou une expérience en matière de fiscalité internationale.
  - b) Chaque autorité compétente doit désigner un membre de la commission d'arbitrage dans les 60 jours suivant la demande d'arbitrage formulée en application du paragraphe 1 de l'article 19 (Arbitrage obligatoire et contraignant). Les deux membres de la commission d'arbitrage ainsi désignés nomment, dans les 60 jours suivant la désignation du dernier d'entre eux, un troisième membre de la commission d'arbitrage qui assume la fonction de président de la commission d'arbitrage. Le président ne doit pas être un ressortissant ou un résident de l'une ou l'autre des Juridictions contractantes.
  - c) Chaque membre de la commission d'arbitrage doit être impartial et indépendant des autorités compétentes, des administrations fiscales et des ministères des Finances des Juridictions contractantes et de toutes les personnes directement concernées par la demande (ainsi que de leurs conseils) au moment où il accepte la désignation, demeurer impartial et indépendant tout au long de la procédure, et éviter ensuite, pendant une durée raisonnable, toute conduite pouvant entacher l'apparence de son impartialité et de son indépendance.
3. Si l'autorité compétente d'une Juridiction contractante omet de désigner un membre de la commission d'arbitrage selon les règles et dans les délais prévus au paragraphe 2 ou convenus par les autorités compétentes des Juridictions contractantes, ce membre est désigné pour le compte de cette autorité compétente par le responsable ayant le rang le plus élevé au sein du Centre de politique et d'administration fiscales de l'Organisation de coopération et de développement économiques et qui n'est ressortissant d'aucune des Juridictions contractantes.
4. Si les deux membres de la commission d'arbitrage initialement désignés omettent de nommer le président selon les modalités et dans les délais prévus au paragraphe 2 ou convenus par les autorités compétentes des Juridictions contractantes, le président est désigné par le responsable ayant le rang le plus élevé au sein du Centre de politique et d'administration fiscales de l'Organisation de coopération et de développement économiques qui n'est ressortissant d'aucune des Juridictions contractantes.

## ***Article 21 – Confidentialité de la procédure d'arbitrage***

1. Aux seules fins de l'application des dispositions de la présente partie et des dispositions de la Convention fiscale couverte applicables et du droit interne des Juridictions contractantes relatives à l'échange de renseignements, à la confidentialité et à l'assistance administrative, les membres de la commission d'arbitrage ainsi qu'un maximum de trois de leurs collaborateurs (et les membres pressentis de la commission d'arbitrage seulement dans la mesure où cela est nécessaire pour apprécier leur capacité à exercer la fonction d'arbitre) doivent être considérés comme des personnes ou des autorités à qui des renseignements peuvent être communiqués. Les renseignements reçus par la commission d'arbitrage et par les membres pressentis de la commission d'arbitrage, et ceux que les autorités compétentes reçoivent de la commission d'arbitrage sont considérés comme des renseignements échangés en vertu des dispositions de la Convention fiscale couverte relatives à l'échange de renseignements et à l'assistance administrative.

2. The competent authorities of the Contracting Jurisdictions shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of the Covered Tax Agreement related to exchange of information and administrative assistance and under the applicable laws of the Contracting Jurisdictions.

#### ***Article 22 – Resolution of a Case Prior to the Conclusion of the Arbitration***

For the purposes of this Part and the provisions of the relevant Covered Tax Agreement that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions:

- a) the competent authorities of the Contracting Jurisdictions reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

#### ***Article 23 – Type of Arbitration Process***

1. Except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

- a) After a case is submitted to arbitration, the competent authority of each Contracting Jurisdiction shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting Jurisdictions). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to the Covered Tax Agreement, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting Jurisdictions have been unable to reach agreement on an issue regarding the conditions for application of a provision of the relevant Covered Tax Agreement (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) The competent authority of each Contracting Jurisdiction may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.

2. Les autorités compétentes des Juridictions contractantes veillent à ce que les membres de la commission d'arbitrage et leurs collaborateurs s'engagent par écrit, avant de participer à la procédure d'arbitrage, à traiter tout renseignement en lien avec la procédure d'arbitrage conformément aux obligations de confidentialité et de non-divulgaration prévues dans les dispositions de la Convention fiscale couverte relatives à l'échange de renseignements et à l'assistance administrative et à celles résultant du droit applicable des Juridictions contractantes.

#### ***Article 22 – Règlement d'un cas avant la conclusion de l'arbitrage***

Au sens de la présente partie et des dispositions de la Convention fiscale couverte qui régissent la résolution des cas dans le cadre de la procédure amiable, la procédure amiable ainsi que la procédure d'arbitrage portant sur le cas prennent fin si, à tout moment après qu'une demande d'arbitrage a été formulée et avant que la commission d'arbitrage ait communiqué sa décision aux autorités compétentes des Juridictions contractantes :

- a) les autorités compétentes des Juridictions contractantes parviennent à un accord amiable permettant de résoudre le cas ; ou
- b) la personne qui a soumis le cas retire sa demande d'arbitrage ou de procédure amiable.

#### ***Article 23 – Méthode d'arbitrage***

1. À moins que les autorités compétentes des Juridictions contractantes conviennent de règles différentes, les règles ci-après s'appliquent à une procédure d'arbitrage engagée conformément à la présente partie :

- a) lorsqu'un cas est soumis à l'arbitrage, l'autorité compétente de chaque Juridiction contractante doit soumettre à la commission d'arbitrage, au plus tard à la date fixée d'un commun accord, une proposition de résolution qui porte sur toutes les questions non résolues de ce cas (en tenant compte de tous les accords précédemment conclus entre les autorités compétentes des Juridictions contractantes concernant ce cas). La proposition de résolution doit se limiter à la mention de montants spécifiques exprimés en unités monétaires (de revenu ou de charges, par exemple) ou, le cas échéant, à la mention d'un taux d'imposition maximal applicable conformément à la Convention fiscale couverte, et ce, pour chaque ajustement ou chaque question similaire soulevée par le cas. Dans les cas où les autorités compétentes des Juridictions contractantes n'ont pas pu se mettre d'accord sur une question relative aux conditions d'application d'une disposition d'une Convention fiscale couverte (ci-après dénommée une « question de seuil »), par exemple, la question de savoir si une personne physique est un résident ou s'il existe un établissement stable, les autorités compétentes peuvent soumettre des propositions de résolution alternatives portant sur toute question dont la résolution dépend du règlement de cette question de seuil.
- b) l'autorité compétente de chacune des Juridictions contractantes peut également soumettre à la commission d'arbitrage un exposé de position à l'appui de sa proposition de résolution. Chaque autorité compétente qui soumet une proposition de résolution ou un exposé de position doit en présenter une copie à l'autre autorité compétente au plus tard à la date à laquelle la proposition de résolution ou l'exposé de position doit être soumis. Chaque autorité compétente peut également, au plus tard à la date fixée d'un commun accord, soumettre à la commission d'arbitrage un mémoire en réponse à la proposition de résolution et à l'exposé de position soumis par l'autre autorité compétente. Une copie de tout mémoire en réponse à la proposition de résolution doit être présentée à l'autre autorité compétente au plus tard à la date à laquelle cette réponse doit être soumise à la commission d'arbitrage.

- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting Jurisdictions. The arbitration decision shall have no precedential value.
2. For the purpose of applying this Article with respect to its Covered Tax Agreements, a Party may reserve the right for paragraph 1 not to apply to its Covered Tax Agreements. In such a case, except to the extent that the competent authorities of the Contracting Jurisdictions mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding:
- a) After a case is submitted to arbitration, the competent authority of each Contracting Jurisdiction shall provide any information that may be necessary for the arbitration decision to all panel members without undue delay. Unless the competent authorities of the Contracting Jurisdictions agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.
  - b) The arbitration panel shall decide the issues submitted to arbitration in accordance with the applicable provisions of the Covered Tax Agreement and, subject to these provisions, of those of the domestic laws of the Contracting Jurisdictions. The panel members shall also consider any other sources which the competent authorities of the Contracting Jurisdictions may by mutual agreement expressly identify.
  - c) The arbitration decision shall be delivered to the competent authorities of the Contracting Jurisdictions in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision shall be adopted by a simple majority of the panel members. The arbitration decision shall have no precedential value.
3. A Party that has not made the reservation described in paragraph 2 may reserve the right for the preceding paragraphs of this Article not to apply with respect to its Covered Tax Agreements with Parties that have made such a reservation. In such a case, the competent authorities of the Contracting Jurisdictions of each such Covered Tax Agreement shall endeavour to reach agreement on the type of arbitration process that shall apply with respect to that Covered Tax Agreement. Until such an agreement is reached, Article 19 (Mandatory Binding Arbitration) shall not apply with respect to such a Covered Tax Agreement.
4. A Party may also choose to apply paragraph 5 with respect to its Covered Tax Agreements and shall notify the Depositary accordingly. Paragraph 5 shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement where either of the Contracting Jurisdictions has made such a notification.
5. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting Jurisdictions to a Covered Tax Agreement shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under the Covered Tax Agreement, as well as the arbitration proceeding under this Part, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting Jurisdictions, a person that presented the case or one of that person's advisors materially breaches that agreement.

- c) la commission d'arbitrage choisit l'une des propositions de résolution du cas soumis par les autorités compétentes pour chacun des points et questions soulevés, et n'est pas tenue de motiver ou d'expliquer sa décision. La décision d'arbitrage est adoptée à la majorité simple des membres de la commission d'arbitrage. La commission d'arbitrage remet sa décision par écrit aux autorités compétentes des Juridictions contractantes. La décision de la commission d'arbitrage n'a aucune valeur de précédent.

2. Pour l'application du présent article à ses Conventions fiscales couvertes, une Partie peut se réserver le droit de ne pas appliquer le paragraphe 1 à ses Conventions fiscales couvertes. Dans ce cas, sauf dans la mesure où les autorités compétentes des Juridictions contractantes ayant conclu une Convention fiscale couverte conviennent de règles différentes, les règles ci-après s'appliquent à la procédure d'arbitrage :

- a) lorsqu'un cas est soumis à l'arbitrage, l'autorité compétente de chacune des Juridictions contractantes doit communiquer sans délai aux membres de la commission d'arbitrage les informations qui peuvent être nécessaires pour rendre la décision d'arbitrage. À moins que les autorités compétentes des Juridictions contractantes conviennent de règles différentes, toute information qui n'a pas été portée à la connaissance des deux autorités compétentes avant la réception de la demande d'arbitrage par les deux autorités compétentes n'est pas prise en compte par la commission d'arbitrage pour rendre sa décision.
- b) la commission d'arbitrage se prononce sur les questions soumises à l'arbitrage conformément aux dispositions applicables de la Convention fiscale couverte et, sous réserve de ces dispositions, à celles du droit interne des Juridictions contractantes. Les membres de la commission d'arbitrage doivent également prendre en considération toutes autres sources de droit que les autorités compétentes des Juridictions contractantes peuvent avoir expressément identifiées d'un commun accord.
- c) La décision de la commission d'arbitrage est communiquée par écrit aux autorités compétentes des Juridictions contractantes et indique les sources de droit sur lesquelles elle se fonde ainsi que le raisonnement qui la sous-tend. La décision d'arbitrage doit être prise à la majorité simple des membres de la commission d'arbitrage. La décision de la commission d'arbitrage n'a aucune valeur de précédent.

3. Une Partie qui n'a pas émis la réserve prévue au paragraphe 2 peut se réserver le droit de ne pas appliquer les paragraphes précédents du présent article à ses Conventions fiscales couvertes conclues avec des Parties qui ont émis la réserve du paragraphe 2. Dans ce cas, les autorités compétentes des Juridictions contractantes à une telle Convention fiscale couverte s'efforcent de parvenir à un accord relatif à la méthode d'arbitrage applicable à cette Convention fiscale couverte. L'article 19 (Arbitrage obligatoire et contraignant) ne s'applique pas au titre d'une Convention fiscale couverte tant qu'un tel accord n'est pas conclu.

4. Une Partie peut choisir d'appliquer le paragraphe 5 à ses Conventions fiscales couvertes et le notifie au Dépositaire. Le paragraphe 5 s'applique entre deux Juridictions contractantes au titre d'une Convention fiscale couverte si l'une des Juridictions contractantes choisit de l'appliquer et le notifie au Dépositaire.

5. Avant le début de la procédure d'arbitrage, les autorités compétentes des Juridictions contractantes ayant conclu une Convention fiscale couverte veillent à ce que chacune des personnes qui a soumis le cas, ainsi que leurs conseils, s'engagent, par écrit, de ne pas divulguer, à toute autre personne, toute information reçue dans le cadre de la procédure d'arbitrage, des autorités compétentes et de la commission d'arbitrage. La procédure amiable ouverte en application de la Convention fiscale couverte, ainsi que la procédure d'arbitrage ouverte en application de la présente partie de la Convention, prennent fin dès lors que, à tout moment entre le moment où la demande d'arbitrage est formulée et le moment où la commission d'arbitrage communique sa décision aux autorités compétentes des Juridictions contractantes, la personne qui a soumis le cas, ou un conseil de la personne qui a soumis la demande, a enfreint cet engagement de manière importante.

6. Notwithstanding paragraph 4, a Party that does not choose to apply paragraph 5 may reserve the right for paragraph 5 not to apply with respect to one or more identified Covered Tax Agreements or with respect to all of its Covered Tax Agreements.

7. A Party that chooses to apply paragraph 5 may reserve the right for this Part not to apply with respect to all Covered Tax Agreements for which the other Contracting Jurisdiction makes a reservation pursuant to paragraph 6.

#### ***Article 24 – Agreement on a Different Resolution***

1. For purposes of applying this Part with respect to its Covered Tax Agreements, a Party may choose to apply paragraph 2 and shall notify the Depositary accordingly. Paragraph 2 shall apply in relation to two Contracting Jurisdictions with respect to a Covered Tax Agreement only where both Contracting Jurisdictions have made such a notification.

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

3. A Party that chooses to apply paragraph 2 may reserve the right for paragraph 2 to apply only with respect to its Covered Tax Agreements for which paragraph 2 of Article 23 (Type of Arbitration Process) applies.

#### ***Article 25 – Costs of Arbitration Proceedings***

In an arbitration proceeding under this Part, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the Contracting Jurisdictions, shall be borne by the Contracting Jurisdictions in a manner to be settled by mutual agreement between the competent authorities of the Contracting Jurisdictions. In the absence of such agreement, each Contracting Jurisdiction shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the Contracting Jurisdictions in equal shares.

#### ***Article 26 – Compatibility***

1. Subject to Article 18 (Choice to Apply Part VI), the provisions of this Part shall apply in place of or in the absence of provisions of a Covered Tax Agreement that provide for arbitration of unresolved issues arising from a mutual agreement procedure case. Each Party that chooses to apply this Part shall notify the Depositary of whether each of its Covered Tax Agreements, other than those that are within the scope of a reservation under paragraph 4, contains such a provision, and if so, the article and paragraph number of each such provision. Where two Contracting Jurisdictions have made a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of this Part as between those Contracting Jurisdictions.

6. Nonobstant le paragraphe 4, une Partie qui ne choisit pas d'appliquer le paragraphe 5 peut se réserver le droit de ne pas appliquer le paragraphe 5 à l'une ou plusieurs de ses Conventions fiscales couvertes identifiées ou à toutes ses Conventions fiscales couvertes.

7. Une Partie qui choisit d'appliquer le paragraphe 5 peut se réserver le droit de ne pas appliquer la présente partie au titre des Conventions fiscales couvertes pour lesquelles l'autre Juridiction contractante émet une réserve prévue au paragraphe 6.

#### ***Article 24 – Accord sur une solution différente***

1. Pour l'application des dispositions de la présente partie à ses Conventions fiscales couvertes, une Partie peut choisir d'appliquer le paragraphe 2 et le notifie au Dépositaire. Le paragraphe 2 s'applique entre deux Juridictions contractantes à l'égard d'une Convention fiscale couverte seulement si les deux Juridictions contractantes ont fait une telle notification.

2. Nonobstant le paragraphe 4 de l'article 19 (Arbitrage obligatoire et contraignant), une décision d'arbitrage rendue en vertu de la présente partie n'est pas contraignante à l'égard des Juridictions contractantes ayant conclu une Convention fiscale couverte et ne doit pas être appliquée si les autorités compétentes des Juridictions contractantes conviennent d'une autre solution portant sur l'ensemble des questions non résolues dans un délai de trois mois calendaires suivant la date à laquelle la décision leur a été communiquée.

3. Une Partie qui choisit d'appliquer le paragraphe 2 peut se réserver le droit de n'appliquer le paragraphe 2 qu'à l'égard de ses Conventions fiscales couvertes pour lesquelles le paragraphe 2 de l'article 23 (Méthode d'arbitrage) s'applique.

#### ***Article 25 – Coûts de la procédure d'arbitrage***

Dans une procédure d'arbitrage ouverte en application de la présente partie, les rémunérations et les dépenses des membres de la commission d'arbitrage, ainsi que les coûts liés à la procédure d'arbitrage supportés par les Juridictions contractantes, sont pris en charge par les Juridictions contractantes selon des modalités déterminées d'un commun accord par les autorités compétentes. En l'absence d'un tel accord, chaque Juridiction contractante supporte ses propres dépenses et celles du membre de la commission d'arbitrage qu'elle a désigné. Les coûts afférents au président de la commission d'arbitrage et les autres dépenses liées à la conduite de la procédure d'arbitrage sont supportés par les Juridictions contractantes à parts égales.

#### ***Article 26 – Compatibilité***

1. Sous réserve de l'article 18 (Choix d'appliquer la partie VI), les dispositions de la présente partie s'appliquent à la place ou en l'absence de dispositions d'une Convention fiscale couverte qui prévoient le règlement par voie d'arbitrage des questions non résolues soulevées par un cas examiné en procédure amiable. Chaque Partie qui choisit d'appliquer la présente partie notifie au Dépositaire chacune de ses Conventions fiscales couvertes qui contiennent une telle disposition autres que celles qui font l'objet d'une réserve prévue au paragraphe 4, en indiquant les numéros de l'article et du paragraphe de chaque disposition concernée. Lorsque deux Juridictions contractantes ont formulé une notification à l'égard d'une disposition d'une Convention fiscale couverte, cette disposition est remplacée par les dispositions de la présente partie aux fins de la relation de ces deux Juridictions contractantes.

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.
3. Subject to paragraph 1, nothing in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting Jurisdictions are or will become parties.
4. A Party may reserve the right for this Part not to apply with respect to one or more identified Covered Tax Agreements (or to all of its Covered Tax Agreements) that already provide for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

2. Toute question non résolue soulevée par un cas examiné en procédure amiable qui entre dans le champ de la procédure d'arbitrage prévue par la présente partie ne doit pas être soumise à l'arbitrage si une commission d'arbitrage ou un organe similaire a déjà été constitué pour ce cas en application d'une convention bilatérale ou multilatérale qui prévoit un mécanisme d'arbitrage obligatoire et contraignant pour le règlement des questions non résolues soulevées en procédure amiable.
3. Sous réserve du paragraphe 1, aucune disposition de la présente partie ne porte atteinte au respect d'obligations plus larges afférentes au règlement par voie d'arbitrage de questions non résolues en procédure amiable qui peuvent résulter d'autres conventions auxquelles les Juridictions contractantes sont ou seront parties.
4. Une Partie peut se réserver le droit de ne pas appliquer la présente partie à l'une ou plusieurs de ses Conventions fiscales couvertes identifiées (ou à toutes ses Conventions fiscales couvertes) qui prévoient déjà une procédure d'arbitrage obligatoire et contraignant pour le règlement de questions non résolues soulevées par un cas examiné en procédure amiable.

**PART VII.**  
**FINAL PROVISIONS**

***Article 27 – Signature and Ratification, Acceptance or Approval***

1. As of 31 December 2016, this Convention shall be open for signature by:
  - a) all States;
  - b) Guernsey (the United Kingdom of Great Britain and Northern Ireland); Isle of Man (the United Kingdom of Great Britain and Northern Ireland); Jersey (the United Kingdom of Great Britain and Northern Ireland); and
  - c) any other jurisdiction authorised to become a Party by means of a decision by consensus of the Parties and Signatories.
2. This Convention is subject to ratification, acceptance or approval.

***Article 28 – Reservations***

1. Subject to paragraph 2, no reservations may be made to this Convention except those expressly permitted by:
  - a) Paragraph 5 of Article 3 (Transparent Entities);
  - b) Paragraph 3 of Article 4 (Dual Resident Entities);
  - c) Paragraphs 8 and 9 of Article 5 (Application of Methods for Elimination of Double Taxation);
  - d) Paragraph 4 of Article 6 (Purpose of a Covered Tax Agreement);
  - e) Paragraphs 15 and 16 of Article 7 (Prevention of Treaty Abuse);
  - f) Paragraph 3 of Article 8 (Dividend Transfer Transactions);
  - g) Paragraph 6 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
  - h) Paragraph 5 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
  - i) Paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
  - j) Paragraph 4 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies);
  - k) Paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);

**PARTIE VII.**  
**DISPOSITIONS FINALES**

***Article 27 – Signature et ratification, acceptation ou approbation***

1. Au 31 décembre 2016, la présente Convention est ouverte à la signature de :
  - a) tous les États ;
  - b) Guernesey (le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) ; l'Île de Man (le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) ; Jersey (le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) ; et
  - c) toute autre juridiction autorisée à devenir une Partie au moyen d'une décision prise par consensus des Parties et des Signataires.
2. La présente Convention est soumise à ratification, acceptation ou approbation.

***Article 28 – Réserves***

1. Sous réserve du paragraphe 2, aucune réserve n'est admise à l'égard de la présente Convention, hormis celles qui sont expressément autorisées par :
  - a) le paragraphe 5 de l'article 3 (Entités transparentes) ;
  - b) le paragraphe 3 de l'article 4 (Entités ayant une double résidence) ;
  - c) les paragraphes 8 et 9 de l'article 5 (Application des méthodes d'élimination de la double imposition) ;
  - d) le paragraphe 4 de l'article 6 (Objet d'une Convention fiscale couverte) ;
  - e) les paragraphes 15 et 16 de l'article 7 (Prévenir l'utilisation abusive des conventions) ;
  - f) le paragraphe 3 de l'article 8 (Transactions relatives au transfert de dividendes) ;
  - g) le paragraphe 6 de l'article 9 (Gains en capital tirés de l'aliénation d'actions, de droits ou de participations dans des entités tirant leur valeur principalement de biens immobiliers) ;
  - h) le paragraphe 5 de l'article 10 (Règle anti-abus visant les établissements stables situés dans des juridictions tierces) ;
  - i) le paragraphe 3 de l'article 11 (Application des conventions fiscales pour limiter le droit d'une Partie d'imposer ses propres résidents) ;
  - j) le paragraphe 4 de l'article 12 (Mesures visant à éviter artificiellement le statut d'établissement stable par des accords de commissionnaire et autres stratégies similaires) ;
  - k) le paragraphe 6 de l'article 13 (Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques) ;

- l) Paragraph 3 of Article 14 (Splitting-up of Contracts);
  - m) Paragraph 2 of Article 15 (Definition of a Person Closely Related to an Enterprise);
  - n) Paragraph 5 of Article 16 (Mutual Agreement Procedure);
  - o) Paragraph 3 of Article 17 (Corresponding Adjustments);
  - p) Paragraphs 11 and 12 of Article 19 (Mandatory Binding Arbitration);
  - q) Paragraphs 2, 3, 6, and 7 of Article 23 (Type of Arbitration Process);
  - r) Paragraph 3 of Article 24 (Agreement on a Different Resolution);
  - s) Paragraph 4 of Article 26 (Compatibility);
  - t) Paragraphs 6 and 7 of Article 35 (Entry into Effect); and
  - u) Paragraph 2 of Article 36 (Entry into Effect of Part VI).
2. a) Notwithstanding paragraph 1, a Party that chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) may formulate one or more reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI (Arbitration). For a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, reservations pursuant to this subparagraph shall be made at the same time as that Party's notification to the Depositary pursuant to Article 18 (Choice to Apply Part VI).
- b) Reservations made under subparagraph a) are subject to acceptance. A reservation made under subparagraph a) shall be considered to have been accepted by a Party if it has not notified the Depositary that it objects to the reservation by the end of a period of twelve calendar months beginning on the date of notification of the reservation by the Depositary or by the date on which it deposits its instrument of ratification, acceptance, or approval, whichever is later. For a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, objections to prior reservations made by other Parties pursuant to subparagraph a) can be made at the time of the first-mentioned Party's notification to the Depositary pursuant to Article 18 (Choice to Apply Part VI). Where a Party raises an objection to a reservation made under subparagraph a), the entirety of Part VI (Arbitration) shall not apply as between the objecting Party and the reserving Party.
3. Unless explicitly provided otherwise in the relevant provisions of this Convention, a reservation made in accordance with paragraph 1 or 2 shall:
- a) modify for the reserving Party in its relations with another Party the provisions of this Convention to which the reservation relates to the extent of the reservation; and
  - b) modify those provisions to the same extent for the other Party in its relations with the reserving Party.
4. Reservations applicable to Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, where that jurisdiction or territory is not a Party to the Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval), shall be made by the responsible Party and can be different from the reservations made by that Party for its own Covered Tax Agreements.

- l) le paragraphe 3 de l'article 14 (Fractionnement de contrats) ;
  - m) le paragraphe 2 de l'article 15 (Définition d'une personne étroitement liée à une entreprise) ;
  - n) le paragraphe 5 de l'article 16 (Procédure amiable) ;
  - o) le paragraphe 3 de l'article 17 (Ajustements corrélatifs) ;
  - p) les paragraphes 11 et 12 de l'article 19 (Arbitrage obligatoire et contraignant) ;
  - q) les paragraphes 2, 3, 6 et 7 de l'article 23 (Méthode d'arbitrage) ;
  - r) le paragraphe 3 de l'article 24 (Accord sur une solution différente) ;
  - s) le paragraphe 4 de l'article 26 (Compatibilité) ;
  - t) les paragraphes 6 et 7 de l'article 35 (Prise d'effet) ; et
  - u) le paragraphe 2 de l'article 36 (Prise d'effet de la partie VI).
2. a) Nonobstant les dispositions du paragraphe 1, une Partie qui choisit d'appliquer la partie VI (Arbitrage) en vertu de l'article 18 (Choix d'appliquer la partie VI) peut émettre une ou plusieurs réserves concernant le type de cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI (Arbitrage). La Partie qui choisit d'appliquer la partie VI (Arbitrage) en vertu de l'article 18 (Choix d'appliquer la partie VI) après qu'elle est devenue une Partie à la présente Convention doit émettre les réserves prévues au présent alinéa au moment où elle formule la notification prévue à l'article 18 (Choix d'appliquer la partie VI) au Dépositaire.
- b) Les réserves prévues à l'alinéa a) sont soumises à acceptation. Une réserve prévue à l'alinéa a) considérée comme acceptée par une Partie si cette dernière n'a pas notifié au Dépositaire une objection à cette réserve au plus tard dans les douze mois calendaires à compter de la date de notification de la réserve par le Dépositaire ou à la date du dépôt de son instrument de ratification, d'acceptation ou d'approbation, selon la dernière de ces dates. Une Partie qui choisit d'appliquer la partie VI (Arbitrage) en vertu de l'article 18 (Choix d'appliquer la partie VI) après être devenue une Partie à la présente Convention peut faire une objection à toute réserve précédemment émise par les autres Parties et prévue à l'alinéa a) en la notifiant au moment où elle formule la notification prévue à l'article 18 (Choix d'appliquer la partie VI) au Dépositaire. Lorsqu'une Partie formule une objection à une réserve prévue à l'alinéa a), l'intégralité de la partie VI (Arbitrage) ne s'applique pas entre la Partie qui a formulé l'objection et la Partie auteur de la réserve.
3. Sauf mention contraire expresse dans les dispositions pertinentes de la présente Convention, une réserve émise conformément aux paragraphes 1 ou 2 :
- a) modifie pour la Partie auteure de la réserve dans ses relations avec une autre Partie, les dispositions de la présente Convention sur lesquelles porte la réserve, dans la mesure prévue par cette réserve ; et
  - b) modifie ces dispositions dans la même mesure pour l'autre Partie dans ses relations avec la Partie auteure de la réserve.
4. Les réserves applicables aux Conventions fiscales couvertes conclues par ou pour le compte d'une juridiction ou d'un territoire dont les relations internationales relèvent de la responsabilité d'une Partie, lorsque cette juridiction ou ce territoire n'est pas une Partie à la présente Convention en vertu des alinéas b) ou c) du paragraphe 1 de l'article 27 (Signature et ratification, acceptation ou approbation) sont émises par ladite Partie et peuvent différer des réserves émises par cette Partie aux fins de ses propres Conventions fiscales couvertes.

5. Reservations shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval, subject to the provisions of paragraphs 2, 6 and 9 of this Article, and paragraph 5 of Article 29 (Notifications). However, for a Party which chooses under Article 18 (Choice to Apply Part VI) to apply Part VI (Arbitration) after it has become a Party to this Convention, reservations described in subparagraphs p), q), r) and s) of paragraph 1 of this Article shall be made at the same time as that Party's notification to the Depositary pursuant to Article 18 (Choice to Apply Part VI).

6. If reservations are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless the document containing the reservations explicitly specifies that it is to be considered definitive, subject to the provisions of paragraphs 2, 5 and 9 of this Article, and paragraph 5 of Article 29 (Notifications).

7. If reservations are not made at the time of signature, a provisional list of expected reservations shall be provided to the Depositary at that time.

8. For reservations made pursuant to each of the following provisions, a list of agreements notified pursuant to clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) that are within the scope of the reservation as defined in the relevant provision (and, in the case of a reservation under any of the following provisions other than those listed in subparagraphs c), d) and n), the article and paragraph number of each relevant provision) must be provided when such reservations are made:

- a) Subparagraphs b), c), d), e) and g) of paragraph 5 of Article 3 (Transparent Entities);
- b) Subparagraphs b), c) and d) of paragraph 3 of Article 4 (Dual Resident Entities);
- c) Paragraphs 8 and 9 of Article 5 (Application of Methods for Elimination of Double Taxation);
- d) Paragraph 4 of Article 6 (Purpose of a Covered Tax Agreement);
- e) Subparagraphs b) and c) of paragraph 15 of Article 7 (Prevention of Treaty Abuse);
- f) Clauses i), ii), and iii) of subparagraph b) of paragraph 3 of Article 8 (Dividend Transfer Transactions);
- g) Subparagraphs d), e) and f) of paragraph 6 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);
- h) Subparagraphs b) and c) of paragraph 5 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
- i) Subparagraph b) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
- j) Subparagraph b) of paragraph 6 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);
- k) Subparagraph b) of paragraph 3 of Article 14 (Splitting-up of Contracts);
- l) Subparagraph b) of paragraph 5 of Article 16 (Mutual Agreement Procedure);
- m) Subparagraph a) of paragraph 3 of Article 17 (Corresponding Adjustments);

5. Les réserves sont émises au moment de la signature ou du dépôt de l'instrument de ratification, d'acceptation ou d'approbation, sous réserve des dispositions des paragraphes 2, 6 et 9 du présent article et du paragraphe 5 de l'article 29 (Notifications). Toutefois, une Partie qui choisit d'appliquer la partie VI (Arbitrage) en vertu de l'article 18 (Choix d'appliquer la partie VI) après être devenue une Partie à la présente Convention doit émettre les réserves prévues aux alinéas p), q, r) et s) du paragraphe 1 du présent article au moment où elle formule la notification prévue à l'article 18 (Choix d'appliquer la partie VI) au Dépositaire.

6. Si des réserves sont émises au moment de la signature, elles doivent être confirmées lors du dépôt de l'instrument de ratification, d'acceptation ou d'approbation, à moins que le document qui énonce ces réserves n'indique expressément qu'il doit être considéré comme définitif, sous réserve des paragraphes 2, 5 et 9 du présent article et du paragraphe 5 de l'article 29 (Notifications).

7. Si aucune réserve n'est émise au moment de la signature, une liste provisoire de réserves prévues doit être remise au Dépositaire à ce moment.

8. S'agissant des réserves émises conformément à chacune des dispositions suivantes, une liste des Conventions fiscales couvertes notifiées en vertu du point ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes) qui relèvent du champ d'application d'une réserve, tel que défini aux dispositions pertinentes (et, s'agissant d'une réserve émise conformément à chacune des dispositions suivantes, à l'exception de celles listées aux alinéas c), d) et n), les numéros de l'article et du paragraphe de chacune des dispositions pertinentes) doit être fournie lorsque ces réserves sont émises :

- a) aux alinéas b), c), d), e) et g) du paragraphe 5 de l'article 3 (Entités transparentes) ;
- b) aux alinéas b), c) et d) du paragraphe 3 de l'article 4 (Entités ayant une double résidence) ;
- c) aux paragraphes 8 et 9 de l'article 5 (Application des méthodes d'élimination de la double imposition) ;
- d) au paragraphe 4 de l'article 6 (Objet d'une Convention fiscale couverte) ;
- e) aux alinéas b) et c) du paragraphe 15 de l'article 7 (Prévenir l'utilisation abusive des conventions) ;
- f) aux points i), ii) et iii) de l'alinéa b) du paragraphe 3 de l'article 8 (Transactions relatives au transfert de dividendes) ;
- g) aux alinéas d), e) et f) du paragraphe 6 de l'article 9 (Gains en capital tirés de l'aliénation d'actions, de droits ou de participations dans des entités tirant leur valeur principalement de biens immobiliers) ;
- h) aux alinéas b) et c) du paragraphe 5 de l'article 10 (Règle anti-abus visant les établissements stables situés dans des juridictions tierces) ;
- i) à l'alinéa b) du paragraphe 3 de l'article 11 (Application des conventions fiscales pour limiter le droit d'une Partie d'imposer ses propres résidents) ;
- j) à l'alinéa b) du paragraphe 6 de l'article 13 (Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques) ;
- k) à l'alinéa b) du paragraphe 3 de l'article 14 (Fractionnement de contrats) ;
- l) à l'alinéa b) du paragraphe 5 de l'article 16 (Procédure amiable) ;
- m) à l'alinéa a) du paragraphe 3 de l'article 17 (Ajustements corrélatifs) ;

- n) Paragraph 6 of Article 23 (Type of Arbitration Process); and
- o) Paragraph 4 of Article 26 (Compatibility).

The reservations described in subparagraphs a) through o) above shall not apply to any Covered Tax Agreement that is not included on the list described in this paragraph.

9. Any Party which has made a reservation in accordance with paragraph 1 or 2 may at any time withdraw it or replace it with a more limited reservation by means of a notification addressed to the Depositary. Such Party shall make any additional notifications pursuant to paragraph 6 of Article 29 (Notifications) which may be required as a result of the withdrawal or replacement of the reservation. Subject to paragraph 7 of Article 35 (Entry into Effect), the withdrawal or replacement shall take effect:

- a) with respect to a Covered Tax Agreement solely with States or jurisdictions that are Parties to the Convention when the notification of withdrawal or replacement of the reservation is received by the Depositary:
  - i) for reservations in respect of provisions relating to taxes withheld at source, where the event giving rise to such taxes occurs on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the notification of withdrawal or replacement of the reservation; and
  - ii) for reservations in respect of all other provisions, for taxes levied with respect to taxable periods beginning on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the notification of withdrawal or replacement of the reservation; and
- b) with respect to a Covered Tax Agreement for which one or more Contracting Jurisdictions becomes a Party to this Convention after the date of receipt by the Depositary of the notification of withdrawal or replacement: on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions.

## ***Article 29 – Notifications***

1. Subject to paragraphs 5 and 6 of this Article, and paragraph 7 of Article 35 (Entry into Effect), notifications pursuant to the following provisions shall be made at the time of signature or when depositing the instrument of ratification, acceptance or approval:

- a) Clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms);
- b) Paragraph 6 of Article 3 (Transparent Entities);
- c) Paragraph 4 of Article 4 (Dual Resident Entities);
- d) Paragraph 10 of Article 5 (Application of Methods for Elimination of Double Taxation);
- e) Paragraphs 5 and 6 of Article 6 (Purpose of a Covered Tax Agreement);
- f) Paragraph 17 of Article 7 (Prevention of Treaty Abuse);
- g) Paragraph 4 of Article 8 (Dividend Transfer Transactions);
- h) Paragraphs 7 and 8 of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property);

- n) au paragraphe 6 de l'article 23 (Méthode d'arbitrage) ; et
- o) au paragraphe 4 de l'article 26 (Compatibilité).

Les réserves mentionnées aux alinéas a) à o) ci-dessus ne s'appliquent pas à une Convention fiscale couverte ne figurant pas sur la liste mentionnée au présent paragraphe.

9. Toute Partie qui a émis une réserve conformément aux paragraphes 1 ou 2 peut à tout moment la retirer ou la remplacer par une réserve de portée plus limitée, en adressant une notification au Dépositaire. Cette Partie formule toute notification complémentaire requise à la suite de ce retrait ou de ce remplacement conformément au paragraphe 6 de l'article 29 (Notifications). Sous réserve du paragraphe 7 de l'article 35 (Prise d'effet), le retrait ou le remplacement prend effet :

- a) s'agissant d'une Convention fiscale couverte conclue uniquement avec des États ou des juridictions qui sont Parties à la présente Convention lorsque la notification du retrait ou du remplacement de la réserve est reçue par le Dépositaire :
  - i) pour les réserves portant sur des dispositions relatives aux impôts prélevés à la source, si le fait générateur de ces impôts intervient à compter du 1er janvier de l'année qui suit l'expiration d'une période de six mois calendaires commençant à la date de communication par le Dépositaire de la notification du retrait ou du remplacement de la réserve ; et
  - ii) pour les réserves portant sur toutes les autres dispositions, pour les impôts perçus au titre de périodes d'imposition qui débutent à compter du 1er janvier de l'année qui suit l'expiration d'une période de six mois calendaires commençant à la date de communication par le Dépositaire de la notification du retrait ou du remplacement de la réserve ; et
- b) s'agissant d'une Convention fiscale couverte conclue avec une ou plusieurs Juridictions contractantes qui deviennent Parties à la présente Convention après la date de réception par le Dépositaire de la notification du retrait ou du remplacement : à la dernière des dates à laquelle la présente Convention entre en vigueur pour ces Juridictions contractantes.

## ***Article 29 – Notifications***

1. Sous réserve des paragraphes 5 et 6 du présent article et du paragraphe 7 de l'article 35 (Prise d'effet), les notifications formulées conformément aux dispositions suivantes doivent être émises au moment de la signature de la Convention ou du dépôt de l'instrument de ratification, d'acceptation ou d'approbation :

- a) le point ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes) ;
- b) le paragraphe 6 de l'article 3 (Entités transparentes) ;
- c) le paragraphe 4 de l'article 4 (Entités ayant une double résidence) ;
- d) le paragraphe 10 de l'article 5 (Application des méthodes d'élimination de la double imposition) ;
- e) les paragraphes 5 et 6 de l'article 6 (Objet d'une Convention fiscale couverte) ;
- f) le paragraphe 17 de l'article 7 (Prévenir l'utilisation abusive des conventions) ;
- g) le paragraphe 4 de l'article 8 (Transactions relatives au transfert de dividendes) ;
- h) les paragraphes 7 et 8 de l'article 9 (Gains en capital tirés de l'aliénation d'actions, de droits ou de participations dans des entités tirant leur valeur principalement de biens immobiliers) ;

- i) Paragraph 6 of Article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions);
- j) Paragraph 4 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents);
- k) Paragraphs 5 and 6 of Article 12 (Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies);
- l) Paragraphs 7 and 8 of Article 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions);
- m) Paragraph 4 of Article 14 (Splitting-up of Contracts);
- n) Paragraph 6 of Article 16 (Mutual Agreement Procedure);
- o) Paragraph 4 of Article 17 (Corresponding Adjustments);
- p) Article 18 (Choice to Apply Part VI);
- q) Paragraph 4 of Article 23 (Type of Arbitration Process);
- r) Paragraph 1 of Article 24 (Agreement on a Different Resolution);
- s) Paragraph 1 of Article 26 (Compatibility); and
- t) Paragraphs 1, 2, 3, 5 and 7 of Article 35 (Entry into Effect).

2. Notifications in respect of Covered Tax Agreements entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, where that jurisdiction or territory is not a Party to the Convention pursuant to subparagraph b) or c) of paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval), shall be made by the responsible Party and can be different from the notifications made by that Party for its own Covered Tax Agreements.

3. If notifications are made at the time of signature, they shall be confirmed upon deposit of the instrument of ratification, acceptance or approval, unless the document containing the notifications explicitly specifies that it is to be considered definitive, subject to the provisions of paragraphs 5 and 6 of this Article, and paragraph 7 of Article 35 (Entry into Effect).

4. If notifications are not made at the time of signature, a provisional list of expected notifications shall be provided at that time.

5. A Party may extend at any time the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) by means of a notification addressed to the Depositary. The Party shall specify in this notification whether the agreement falls within the scope of any of the reservations made by the Party which are listed in paragraph 8 of Article 28 (Reservations). The Party may also make a new reservation described in paragraph 8 of Article 28 (Reservations) if the additional agreement would be the first to fall within the scope of such a reservation. The Party shall also specify any additional notifications that may be required under subparagraphs b) through s) of paragraph 1 to reflect the inclusion of the additional agreements. In addition, if the extension results for the first time in the inclusion of a tax agreement entered into by or on behalf of a jurisdiction or territory for whose international relations a Party is responsible, the Party shall specify any reservations (pursuant to paragraph 4 of Article 28 (Reservations)) or notifications (pursuant to paragraph 2 of this Article) applicable to Covered Tax Agreements entered into by or on behalf of that jurisdiction or territory. On the date on which the added agreement(s) notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms) become Covered Tax Agreements, the provisions of Article 35 (Entry into Effect) shall govern the date on which the modifications to the Covered Tax Agreement shall have effect.

- i) le paragraphe 6 de l'article 10 (Règle anti-abus visant les établissements stables situés dans des juridictions tierces) ;
- j) le paragraphe 4 de l'article 11 (Application des conventions fiscales pour limiter le droit d'une Partie d'imposer ses propres résidents) ;
- k) les paragraphes 5 et 6 de l'article 12 (Mesures visant à éviter artificiellement le statut d'établissement stable par des accords de commissionnaire et autres stratégies similaires) ;
- l) les paragraphes 7 et 8 de l'article 13 (Mesures visant à éviter artificiellement le statut d'établissement stable par le recours aux exceptions applicables à certaines activités spécifiques) ;
- m) le paragraphe 4 de l'article 14 (Fractionnement de contrats) ;
- n) le paragraphe 6 de l'article 16 (Procédure amiable) ;
- o) le paragraphe 4 de l'article 17 (Ajustements corrélatifs) ;
- p) l'article 18 (Choix d'appliquer la partie VI) ;
- q) le paragraphe 4 de l'article 23 (Méthode d'arbitrage) ;
- r) le paragraphe 1 de l'article 24 (Accord sur une solution différente) ;
- s) le paragraphe 1 de l'article 26 (Compatibilité) ; et
- t) les paragraphes 1, 2, 3, 5 et 7 de l'article 35 (Prise d'effet).

2. Les notifications des Conventions fiscales couvertes conclues par ou pour le compte d'une juridiction ou d'un territoire dont les relations internationales relèvent de la responsabilité d'une Partie, lorsque cette juridiction ou ce territoire n'est pas une Partie à la présente Convention en vertu des alinéas b) ou c) du paragraphe 1 de l'article 27 (Signature et ratification, acceptation ou approbation), sont formulées par ladite Partie et peuvent différer des notifications effectuées par cette Partie aux fins de ses propres Conventions fiscales couvertes.

3. Si des notifications sont formulées au moment de la signature, elles doivent être confirmées lors du dépôt de l'instrument de ratification, d'acceptation ou d'approbation, à moins que le document qui énonce les notifications n'indique expressément qu'il doit être considéré comme définitif, sous réserve des paragraphes 5 et 6 du présent article et du paragraphe 7 de l'article 35 (Prise d'effet).

4. Si aucune notification n'est formulée au moment de la signature, une liste provisoire de notifications prévues doit être remise à ce moment.

5. Une Partie peut à tout moment compléter la liste de ses conventions notifiées prévue au point ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes) en formulant une notification à cet effet au Dépositaire. La Partie précise dans cette notification si la convention ajoutée fait l'objet de réserves listées au paragraphe 8 de l'article 28 (Réserves). La Partie peut également émettre une nouvelle réserve prévue au paragraphe 8 de l'article 28 (Réserves) dans le cas où la convention ajoutée à la liste serait la première convention à laquelle s'appliquerait cette réserve. La Partie doit également préciser toute notification complémentaire potentiellement requise aux alinéas b) à s) du paragraphe 1 pour tenir compte de l'ajout de nouvelles conventions. En outre, si l'ajout a pour effet pour la première fois d'inclure une convention fiscale conclue par ou pour le compte d'une juridiction ou d'un territoire dont les relations internationales relèvent de la responsabilité de la Partie, la Partie doit indiquer les réserves (prévues au paragraphe 4 de l'article 28 (Réserves)) et les notifications (prévues au paragraphe 2 du présent article) applicables aux Conventions fiscales couvertes conclues par ou pour le compte de la juridiction ou du territoire. À compter de la date à laquelle la ou les conventions ajoutées deviennent des Conventions fiscales couvertes en vertu du point ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes), les modifications apportées à la Convention fiscale couverte prennent effet à la date prévue par les dispositions de l'article 35 (Prise d'effet).

6. A Party may make additional notifications pursuant to subparagraphs b) through s) of paragraph 1 by means of a notification addressed to the Depositary. These notifications shall take effect:

- a) with respect to Covered Tax Agreements solely with States or jurisdictions that are Parties to the Convention when the additional notification is received by the Depositary:
  - i) for notifications in respect of provisions relating to taxes withheld at source, where the event giving rise to such taxes occurs on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the additional notification; and
  - ii) for notifications in respect of all other provisions, for taxes levied with respect to taxable periods beginning on or after 1 January of the year next following the expiration of a period of six calendar months beginning on the date of the communication by the Depositary of the additional notification; and
- b) with respect to a Covered Tax Agreement for which one or more Contracting Jurisdictions becomes a Party to this Convention after the date of receipt by the Depositary of the additional notification: on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions.

#### ***Article 30 – Subsequent Modifications of Covered Tax Agreements***

The provisions in this Convention are without prejudice to subsequent modifications to a Covered Tax Agreement which may be agreed between the Contracting Jurisdictions of the Covered Tax Agreement.

#### ***Article 31 – Conference of the Parties***

1. The Parties may convene a Conference of the Parties for the purposes of taking any decisions or exercising any functions as may be required or appropriate under the provisions of this Convention.
2. The Conference of the Parties shall be served by the Depositary.
3. Any Party may request a Conference of the Parties by communicating a request to the Depositary. The Depositary shall inform all Parties of any request. Thereafter, the Depositary shall convene a Conference of the Parties, provided that the request is supported by one-third of the Parties within six calendar months of the communication by the Depositary of the request.

#### ***Article 32 – Interpretation and Implementation***

1. Any question arising as to the interpretation or implementation of provisions of a Covered Tax Agreement as they are modified by this Convention shall be determined in accordance with the provision(s) of the Covered Tax Agreement relating to the resolution by mutual agreement of questions of interpretation or application of the Covered Tax Agreement (as those provisions may be modified by this Convention).
2. Any question arising as to the interpretation or implementation of this Convention may be addressed by a Conference of the Parties convened in accordance with paragraph 3 of Article 31 (Conference of the Parties).

6. Une Partie peut formuler des notifications complémentaires prévues aux alinéas b) à s) du paragraphe 1, au moyen d'une notification adressée au Dépositaire. Ces notifications prennent effet :

- a) s'agissant des Conventions fiscales couvertes conclues uniquement avec des États ou des juridictions qui sont Parties à la présente Convention lorsque la notification complémentaire est reçue par le Dépositaire :
  - i) pour les notifications portant sur des dispositions relatives aux impôts prélevés à la source, si le fait générateur de ces impôts intervient à compter du 1er janvier de l'année qui suit l'expiration d'une période de six mois calendaires commençant à la date de communication par le Dépositaire de la notification complémentaire ; et
  - ii) pour les notifications portant sur toutes les autres dispositions, pour les impôts perçus au titre de périodes d'imposition qui débutent à compter du 1er janvier de l'année qui suit l'expiration d'une période de six mois calendaires commençant à la date de communication par le Dépositaire de la notification complémentaire ; et
- b) s'agissant d'une Convention fiscale couverte conclue avec une ou plusieurs Juridictions contractantes qui deviennent Parties à la présente Convention après la date de réception par le Dépositaire de la notification complémentaire: à la dernière des dates à laquelle la présente Convention entre en vigueur pour cette Juridiction contractante.

#### ***Article 30 – Modifications ultérieures des Conventions fiscales couvertes***

Les dispositions de la présente Convention ne préjugent pas des modifications ultérieures d'une Convention fiscale couverte susceptibles d'être convenues entre les Juridictions contractantes de la Convention fiscale couverte.

#### ***Article 31 – Conférence des Parties***

- 1. Les Parties peuvent convoquer une Conférence des Parties afin de prendre toute décision ou d'exercer toute fonction qui pourrait être requise ou appropriée en vertu des dispositions de la présente Convention.
- 2. La Conférence des Parties est assistée par le Dépositaire.
- 3. Toute Partie peut demander la tenue d'une Conférence des Parties en adressant une demande au Dépositaire. Le Dépositaire informe toutes les Parties de toute demande. Le Dépositaire convoque ensuite une Conférence des Parties, à condition que la demande soit soutenue par un tiers des Parties, dans un délai de six mois à compter de la communication de la demande par le Dépositaire.

#### ***Article 32 – Interprétation et mise en œuvre***

- 1. Toute question relative à l'interprétation ou à la mise en œuvre des dispositions d'une Convention fiscale couverte telles que modifiées par la présente Convention doit être réglée conformément aux dispositions de la Convention fiscale couverte relatives au règlement par accord amiable des questions d'interprétation ou d'application de la Convention fiscale couverte (ces dispositions pouvant être modifiées par la présente Convention).
- 2. Toute question relative à l'interprétation ou à la mise en œuvre de la présente Convention peut être traitée par une Conférence des Parties convoquée conformément au paragraphe 3 de l'article 31 (Conférence des Parties).

### ***Article 33 – Amendment***

1. Any Party may propose an amendment to this Convention by submitting the proposed amendment to the Depositary.
2. A Conference of the Parties may be convened to consider the proposed amendment in accordance with paragraph 3 of Article 31 (Conference of the Parties).

### ***Article 34 – Entry into Force***

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval.
2. For each Signatory ratifying, accepting, or approving this Convention after the deposit of the fifth instrument of ratification, acceptance or approval, the Convention shall enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by such Signatory of its instrument of ratification, acceptance or approval.

### ***Article 35 – Entry into Effect***

1. The provisions of this Convention shall have effect in each Contracting Jurisdiction with respect to a Covered Tax 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 the first day of the next calendar year that begins on or after the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement; and
  - b) with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depositary that they intend to apply such shorter period) from the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement.
2. Solely for the purpose of its own application of subparagraph a) of paragraph 1 and subparagraph a) of paragraph 5, a Party may choose to substitute “taxable period” for “calendar year”, and shall notify the Depositary accordingly.
3. Solely for the purpose of its own application of subparagraph b) of paragraph 1 and subparagraph b) of paragraph 5, a Party may choose to replace the reference to “taxable periods beginning on or after the expiration of a period” with a reference to “taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period”, and shall notify the Depositary accordingly.
4. Notwithstanding the preceding provisions of this Article, Article 16 (Mutual Agreement Procedure) shall have effect with respect to a Covered Tax Agreement for a case presented to the competent authority of a Contracting Jurisdiction on or after the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement, except for cases that were not eligible to be presented as of that date under the Covered Tax Agreement prior to its modification by the Convention, without regard to the taxable period to which the case relates.

### ***Article 33 – Modifications***

1. Toute Partie peut proposer une modification de la présente Convention en soumettant une proposition de modification au Dépositaire.
2. Une Conférence des Parties peut être convoquée afin d'examiner la proposition de modification conformément au paragraphe 3 de l'article 31 (Conférence des Parties).

### ***Article 34 – Entrée en vigueur***

1. La présente Convention entre en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois calendaires à compter de la date du dépôt du cinquième instrument de ratification, d'acceptation ou d'approbation.
2. Pour chaque Signataire qui ratifie, accepte ou approuve la présente Convention après le dépôt du cinquième instrument de ratification, d'acceptation ou d'approbation, la Convention entre en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois calendaires à compter de la date de dépôt par ce Signataire de son instrument de ratification, d'acceptation ou d'approbation.

### ***Article 35 – Prise d'effet***

1. Les dispositions de la présente Convention prennent effet dans chaque Juridiction contractante à l'égard d'une Convention fiscale couverte :
  - a) s'agissant des impôts prélevés à la source sur des sommes payées ou attribuées à des non-résidents, si le fait générateur de ces impôts intervient à compter du premier jour de l'année civile qui commence à compter de la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu une Convention fiscale couverte ; et
  - b) s'agissant de tous les autres impôts perçus par cette Juridiction contractante, pour les impôts perçus au titre de périodes d'imposition commençant à l'expiration ou après l'expiration d'une période de six mois calendaires (ou d'une période plus courte si toutes les Juridictions contractantes notifient au Dépositaire qu'elles ont l'intention d'appliquer une telle période) à compter de la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu une Convention fiscale couverte.
2. Pour une application unilatérale de l'alinéa a) du paragraphe 1 et de l'alinéa a) du paragraphe 5 par une Partie, une Partie peut choisir de remplacer l'expression « année civile » par « période d'imposition » en notifiant son choix au Dépositaire.
3. Pour une application unilatérale de l'alinéa b) du paragraphe 1 et de l'alinéa b) du paragraphe 5 par une Partie, une Partie peut choisir de remplacer le texte suivant « périodes d'imposition commençant à l'expiration ou après l'expiration d'une période » par « périodes d'imposition commençant à compter du 1er janvier de l'année qui commence à compter de l'expiration d'une période », en notifiant son choix au Dépositaire.
4. Nonobstant les dispositions précédentes du présent article, l'article 16 (Procédure amiable) s'applique aux fins d'une Convention fiscale couverte concernant un cas soumis à l'autorité compétente d'une Juridiction contractante à compter de la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte, à l'exception des cas qui ne pouvaient être soumis à cette date en application de la Convention fiscale couverte, avant qu'elle ne soit modifiée par la présente Convention, quelle que soit la période d'imposition concernée par le cas.

5. For a new Covered Tax Agreement resulting from an extension pursuant to paragraph 5 of Article 29 (Notifications) of the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms), the provisions of this Convention shall have effect in each Contracting Jurisdiction:

- 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 the first day of the next calendar year that begins on or after 30 days after the date of the communication by the Depositary of the notification of the extension of the list of agreements; and
- b) with respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of nine calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depositary that they intend to apply such shorter period) from the date of the communication by the Depositary of the notification of the extension of the list of agreements.

6. A Party may reserve the right for paragraph 4 not to apply with respect to its Covered Tax Agreements.

7. a) A Party may reserve the right to replace:

- i) the references in paragraphs 1 and 4 to “the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”; and
- ii) the references in paragraph 5 to “the date of the communication by the Depositary of the notification of the extension of the list of agreements”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement”;

- iii) the references in subparagraph a) of paragraph 9 of Article 28 (Reservations) to “on the date of the communication by the Depositary of the notification of withdrawal or replacement of the reservation”; and
- iv) the reference in subparagraph b) of paragraph 9 of Article 28 (Reservations) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the withdrawal or replacement of the reservation with respect to that specific Covered Tax Agreement”;

- v) the references in subparagraph a) of paragraph 6 of Article 29 (Notifications) to “on the date of the communication by the Depositary of the additional notification”; and
- vi) the reference in subparagraph b) of paragraph 6 of Article 29 (Notifications) to “on the latest of the dates on which the Convention enters into force for those Contracting Jurisdictions”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the additional notification with respect to that specific Covered Tax Agreement”;

5. Pour une Convention fiscale couverte ajoutée conformément au paragraphe 5 de l'article 29 (Notifications) à la liste des conventions notifiées en vertu du point (ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes), les dispositions de la présente Convention prennent effet dans chaque Juridiction contractante :

- a) s'agissant des impôts prélevés à la source sur des sommes payées ou attribuées à des non-résidents, si le fait générateur de ces impôts intervient à compter du premier jour de l'année civile qui suit une période de 30 jours suivant la date de communication par le Dépositaire de la notification de l'ajout à la liste des conventions ; et
- b) s'agissant de tous les autres impôts perçus par cette Juridiction contractante, pour les impôts perçus au titre de périodes d'imposition commençant à l'expiration ou après l'expiration d'une période de neuf mois calendaires (ou d'une période plus courte si toutes les Juridictions contractantes notifient au Dépositaire qu'elles ont l'intention d'appliquer une telle période) qui commence à compter de la date de communication par le Dépositaire de la notification de l'ajout à la liste des conventions.

6. Une Partie peut se réserver le droit de ne pas appliquer le paragraphe 4 à ses Conventions fiscales couvertes.

7. a) Une Partie peut se réserver le droit de remplacer :

- i) les références, figurant aux paragraphes 1 et 4, à « la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes d'une Convention fiscale couverte » ; et
- ii) les références, figurant au paragraphe 5, à « la date de communication par le Dépositaire de la notification de l'ajout à la liste des conventions » ;

par des références à : « 30 jours après la date de réception par le Dépositaire de la dernière des notifications par chacune des Juridictions contractantes qui ont émis la réserve prévue au paragraphe 7 de l'article 35 (Prise d'effet), indiquant l'accomplissement des procédures internes relatives à la prise d'effet des dispositions de la présente Convention aux fins de la Convention fiscale couverte concernée » ;

- iii) les références, figurant à l'alinéa a) du paragraphe 9 de l'article 28 (Réserves), à « à la date de communication par le Dépositaire de la notification du retrait ou du remplacement de la réserve » ; et
- iv) la référence, figurant à l'alinéa b) du paragraphe 9 de l'article 28 (Réserves), à « à la dernière des dates à laquelle la présente Convention entre en vigueur pour ces Juridictions contractantes » ;

par des références à : « 30 jours après la date de réception par le Dépositaire de la dernière des notifications de chacune des Juridictions contractantes qui ont émis la réserve prévue au paragraphe 7 de l'article 35 (Prise d'effet), indiquant l'accomplissement des procédures internes relatives à la prise d'effet du retrait ou du remplacement de la réserve aux fins de la Convention fiscale couverte concernée » ;

- v) les références, figurant à l'alinéa a) du paragraphe 6 de l'article 29 (Notifications), à « à la date de communication par le Dépositaire de la notification complémentaire » ; et
- vi) la référence, figurant à l'alinéa b) du paragraphe 6 de l'article 29 (Notifications), à « à la dernière des dates à laquelle la présente Convention entre en vigueur pour ces Juridictions contractantes » ;

par des références à : « 30 jours après la date de réception par le Dépositaire de la dernière des notifications de chacune des Juridictions contractantes qui ont émis la réserve prévue au paragraphe 7 de l'article 35 (Prise d'effet), indiquant l'accomplissement des procédures internes relatives à la prise d'effet de la notification complémentaire aux fins de la Convention fiscale couverte concernée » ;

- vii) the references in paragraphs 1 and 2 of Article 36 (Entry into Effect of Part VI) to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement”; and

- viii) the reference in paragraph 3 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the notification of the extension of the list of agreements”;

- ix) the references in paragraph 4 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the notification of withdrawal of the reservation”, “the date of the communication by the Depositary of the notification of replacement of the reservation” and “the date of the communication by the Depositary of the notification of withdrawal of the objection to the reservation”; and

- x) the reference in paragraph 5 of Article 36 (Entry into Effect of Part VI) to “the date of the communication by the Depositary of the additional notification”;

with references to “30 days after the date of receipt by the Depositary of the latest notification by each Contracting Jurisdiction making the reservation described in paragraph 7 of Article 35 (Entry into Effect) that it has completed its internal procedures for the entry into effect of the provisions of Part VI (Arbitration) with respect to that specific Covered Tax Agreement”.

- b) A Party making a reservation in accordance with subparagraph a) shall notify the confirmation of the completion of its internal procedures simultaneously to the Depositary and the other Contracting Jurisdiction(s).
- c) If one or more Contracting Jurisdictions to a Covered Tax Agreement makes a reservation under this paragraph, the date of entry into effect of the provisions of the Convention, of the withdrawal or replacement of a reservation, of an additional notification with respect to that Covered Tax Agreement, or of Part VI (Arbitration) shall be governed by this paragraph for all Contracting Jurisdictions to the Covered Tax Agreement.

### ***Article 36 – Entry into Effect of Part VI***

1. Notwithstanding paragraph 9 of Article 28 (Reservations), paragraph 6 of Article 29 (Notifications), and paragraphs 1 through 6 of Article 35 (Entry into Effect), with respect to two Contracting Jurisdictions to a Covered Tax Agreement, the provisions of Part VI (Arbitration) shall have effect:

- a) with respect to cases presented to the competent authority of a Contracting Jurisdiction (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)), on or after the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement; and

- vii) les références, figurant aux paragraphes 1 et 2 de l'article 36 (Prise d'effet de la partie VI), à « la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu une Convention fiscale couverte » ;

par des références à : « 30 jours après la date de réception par le Dépositaire de la dernière des notifications de chacune des Juridictions contractantes qui ont émis la réserve prévue au paragraphe 7 de l'article 35 (Prise d'effet), indiquant l'accomplissement des procédures internes relatives à la prise d'effet des dispositions de la présente Convention aux fins la Convention fiscale couverte concernée » ; et

- viii) la référence, figurant au paragraphe 3 de l'article 36 (Prise d'effet de la partie VI), à « la date de communication par le Dépositaire de la notification de l'ajout à la liste des conventions » ;

- ix) les références, figurant au paragraphe 4 de l'article 36 (Prise d'effet de la partie VI), à « la date de communication par le Dépositaire de la notification du retrait de la réserve » « la date de communication par le Dépositaire de la notification du remplacement de la réserve » et « la date de communication par le Dépositaire de la notification du retrait de l'objection à la réserve », respectivement ; et

- x) la référence, figurant au paragraphe 5 de l'article 36 (Prise d'effet de la partie VI), à « la date de communication par le Dépositaire de la notification complémentaire » ;

par des références à : « 30 jours après la date de réception par le Dépositaire de la dernière des notifications de chacune des Juridictions contractantes qui ont émis la réserve prévue au paragraphe 7 de l'article 35 (Prise d'effet), indiquant l'accomplissement des procédures internes relatives à la prise d'effet de la partie VI (Arbitrage) aux fins la Convention fiscale couverte concernée ».

- b) Une Partie qui émet une réserve conformément à l'alinéa a) doit notifier, simultanément au Dépositaire et à toutes autres Juridictions contractantes une confirmation de l'accomplissement de ses procédures internes.
- c) Si une ou plusieurs Juridictions contractantes ayant conclu une Convention fiscale couverte émettent une réserve conformément au présent paragraphe, la date de prise d'effet des dispositions de la présente Convention, du retrait ou du remplacement d'une réserve, de toute notification complémentaire relative à cette Convention fiscale couverte, ou de la partie VI (Arbitrage), est régie par le présent paragraphe pour toutes les Juridictions contractantes parties ayant conclu la Convention fiscale couverte.

### ***Article 36 – Prise d'effet de la partie VI***

1. Nonobstant le paragraphe 9 de l'article 28 (Réserves), du paragraphe 6 de l'article 29 (Notifications) et des paragraphes 1 à 6 de l'article 35 (Prise d'effet), les dispositions de la partie VI (Arbitrage) prennent effet entre deux Juridictions contractantes ayant conclu une Convention fiscale couverte :

- a) concernant les cas soumis à l'autorité compétente d'une Juridiction contractante (comme mentionné à l'alinéa a) du paragraphe 1 de l'article 19 (Arbitrage obligatoire et contraignant)), à compter de la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte ; et

- b) with respect to cases presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement, on the date when both Contracting Jurisdictions have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 (Mandatory Binding Arbitration), along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting Jurisdiction (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration)) according to the terms of that mutual agreement.
2. A Party may reserve the right for Part VI (Arbitration) to apply to a case presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement only to the extent that the competent authorities of both Contracting Jurisdictions agree that it will apply to that specific case.
3. In the case of a new Covered Tax Agreement resulting from an extension pursuant to paragraph 5 of Article 29 (Notifications) of the list of agreements notified under clause ii) of subparagraph a) of paragraph 1 of Article 2 (Interpretation of Terms), the references in paragraphs 1 and 2 of this Article to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depositary of the notification of the extension of the list of agreements”.
4. A withdrawal or replacement of a reservation made under paragraph 4 of Article 26 (Compatibility) pursuant to paragraph 9 of Article 28 (Reservations), or the withdrawal of an objection to a reservation made under paragraph 2 of Article 28 (Reservations) which results in the application of Part VI (Arbitration) between two Contracting Jurisdictions to a Covered Tax Agreement, shall have effect according to subparagraphs a) and b) of paragraph 1 of this Article, except that the references to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depositary of the notification of withdrawal of the reservation”, “the date of the communication by the Depositary of the notification of replacement of the reservation” or “the date of the communication by the Depositary of the notification of withdrawal of the objection to the reservation”, respectively.
5. An additional notification made pursuant to subparagraph p) of paragraph 1 of Article 29 (Notifications) shall have effect according to subparagraphs a) and b) of paragraph 1, except that the references in paragraphs 1 and 2 of this Article to “the later of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the Covered Tax Agreement” shall be replaced with references to “the date of the communication by the Depositary of the additional notification”.

### ***Article 37 – Withdrawal***

1. Any Party may, at any time, withdraw from this Convention by means of a notification addressed to the Depositary.
2. Withdrawal pursuant to paragraph 1 shall become effective on the date of receipt of the notification by the Depositary. In cases where this Convention has entered into force with respect to all Contracting Jurisdictions to a Covered Tax Agreement before the date on which a Party’s withdrawal becomes effective, that Covered Tax Agreement shall remain as modified by this Convention.

- b) concernant les cas soumis à l'autorité compétente d'une Juridiction contractante avant la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte, à la date à laquelle les deux Juridictions contractantes ont notifié au Dépositaire qu'elles sont parvenues à un accord amiable conformément au paragraphe 10 de l'article 19 (Arbitrage obligatoire et contraignant). Cette notification doit aussi indiquer l'information concernant la date à laquelle ou les dates auxquelles ces cas seront considérés avoir été soumis à l'autorité compétente de la Juridiction contractante (comme mentionné à l'alinéa a) du paragraphe 1 de l'article 19 (Arbitrage obligatoire et contraignant), conformément aux termes de l'accord amiable obtenu.
2. Une Partie peut se réserver le droit de n'appliquer la partie VI (Arbitrage) à l'égard d'un cas soumis à l'autorité compétente d'une Juridiction contractante avant la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte que dans la mesure où les autorités compétentes de toutes les Juridictions contractantes conviennent de l'appliquer à ce cas.
3. Lorsqu'une Convention fiscale couverte est ajoutée en vertu du paragraphe 5 de l'article 29 (Notifications) à la liste de conventions notifiées en application du point ii) de l'alinéa a) du paragraphe 1 de l'article 2 (Interprétation des termes) les références figurant aux paragraphes 1 et 2 du présent article à « la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte » sont remplacées par des références à « la date de communication par le Dépositaire de la notification de l'ajout à la liste des conventions ».
4. Le retrait ou le remplacement d'une réserve émise en vertu du paragraphe 4 de l'article 26 (Compatibilité) conformément au paragraphe 9 de l'article 28 (Réserves), ou le retrait d'une objection à une réserve émise en vertu du paragraphe 2 de l'article 28 (Réserves) qui déclenche l'application de la partie VI (Arbitrage) entre deux Juridictions contractantes ayant conclu une Convention fiscale couverte, prend effet conformément aux alinéas a) et b) du paragraphe 1 du présent article sous réserve que les références à « la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte » soient remplacées par des références à « la date de communication par le Dépositaire de la notification du retrait de la réserve », « la date de communication par le Dépositaire de la notification du remplacement de la réserve » ou « la date de communication par le Dépositaire de la notification du retrait de l'objection à la réserve », respectivement.
5. Une notification complémentaire formulée en vertu de l'alinéa p) du paragraphe 1 de l'article 29 (Notifications) prend effet conformément aux alinéas a) et b) du paragraphe 1 sous réserve que les références figurant aux paragraphes 1 et 2 du présent article à « la dernière des dates à laquelle la présente Convention entre en vigueur pour chacune des Juridictions contractantes ayant conclu la Convention fiscale couverte » soient remplacées par des références à « la date de communication par le Dépositaire de la notification complémentaire ».

### ***Article 37 – Retrait***

1. Toute Partie peut, à tout moment, se retirer de la présente Convention en formulant une notification à cet effet au Dépositaire.
2. Le retrait prévu au paragraphe 1 prend effet à la date de réception de la notification par le Dépositaire. Dans les cas où la présente Convention est entrée en vigueur à l'égard de toutes les Juridictions contractantes d'une Convention fiscale couverte, avant la date à laquelle le retrait d'une Partie prend effet, cette Convention fiscale couverte demeure telle qu'elle a été modifiée par la présente Convention.

### ***Article 38 – Relation with Protocols***

1. This Convention may be supplemented by one or more protocols.
2. In order to become a party to a protocol, a State or jurisdiction must also be a Party to this Convention.
3. A Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with its provisions.

### ***Article 39 – Depositary***

1. The Secretary-General of the Organisation for Economic Co-operation and Development shall be the Depositary of this Convention and any protocols pursuant to Article 38 (Relation with Protocols).
2. The Depositary shall notify the Parties and Signatories within one calendar month of:
  - a) any signature pursuant to Article 27 (Signature and Ratification, Acceptance or Approval);
  - b) the deposit of any instrument of ratification, acceptance or approval pursuant to Article 27 (Signature and Ratification, Acceptance or Approval);
  - c) any reservation or withdrawal or replacement of a reservation pursuant to Article 28 (Reservations);
  - d) any notification or additional notification pursuant to Article 29 (Notifications);
  - e) any proposed amendment to this Convention pursuant to Article 33 (Amendment);
  - f) any withdrawal from this Convention pursuant to Article 37 (Withdrawal); and
  - g) any other communication related to this Convention.
3. The Depositary shall maintain publicly available lists of:
  - a) Covered Tax Agreements;
  - b) reservations made by the Parties; and
  - c) notifications made by the Parties.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Paris, the 24<sup>th</sup> day of November 2016, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Organisation for Economic Co-operation and Development.

### ***Article 38 – Relation avec les protocoles***

1. La présente Convention peut être complétée par un ou plusieurs protocoles.
2. Pour être une partie à un protocole, un État ou une juridiction doit également être Partie à la présente Convention.
3. Une Partie à la présente Convention n'est pas liée par un protocole si elle n'est pas devenue partie à ce protocole, conformément à ses dispositions.

### ***Article 39 – Dépositaire***

1. Le Secrétaire général de l'Organisation de coopération et de développement économiques est le Dépositaire de la présente Convention et des protocoles y afférents en vertu de l'article 38 (Relation avec les protocoles).
2. Le Dépositaire notifie aux Parties et aux Signataires dans un délai d'un mois calendaire :
  - a) toute signature conformément à l'article 27 (Signature et ratification, acceptation ou approbation) ;
  - b) le dépôt de tout instrument de ratification, d'acceptation ou d'approbation conformément à l'article 27 (Signature et ratification, acceptation ou approbation) ;
  - c) toute réserve, retrait ou remplacement d'une réserve conformément à l'article 28 (Réserves) ;
  - d) toute notification ou notifications complémentaires conformément à l'article 29 (Notifications) ;
  - e) toute proposition de modification de la présente Convention en application de l'article 33 (Modifications) ;
  - f) tout retrait de la présente Convention en application de l'article 37 (Retrait) ; et
  - g) toute autre communication relative à la présente Convention.
3. Le Dépositaire tient à jour des listes accessibles au public :
  - a) des Conventions fiscales couvertes ;
  - b) des réserves émises par les Parties ; et
  - c) des notifications formulées par les Parties.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

Fait à Paris, le 24ème jour de novembre 2016, en anglais et français, les deux textes faisant également foi, en un exemplaire unique qui sera déposé aux archives de l'Organisation de coopération et de développement économiques.

I hereby certify that the foregoing text is a true copy of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done in Paris on 24 November 2016, the original of which is deposited with the Secretary-General of the Organisation for Economic Co-operation and Development.

Je certifie que le texte qui précède est une copie conforme de la Convention multilatérale pour la mise en œuvre des mesures relatives aux conventions fiscales pour prévenir l'érosion de la base d'imposition et le transfert de bénéfices faite à Paris le 24 novembre 2016, dont l'original se trouve déposé auprès du Secrétaire général de l'Organisation de coopération et de développement économiques.

Paris, 7 June 2017

Paris, le 7 juin 2017

For the Secretary-General,  
The Director for Legal Affairs:

Pour le Secrétaire général,  
Le Directeur des Affaires juridiques :



Nicola Bonucci

**Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"): Functioning under Public International Law**

**Note by the OECD Directorate for Legal Affairs**

1. The present note sets out the background to and legal concepts behind the development of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereafter "MLI"), in order to explain the way in which it operates under public international law to modify existing bilateral tax treaties. It should be read in conjunction with the Explanatory Statement to the MLI, which was adopted at the same time as the text of the Convention itself on 24 November 2016 and which reflects the agreed understanding of the negotiators with respect to the Convention<sup>1</sup>.

**A. BEPS and the Need to Update Bilateral Tax Treaties**

2. Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The 2013 OECD/G20 BEPS Action Plan identified 15 Actions to address BEPS in a comprehensive manner<sup>2</sup>.

3. After two years of work among all OECD and G20 members, the BEPS Package was endorsed by the OECD and G20 in November 2015<sup>3</sup>. Since then, many other jurisdictions have joined OECD and G20 countries in committing to the BEPS Package and its consistent implementation by becoming members of the Inclusive Framework on BEPS Implementation<sup>4</sup>.

4. The Package includes measures under four Actions which involve changes to the existing network of more than 3000 bilateral tax treaties (Action 2 on Hybrid Mismatches; Action 6 on the Prevention of Treaty Abuse; Action 7 on Avoidance of Permanent Establishment Status; Action 14 on Improving Dispute Resolution)<sup>5</sup>. Certain of the tax treaty-related measures - under Action 6 and Action 14 - represent minimum standards, meaning that countries have agreed that these standards must be implemented. For jurisdictions which are members of the Inclusive Framework on BEPS Implementation<sup>6</sup>, the implementation of the minimum standards will be monitored by means of a peer review mechanism.

**B. Agreement to Develop a Multilateral Treaty to Update Bilateral Tax Treaties**

5. Action 15 of the 2013 OECD/G20 BEPS Action Plan mandated an analysis of the possible development of a multilateral instrument to implement tax treaty related BEPS measures "to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties". Following the launch of the Action Plan, a "Group of Experts" was set up to examine the feasibility of using a multilateral instrument for this purpose. The Group was

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1. MLI Explanatory Statement, paragraph 11: <https://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>.

2. Action Plan on BEPS: <https://www.oecd.org/ctp/BEPSActionPlan.pdf> endorsed by G20 Leaders at their September 2013 Summit in St Petersburg: <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html>.

3. Final BEPS package: <http://www.oecd.org/tax/beps-2015-final-reports.htm>

4. Inclusive framework: <http://www.oecd.org/tax/beps/beps-about.htm>, and its members: <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

5. See note 3

<sup>6</sup> See [About BEPS and the inclusive framework - OECD](#)

composed of eminent experts in public international law, including several members of the United Nations International Law Commission, as well as eminent experts in international tax law<sup>7</sup>.

6. Based on the work of the Group of Experts in 2013-2014, the 2014 Report on Action 15<sup>8</sup> concluded that a multilateral instrument can:

- a) implement BEPS measures and modify the existing network of bilateral tax treaties;
- b) provide appropriate flexibility in the level of commitment; and
- c) ensure transparency and clarity for all stakeholders<sup>9</sup>.

7. Based on an analysis of doctrine and precedents in public international law, the Annex to the 2014 Report presented a toolbox of options to be used, as appropriate, in the development of a multilateral instrument to implement the BEPS tax treaty-related measures. In light of these elements, the 2014 Report concluded that a multilateral instrument to enable countries to modify their tax treaties to implement BEPS tax treaty-related measures was “desirable and feasible, and the negotiations should be convened quickly”<sup>10</sup>.

### C. Development of the MLI by an International Conference

8. The 2014 Interim Report on Action 15 recommended that an international conference be convened to negotiate a multilateral instrument to implement tax treaty-related BEPS measures<sup>11</sup>. Accordingly, the “Mandate for the Development of a Multilateral Instrument on Tax Treaty Measures to Tackle BEPS”, which provided for the establishment of an ad hoc Group for this purpose, was approved by the countries participating in the OECD/G20 BEPS Project and endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015<sup>12</sup>. The Action 15 Final Report, which forms part of the BEPS Package endorsed by the OECD Council and G20 Leaders, reflected these developments<sup>13</sup>.

9. The ad hoc Group, which continues its work, is open to participation from all interested countries on an equal footing and is served by the OECD Secretariat. Over 100 countries and jurisdictions participated in the negotiation of the MLI<sup>14</sup>. There were six negotiation sessions, starting in May 2015 and the text of the Convention was adopted by the ad hoc Group on 24 November 2016.

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7. The Group of Experts included: Philip Baker (United Kingdom), Théodore Christakis (Greece), Frank Engelen (Netherlands), Concepción Escobar Hernandez (Spain), Mathias Forteau (France), Itai Grinberg (United States), Jan Klabbbers (Netherlands), Vaughan Lowe (United Kingdom), Philippe Martin (France), Yoshihiro Masui (Japan), Ekkehart Reimer (Germany), Giorgio Sacerdoti (Italy), Dire Tladi (South Africa).

8. See Action 15 Final Report, pp. 13-54: [http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report\\_9789264241688-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report_9789264241688-en#page1)

9. *Ibid*, Annex

10. *Ibid*, p. 17

11. *Ibid*, p. 27

12. CTPA/CFA/NOE2(2015)12/REV3/CONF and G20 endorsement: <http://www.g20.utoronto.ca/2015/150210-finance.pdf>

13. See note 8 and endorsement by OECD Council on 1 October 2015 [C/M(2015)19, item 190 and C(2015)125] and G20 Leaders: <http://www.g20.utoronto.ca/2015/151116-communique.html>.

14. Members of the ad hoc Group: <http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm>

10. Since the substance of the tax treaty related BEPS measures had already been agreed, the role of the ad hoc Group that negotiated the MLI was to determine the way in which the MLI would modify the provisions of bilateral tax treaties in order to implement those measures. The one exception was Part VI of the MLI which contains a set of provisions on mandatory binding mutual agreement procedure (MAP) arbitration. The substance of these provisions was developed as part of the negotiation of the MLI by a Sub-Group on Arbitration.

#### **D. Concept of the MLI: One Negotiation, One Signature, One Ratification**

11. The MLI is a multilateral treaty which will be applied alongside existing bilateral tax treaties modifying their application. In this way, bilateral treaties can be modified in a synchronised and consistent way in order to swiftly implement the tax treaty-related BEPS measures.

12. The MLI represents a significant efficiency gain as compared to the alternative of pairs of jurisdictions bilaterally renegotiating each of the more than 3000 tax treaties, which could have taken decades and resulted in inconsistent implementation on BEPS measures. Instead of many different negotiations, there has been one collective negotiation. The MLI also enables countries to go through only one ratification procedure in their parliament in order to modify their whole treaty network rather than seeking separate ratification of amendments to each bilateral tax treaty.

13. While the MLI will constitute the first use of a multilateral treaty to modify bilateral tax treaties, this mechanism has already been used in other areas. For example, a 2003 Agreement on Extradition between the European Union and the United States modified the provisions of existing bilateral extradition treaties between the different European Union Member States and the United States<sup>15</sup>.

#### **E. “Modification” of Bilateral Tax Treaties by a Subsequent Multilateral Treaty**

14. As set out in Articles 1 and 2 of the MLI, the Convention “modifies” any tax treaty in force between Parties to the MLI which has been listed by both Contracting Jurisdictions as an agreement which they wish to be covered by the MLI (defined as a “Covered Tax Agreement”).

15. The term “modification” was deliberately chosen, having been the subject of an in-depth discussion with the Group of Experts. As set out in the Explanatory Statement to the MLI<sup>16</sup>, the Convention does not function in the same way as an amending protocol to a single existing tax treaty which would set out amendments to the text of specified provisions of the tax treaty. Instead, the MLI is applied alongside existing bilateral tax treaties, modifying their application in order to implement the tax treaty-related BEPS measures.

16. The approach taken in the MLI follows the general legal principle that when two rules apply to the same subject matter, the later in time prevails (*lex posterior derogat legi priori*). Accordingly, to

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15. 2003 Agreement on Extradition between the European Union and the United States of America: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=10121>, see also Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 - 2015 Final Report p.35: [http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report\\_9789264241688-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/developing-a-multilateral-instrument-to-modify-bilateral-tax-treaties-action-15-2015-final-report_9789264241688-en#page1). Other examples, cited in the Annex to the 2014 Report (pp. 32-34), include the European Convention on Extradition (1957), European Convention on the Repatriation of Minors (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), the North American Free Trade Agreement (1994) and the International Convention for the Suppression of the Financing of Terrorism (1999).

16. See note 1, paragraph 13.

the extent that they are incompatible, a subsequent treaty (i.e. the MLI) prevails over a previously concluded treaty between the same Parties on the same subject matter (i.e. a Covered Tax Agreement). This rule is explicitly set out in Article 30(3) of the 1969 Vienna Convention on the Law of Treaties and is also considered to reflect customary international law<sup>17</sup>. In cases in which two successive treaties are concluded on the same subject matter, the Parties are considered as having consented to modify their prior rights and obligations under the earlier treaty through the expression of their sovereign will to be bound by the later treaty.

17. It is important to note that the MLI does not somehow “freeze” the underlying bilateral treaty in time. In this regard, Article 30 of the MLI explicitly provides that its provisions “are without prejudice to subsequent modifications to a Covered Tax Agreement which may be agreed between the Contracting Jurisdictions of the Covered Tax Agreement”.<sup>18</sup>

18. To express this in another way, the broad object and purpose of a bilateral tax treaty or “double tax convention” is to agree on the allocation of taxing rights and other forms of tax-cooperation between two jurisdictions (including to prevent tax evasion and avoidance). Accordingly, two jurisdictions have mutually consented to a defined set of rights and obligations on this set of issues (in the form of a bilateral tax treaty). The terms of this mutual consent between the two jurisdictions may already have been modified (e.g. in the form of an amending protocol to the bilateral treaty). The mutual consent between the two jurisdictions will now be modified in the context of wider multilateral consensus on these issues (in the form of the MLI). The mutual consent between the two jurisdictions on these issues can continue to be modified in the future<sup>19</sup> (for example, in the form of an amending protocol to the bilateral tax treaty, a subsequent multilateral treaty or by the termination of the bilateral treaty). Accordingly, the key concept is the evolution of the mutual consent between the two jurisdictions which may be expressed in different legal forms.

#### **F. Definition of Modifications through Compatibility Clauses, Reservations and Notifications**

19. The MLI modifies the application of Covered Tax Agreements in different ways. The method of modification is defined by means of a compatibility clause which defines the relationship between the provisions of the MLI and the bilateral treaty in objective terms. The different kinds of modification as described in MLI compatibility clauses are as follows:

- a) The MLI provision applies “in place” of an existing provision in a bilateral treaty i.e. the MLI provision replaces an existing provision if there is one.
- b) The MLI provision “applies to” or “modifies” an existing provision in a bilateral treaty i.e. the MLI provision changes the application of an existing provision without entirely replacing it.
- c) The MLI provision applies “in the absence of” an existing provision in a bilateral treaty i.e. the MLI provision is, in effect, added to the bilateral treaty if there is no existing provision.
- d) The MLI provision applies “in place of or in the absence of” an existing provision in a bilateral treaty i.e. the MLI provision either replaces an existing provision or is, in effect, added to the bilateral treaty if there is no existing provision.

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17. 1969 Vienna Convention on the Law of Treaties: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

<sup>18</sup> It is important to recall here that the extent to which a member jurisdiction of the Inclusive Framework on BEPS Implementation (see note 6) has fulfilled its commitment to implement the BEPS minimum standards will be monitored by means of a peer review mechanism.

<sup>19</sup> See note 18.

20. In all of the cases set out above, the existing agreement between the Contracting Jurisdictions, as set out in the bilateral tax treaty, is modified by the MLI. Accordingly, there is no difference in the legal functioning of the MLI provisions described in cases a) to d).

21. To accommodate different existing provisions in bilateral tax treaties and different policy preferences, the MLI allows for different forms of flexibility through a system of reservations<sup>20</sup> and notifications of choices between alternative provisions and choices to apply optional provisions. A jurisdiction's list of Covered Tax Agreements, reservations and notifications is submitted in the form of a completed template and constitutes the jurisdiction's "MLI Position".

22. In order to ensure that there is clarity and transparency about the modifications made by the MLI to bilateral treaties, the operation of the compatibility clauses described above is linked to notifications provided by the Contracting Jurisdictions to the bilateral treaty<sup>21</sup>. In cases a), b) and c) described above, the operation of the MLI provision requires the notification by both Contracting Jurisdictions to the bilateral treaty of the existence (cases a and b) or the absence (case c) of an existing provision. In case d), the MLI provision will apply in all cases regardless of whether there is an existing provision and regardless of the notifications made by the Contracting Jurisdictions. If both Contracting Jurisdictions notify the existence of a provision, the MLI provision will replace it. If the Contracting Jurisdictions do not notify the existence of a provision, the MLI provision will be added to the bilateral treaty. In the unlikely event that, in case d), there were to be an existing provision which has not been notified by both Contracting Jurisdictions, the MLI provision would supersede the existing provision to the extent that the two are incompatible. This again represents an application of the principle, reflected in Article 30(3) of the Vienna Convention on the Law of Treaties<sup>22</sup>, under which an earlier treaty between the same parties will apply only to the extent that its provisions are compatible with those of the later treaty.

## **G. Ratification and Domestic Implementation**

23. Ratification is an international act whereby a State establishes on the international plane<sup>23</sup> its consent to be bound by a treaty<sup>24</sup>. In order to proceed to ratification of the treaty, many countries will complete domestic processes in order to secure parliamentary approval for ratification<sup>25</sup>. In this way, the consent to the terms of a treaty by the executive branch of government (expressed by the signature of the treaty) is confirmed by the legislative branch of government. Once any ratification procedures are complete, ending with the deposit of the instrument of ratification, the State has consented to be bound by the terms of the treaty.

24. The process for ratification will vary depending on the jurisdiction's legal system and domestic requirements. For most jurisdictions, it will be necessary to seek parliamentary approval for the

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<sup>20</sup> An exhaustive list of authorised reservations to the MLI is set out in its Article 28(1). The only exception, as set out in Article 28(2), are reservations with regard to the scope of cases eligible for arbitration under Part VI of the MLI which can be formulated by a Party choosing to apply Part VI. See also paragraphs 264-270 of the Explanatory Statement to the MLI.

21. As set out in paragraph 15 of the Explanatory Statement to the MLI, "[i]t is expected that Parties would use their best efforts to identify all provisions [of the bilateral treaty] that are within the objective scope of the compatibility clause. It is not intended that Parties would choose to omit some relevant provisions while listing others."

22. See note 17

<sup>23</sup> meaning at the international "level"

24. Article 2(1)(b) of the 1969 Vienna Convention on the Law of Treaties, see note 16

<sup>25</sup> Some jurisdictions may not require parliamentary approval or have any formal process to accomplish before depositing their instrument of ratification of the MLI.

ratification of the MLI. It is expected that, for the purpose of ratification of the MLI, the parliament will only review the MLI itself and the jurisdiction's own MLI Position (i.e. the list of Covered Tax Agreements, reservations and notifications). Indeed, this is the standard approach for multilateral treaties which remain open for signature in the future, since a government does not know at the time of ratification which other jurisdictions will become parties to the treaty and what position they will take under the treaty. It is also part of the inherent design of the MLI: there is an "open offer" by a jurisdiction to its listed treaty partners to modify bilateral tax treaties in line with its MLI Position.

25. It is important to note that, irrespective of the MLI Position taken by its treaty partners, the modifications to the application of a jurisdiction's bilateral tax treaties can never go beyond the boundaries of the jurisdiction's own consent as defined in its MLI Position and with the consequences set out in the relevant provisions of the MLI. For instance, the application of a bilateral treaty concluded by the jurisdiction will not be modified unless it has been listed by that jurisdiction as a Covered Tax Agreement and an MLI provision will not modify the application of any of that jurisdiction's bilateral treaties if the jurisdiction has made a reservation opting out entirely of an MLI provision<sup>26</sup>. Accordingly, in ratifying the MLI, the jurisdiction consents to a possible set of modifications to the application of bilateral tax treaties and this consent is given independently of the MLI Positions which may be taken by its treaty partners. Nevertheless, jurisdictions may decide to present to parliament for information the MLI Position taken by their treaty partners which sign at the same time in order to facilitate an understanding of how those bilateral tax treaties are likely to be modified.

26. In considering the question of what legal steps are required in order to give effect to the MLI, it is important to distinguish the situation in public international law and in domestic law.

*a) What is the situation in public international law?*

27. In terms of public international law, the ratification of the MLI by both Contracting Jurisdictions to the bilateral treaty is all that is needed in public international law for the MLI to modify a Covered Tax Agreement. When the MLI has modified a tax treaty, the applicable rule in public international law terms would thus be "Article X of the bilateral tax treaty as modified by Article Y of the MLI". This answer in public international law is the same for all treaty partners irrespective of their domestic legal system.

*b) What is the situation in domestic law?*

28. In terms of domestic law, jurisdictions will have different methods for ensuring the implementation at the domestic level of the modifications made by the MLI to bilateral tax treaties. The method will depend on the legal framework which governs the implementation of international rights and obligations in each jurisdiction, e.g. whether the ratification of an international treaty automatically results in the integration of the rights and obligations set out in that treaty into domestic law (a "monist" system) or whether domestic legislation is required in order to transpose the rights and obligations in the treaty into domestic law (a "dualist" system). In the first case, changes to the rights and obligations of taxpayers may flow directly from the ratification of the MLI while, in the second case, such changes to the rights and obligations of taxpayers will generally flow from domestic legislation.

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<sup>26</sup> Article 28(3) of the MLI restates the principle reflected in Article 21(1) of the Vienna Convention on the Law of Treaties that, unless explicitly provided otherwise, a reservation made by one Party applies symmetrically and modifies the MLI provision to the same extent for both the reserving Party and the other Party.

29. The approach to the domestic implementation of the MLI will generally follow the way in which bilateral tax treaties themselves are implemented at the domestic level. In some jurisdictions, the reference to the applicable rule in domestic law will be directly to the bilateral treaty (typically in monist systems) while in other jurisdictions, the reference to the applicable rule in domestic law will be to domestic legislation which transposes the bilateral treaty (typically in dualist systems). Accordingly, when the MLI has modified a tax treaty, the reference to the applicable rule in domestic law may either be to the bilateral treaty itself as modified by the MLI (the same answer as in public international law terms) or it may be to domestic legislation which transposes the modifications made by the MLI to the bilateral treaty (hence a different answer in public international law terms and domestic law terms).

30. In the case in which there is domestic transposing legislation, that legislation can take different forms. In many cases, the legislation may reproduce the relevant provisions of the MLI in order to give them effect under domestic law. However, in a few cases, the domestic transposing legislation may “consolidate” into one single statute or set of statutory rules the provisions of the bilateral tax treaty with the modifications made by the MLI and, in order to prepare this domestic legislation, the jurisdiction may wish to consult with its treaty partner in order to ensure it has a correct understanding of how their “mutual consent” concerning the allocation of taxing rights (see section 5 above) has changed. However, this would not be an amended text of the bilateral treaty (which would be a legal instrument at the international level requiring ratification by both treaty partners) but rather a method for giving effect in domestic law to the specific changes in the “mutual consent” between the treaty partners.

31. It is important to note that, while the answer to question a) above is the same for all jurisdictions, the answer to question b) may well be different for each Contracting Jurisdiction to a bilateral tax treaty. In line with well-established treaty law and practice, it is not necessary for two treaty partners to adopt the same approach to the domestic implementation of a treaty, and the approach adopted will depend on their domestic legal system. Accordingly, it is not necessary for pairs of Contracting Jurisdictions to agree on a common approach for domestic implementation of the modifications made by the MLI to their tax treaty.

#### **H. Legal Requirements v. Methods to Ensure Clarity and Transparency**

32. As explained above, a few jurisdictions in the group which have a generally dualist system may “consolidate” the provisions of the MLI and the provisions of the bilateral tax treaty into one text for the purpose of transposing the modifications made by the MLI into their domestic law. However, it is important to distinguish what is *legally required* for the domestic implementation of the MLI and actions which may be appropriate *for policy reasons*, particularly in order to ensure clarity and transparency for tax administrations and taxpayers about the modifications made by the MLI to the bilateral tax treaty.

33. Only a few jurisdictions are likely to be under a strict domestic legal requirement to consolidate the provisions of the MLI and the provisions of the bilateral tax treaty for the purpose of legislation to transpose the MLI at the domestic level. However, other jurisdictions may well decide to produce consolidated versions of their bilateral tax treaties as modified by the MLI in order to ensure that tax administrations and taxpayers understand the ways in which the MLI has modified rights and obligations under the bilateral tax treaty. Such consolidated texts may also be produced by third parties, in particular, tax treaty database providers. Formally speaking, these consolidated texts will not be the applicable legal instruments between the treaty partners at the international

level (which would remain the bilateral treaty and the MLI).<sup>27</sup> Rather such texts would constitute practical tools to facilitate the understanding of the rights and obligations which now apply under the bilateral treaty as modified by the MLI. For this same purpose, jurisdictions may also decide not to produce consolidated texts *per se* but rather to produce guidance about the modifications made by the MLI.

34. In cases where consolidated texts or guidance are produced not as a domestic legal requirement but rather as a means of ensuring that tax administrations and taxpayers understand the applicable rights and obligations, there is no legal requirement as to the timing of issuance of such consolidated texts or guidance documents. Accordingly, the consolidated versions or guidance documents can be issued after ratification of the MLI, in particular since there is an in-built time delay before the entry into effect of the provisions of the MLI.<sup>28</sup> Moreover, in order to produce a consolidated version, it will be necessary to have the final version of both jurisdictions' MLI Positions which will only be available once both jurisdictions have ratified the MLI.

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*For further information, please contact the OECD Secretariat at [multilateralinstrument@oecd.org](mailto:multilateralinstrument@oecd.org)*

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<sup>27</sup> In certain circumstances, the consolidated texts could be considered as agreements between competent authorities under the procedure foreseen in bilateral tax treaties for resolution by mutual agreement of questions of interpretation or application of the tax treaty.

<sup>28</sup> Pursuant to Articles 34 and 35 of the MLI, the MLI enters into force after the expiry of a specified period following the deposit of the instrument of ratification and there is a further time delay before the entry into effect of the specific provisions of the MLI.



## Procès-Verbal of Signature

REPUBLIC OF LITHUANIA

Multilateral Convention to Implement Tax Treaty Related Measures  
to Prevent Base Erosion and Profit Shifting

On 7 June 2017, at the headquarters of the Organisation for Economic Co-operation and Development (OECD) in Paris, Mr Linas LINKEVIČIUS, Minister of Foreign Affairs, signed the:

*Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion  
and Profit Shifting, done at Paris on 24 November 2016*

Pursuant to Articles 28(7) and 29(4) of the Convention, the Republic of Lithuania provided, upon signature, a provisional list of expected reservations and notifications.

In witness whereof this procès-verbal has been drawn up and signed by Mr Nicola BONUCCI, Director for Legal Affairs of the OECD, in two copies, of which one will be deposited in the archives of the OECD and the other transmitted to the Republic of Lithuania.

The Director for Legal Affairs

Nicola BONUCCI

## **Republic of Lithuania**

### **Draft MLI Position (subject to the completion of our internal requirements)**

#### **Status of List of Reservations and Notifications at the Time of Signature**

##### ***For jurisdictions providing a provisional list:***

This document contains a provisional list of expected reservations and notifications to be made by Republic of Lithuania pursuant to Articles 28(7) and 29(4) of the Convention.

## Article 2 – Interpretation of Terms

### ***Notification - Agreements Covered by the Convention***

Pursuant to Article 2(1)(a)(ii) of the Convention, Republic of Lithuania wishes the following agreements to be covered by the Convention:

No	Title	Other Contracting Jurisdiction	Original/ Amending Instrument	Date of Signature	Date of Entry into Force
1	Convention between the Republic of Lithuania and the Republic of Armenia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Armenia	Original	13-03-2000	26-02-2001
2	Convention between Republic of Lithuania and Republic of Austria for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital	Austria	Original	06-04-2005	17-11-2005
3	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Azerbaijan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Azerbaijan	Original	02-04-2004	13-11- 2004
4	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Belarus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Belarus	Original	18-07-1995	26-06-1996
5	Convention between the Government of the Republic of Lithuania and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Belgium	Original	26-11-1998	05-05-2003
6	Convention between the Republic of Lithuania and the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Bulgaria	Original	09-05-2006	27-12-2006

7	Convention between the Government of the Republic of Lithuania and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Canada	Original	29-08-1996	12-12-1997
8	Agreement between the Government of the Republic of Lithuania and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	China	Original	03-06-1996	18-10-1996
9	Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Croatia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Croatia	Original	04-05-2000	30-03-2001
10	Convention between the Republic of Lithuania and the Czech Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Czech Republic	Original	27-10-1994	08-08-1995
11	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Cyprus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	Cyprus	Original	21-06- 2013	17-04- 2014
12	Convention between the Kingdom of Denmark and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Denmark	Original	13-10-1993	30-12-1993
13	Convention between the Republic of Estonia and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Estonia	Original	21-10-2004	08-02-2006
14	Convention between the Republic of Finland and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Finland	Original	30-04-1993	30-12-1993

15	Convention between the Government of the Republic of Lithuania and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	France	Original	07-07-1997	01-05-2001
16	Convention between the Republic of Lithuania And Georgia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Georgia	Original	11-09-2003	20-07-2004
17	Agreement between the Federal Republic of Germany and the Republic of Lithuania for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital	Germany	Original	22-07-1997	11-11-1998
18	Convention between the Government of The Republic of Lithuania and the Government of the Hellenic Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Greece	Original	15-05-2002	05-12-2005
19	Convention between the Republic of Lithuania and the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and on Capital	Hungary	Original	12-05-2004	22-12-2004
20	Convention between the Republic of Lithuania and the Republic of Iceland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Iceland	Original	13-06-1998	17-06-1999
21	Agreement between the Government of the Republic of Lithuania and the Government of the Republic of India for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	India	Original	26-07-2011	10-07-2012
22	Convention between the Government of Ireland and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains	Ireland	Original	18-11-1997	05-06-1998

23	Convention between the Government of the Republic of Lithuania and the Government of the State of Israel for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income And on Capital	Israel	Original	11-05-2006	01-12-2006
24	Convention between the Government of the Republic of Lithuania and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion	Italy	Original	04-04-1996	03-06-1999
25	Convention between the Republic of Lithuania and the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Kazakhstan	Original	07-03- 1997	11-12- 1997
26	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Korea	Original	20-04-2006	14-07-2007
27	Agreement between the Government of the Republic of Lithuania and the Government of the State of Kuwait for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	Kuwait	Original	18-04-2013	-
28	Agreement between the Government of the Republic of Lithuania and the Government of the Kyrgyz Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Kyrgyzstan	Original	15-05-2008	20-06-2013
29	Convention between the Republic of Latvia and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Latvia	Original	17-12-1993	30-12-1994
30	Convention between the Government of the Republic of	Luxembourg	Original	22-11-2004	14-04-2006

	Lithuania and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and on Capital		Amending Instrument	20-06-2014	11-12-2015
31	Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Macedonia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Macedonia	Original	29-08-2007	27-08-2008
32	Convention between the Government of Malta and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	Malta	Original	17-05-2001	02-02-2004
33	Convention between the Government of the Republic of Lithuania and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Mexico	Original	23-02-2012	29-11-2012
34	Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Moldova for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Moldova	Original	18-02- 1998	07-09- 1998
35	Convention between the Government of the Republic of Lithuania and the Government of the Kingdom of Morocco for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Morocco	Original	19-04-2013	-
36	Convention between the Kingdom of the Netherlands and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Netherlands	Original	16-06-1999	31-08-2000
37	Convention between the Kingdom of Norway and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Norway	Original	27-04-1993	30-12-1993

38	Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Poland	Original	20-01-1994	19-07-1994
39	Convention between the Portuguese Republic and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Portugal	Original	14-02-2002	26-02-2003
40	Convention between the Republic of Lithuania and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Romania	Original	26-11-2001	15-07-2002
41	Agreement between the Government of the Russian Federation and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Russia	Original	29-06-1999	05-05-2005
42	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Serbia for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital	Serbia	Original	28-08- 2007	12-06- 2009
43	Agreement between the Government of the Republic of Lithuania and the Government of The Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	Singapore	Original	18-11-2003	28-06-2004
44	Convention between the Republic of Lithuania and the Slovak Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Slovakia	Original	15-03-2001	16-12-2002
45	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Slovenia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Slovenia	Original	23-05-2000	01-02-2002

46	Convention between the Kingdom of Spain and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Spain	Original	22-07-2003	26-12-2003
47	Convention between the Kingdom of Sweden and the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Sweden	Original	27-09-1993	30-12-1993
48	Convention between the Government of the Republic of Lithuania and the Swiss Federal Council for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital	Switzerland	Original	27-05-2002	18-12-2002
49	Agreement between the Government of the Republic of Lithuania and the Government of The Republic of Turkey For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	Turkey	Original	24-11-1998	17-05-2000
50	Agreement between the Government of the Republic of Lithuania and the Government of Turkmenistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Turkmenistan	Original	18-06-2013	10-12-2014
51	Convention between the Government of the Republic of Lithuania and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital	Ukraine	Original	23-09- 1996	25-12- 1997
52	Agreement between Government of the Republic of Lithuania and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income	United Arab Emirates	Original	30-06-2013	19-12-2014
53	Convention between the Government of the Republic of Lithuania and the Government of the United Kingdom of Great Britain And Northern Ireland For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on	United Kingdom	Original	19-03-2001	04-02-2002

	Capital Gains		Amending Instrument	21-05-2002	28-11-2002
54	Convention between the Government of the United States of America and the Government of the Republic of Lithuania For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income	United States	Original	15-01-1998	30-12-1999
55	Convention between the Government of the Republic of Lithuania and the Government of the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital	Uzbekistan	Original	18-02-2002	11-11-2002

### Article 3 – Transparent Entities

#### *Reservation*

Pursuant to Article 3(5)(a) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 3 not to apply to its Covered Tax Agreements.

### Article 4 – Dual Resident Entities

#### *Reservation*

Pursuant to Article 4(3)(a) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 4 not to apply to its Covered Tax Agreements.

### Article 6 – Purpose of a Covered Tax Agreement

#### *Notification of Existing Preamble Language in Listed Agreements*

Pursuant to Article 6(5) of the Convention, Republic of Lithuania considers that the following agreements are not within the scope of a reservation under Article 6(4) and contain preamble language described in Article 6(2). The text of the relevant preambular paragraph is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Preamble Text
1	Armenia	< proceeding from the intention to promote and strengthen economical, scientific, technical and cultural relations between both Contracting States and> in order to avoid double taxation and prevent fiscal evasion with respect to taxes on income and on capital and exclude tax discrimination, <decided to conclude this Convention>
2	Austria	desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,

3	Azerbaijan	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
4	Belarus	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
5	Belgium	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
6	Bulgaria	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital <in order to promote and strengthen the economic relations between the two States,>
7	Canada	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
8	China	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
9	Croatia	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
10	Czech Republic	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
11	Cyprus	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
12	Denmark	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
13	Estonia	wishing to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
14	Finland	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
15	France	désireux de conclure une Convention en vue d'éviter les doubles impositions et de prévenir l'évasion et la fraude fiscales en matière d'impôts sur le revenu et sur la fortune,
16	Georgia	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
18	Greece	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
19	Hungary	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
20	Iceland	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
21	India	desiring to conclude an Agreement for the avoidance of double

		taxation and prevention of fiscal evasion with respect to taxes on income and on capital <and with a view to promoting economic cooperation between the two Contracting States>,
22	Ireland	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains,
23	Israel	DESIRING to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
24	Italy	Desiring to conclude a Convention to avoid double taxation with respect to taxes on income and on capital and to prevent fiscal evasion,
25	Kazakhstan	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
26	Korea	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
27	Kuwait	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
28	Kyrgyzstan	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
29	Latvia	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
30	Luxembourg	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
31	Macedonia	desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
32	Malta	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
33	Mexico	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
34	Moldova	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
35	Morocco	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
36	Netherlands	Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
37	Norway	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
38	Poland	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to

		taxes on income and on capital,
39	Portugal	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
40	Romania	desiring <to promote and strengthen the economic relations> by concluding a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
41	Russia	desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital <and with a view to promote economic cooperation between the two states>,
42	Serbia	Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,
43	Singapore	Desiring to conclude Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
44	Slovakia	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
45	Slovenia	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
46	Spain	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
47	Sweden	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
48	Switzerland	Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,
49	Turkey	Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
50	Turkmenistan	desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
51	Ukraine	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, <And confirming their endeavour to the development and deepening of mutual economic relations,>
52	United Arab Emirates	Desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income,
53	United Kingdom	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;
54	United States	desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
55	Uzbekistan	Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to

		taxes on income <and on capital and with a view to promote economic cooperation between the two countries>,
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## **Article 7 – Prevention of Treaty Abuse**

### ***Notification of Choice of Optional Provisions***

Pursuant to Article 7(17)(b) of the Convention, Republic of Lithuania hereby chooses to apply Article 7(4).

### ***Notification of Existing Provisions in Listed Agreements***

Pursuant to Article 7(17)(a) of the Convention, Republic of Lithuania considers that the following agreements are not subject to a reservation under Article 7(15)(b) and contain a provision described in Article 7(2). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
5	Belgium	Article 29
7	Canada	Article 28(3)
13	Estonia	Article 30
21	India	Article 30(1)
24	Italy	Article 30(1)
25	Kazakhstan	Article (28)
29	Latvia	Article (30)
31	Macedonia	Article 28
32	Malta	Article 27(3)
33	Mexico	Article 23
36	Netherlands	Article 10(8)
41	Russia	Article 28
43	Singapore	Article 22(3), (4)
	Ukraine	Article 25
52	United Arab Emirates	Article 30
53	United Kingdom	Articles 10(6), 11(8), 12(7), 22 (4), 25(2)
55	Uzbekistan	Article 28

## **Article 8 – Dividend Transfer Transactions**

### ***Reservation***

Pursuant to Article 8(3)(a) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 8 not to apply to its Covered Tax Agreements.

## **Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property**

### ***Reservation***

Pursuant to Article 9(6)(a) of the Convention, Republic of Lithuania reserves the right for Article 9(1) not to apply to its Covered Tax Agreements.

## **Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions**

### ***Reservation***

Pursuant to Article 10(5)(a) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 10 not to apply to its Covered Tax Agreements.

### **Article 11 – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents**

#### ***Reservation***

Pursuant to Article 11(3)(a) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 11 not to apply to its Covered Tax Agreements.

### **Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies**

#### ***Notification of Existing Provisions in Listed Agreements***

Pursuant to Article 12(5) of the Convention, Republic of Lithuania considers that the following agreements contain a provision described in Article 12(3)(a). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 5(5)
2	Austria	Article 5(5)
3	Azerbaijan	Article 5(5)
4	Belarus	Article 5(5)
5	Belgium	Article 5(5)
6	Bulgaria	Article 5(5)
7	Canada	Article 5(5)
8	China	Article 5(5)
9	Croatia	Article 5(5)
10	Czech Republic	Article 5(5)
11	Cyprus	Article 5(5)
12	Denmark	Article 5(5)
13	Estonia	Article 5(5)
14	Finland	Article 5(5)
15	France	Article 5(5)
16	Georgia	Article 5(5)
17	Germany	Article 5(5)
18	Greece	Article 5(5)
19	Hungary	Article 5(5)
20	Iceland	Article 5(5)
21	India	Article 5(5) (a)
22	Ireland	Article 5(5)
23	Israel	Article 5(5)
24	Italy	Article 5(4)
25	Kazakhstan	Article 5(5)
26	Korea	Article 5(5)
27	Kuwait	Article 5(5)
28	Kyrgyzstan	Article 5(5)
29	Latvia	Article 5(5)
30	Luxembourg	Article 5(5)
31	Macedonia	Article 5(5)

32	Malta	Article 5(5)
33	Mexico	Article 5(5)
34	Moldova	Article 5(5)
35	Morocco	Article 5(5)
36	Netherlands	Article 5(5)
37	Norway	Article 5(5)
38	Poland	Article 5(5)
39	Portugal	Article 5(5)
40	Romania	Article 5(6)
41	Russia	Article 5(5)
42	Serbia	Article 5(5)
43	Singapore	Article 5(5)
44	Slovakia	Article 5(5)
45	Slovenia	Article 5(5)
46	Spain	Article 5(5)
47	Sweden	Article 5(5)
48	Switzerland	Article 5(5)
49	Turkey	Article 5(5)
50	Turkmenistan	Article 5(5)
51	Ukraine	Article 5(5)
52	United Arab Emirates	Article 5(6)
53	United Kingdom	Article 5(5)
54	United States	Article 5(5)
55	Uzbekistan	Article 5(5)

Pursuant to Article 12(6) of the Convention, Republic of Lithuania considers that the following agreements contain a provision described in Article 12(3)(b). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 5(6)
2	Austria	Article 5(6)
3	Azerbaijan	Article 5(6)
4	Belarus	Article 5(6)
5	Belgium	Article 5(6)
6	Bulgaria	Article 5(6)
7	Canada	Article 5(6)
8	China	Article 5(6)
9	Croatia	Article 5(6)
10	Czech Republic	Article 5(6)
11	Cyprus	Article 5(6)
12	Denmark	Article 5(6)
13	Estonia	Article 5(6)
14	Finland	Article 5(6)
15	France	Article 5(6)
16	Georgia	Article 5(6)
17	Germany	Article 5(6)
18	Greece	Article 5(6)
19	Hungary	Article 5(6)
20	Iceland	Article 5(6)
21	India	Article 5(6)
22	Ireland	Article 5(6)
23	Israel	Article 5(6)

24	Italy	Article 5(5)
25	Kazakhstan	Article 5(6)
26	Korea	Article 5(6)
27	Kuwait	Article 5(6)
28	Kyrgyzstan	Article 5(6)
29	Latvia	Article 5(6)
30	Luxembourg	Article 5(6)
31	Macedonia	Article 5(6)
32	Malta	Article 5(6)
33	Mexico	Article 5(6)
34	Moldova	Article 5(6)
35	Morocco	Article 5(6)
36	Netherlands	Article 5(6)
37	Norway	Article 5(6)
38	Poland	Article 5(6)
39	Portugal	Article 5(6)
40	Romania	Article 5(7)
41	Russia	Article 5(6)
42	Serbia	Article 5(6)
43	Singapore	Article 5(6)
44	Slovakia	Article 5(6)
45	Slovenia	Article 5(6)
46	Spain	Article 5(6)
47	Sweden	Article 5(6)
48	Switzerland	Article 5(6)
49	Turkey	Article 5(6)
50	Turkmenistan	Article 5(6)
51	Ukraine	Article 5(6)
52	United Arab Emirates	Article 5(7)
53	United Kingdom	Article 5(6)
54	United States	Article 5(6)
55	Uzbekistan	Article 5(6)

### **Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions**

#### ***Notification of Choice of Optional Provisions***

Pursuant to Article 13(7) of the Convention, Republic of Lithuania hereby chooses to apply Option B under Article 13(1).

#### ***Notification of Existing Provisions in Listed Agreements***

Pursuant to Article 13(7) of the Convention, Republic of Lithuania considers that the following agreements contain a provision described in Article 13(5)(a). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 5(4)
2	Austria	Article 5(4)
3	Azerbaijan	Article 5(4)
4	Belarus	Article 5(4)
5	Belgium	Article 5(4)

6	Bulgaria	Article 5(4)
7	Canada	Article 5(4)
8	China	Article 5(4)
9	Croatia	Article 5(4)
10	Czech Republic	Article 5(4)
11	Cyprus	Article 5(4)
12	Denmark	Article 5(4)
13	Estonia	Article 5(4)
14	Finland	Article 5(4)
15	France	Article 5(4)
16	Georgia	Article 5(4)
17	Germany	Article 5(4)
18	Greece	Article 5(4)
19	Hungary	Article 5(4)
20	Iceland	Article 5(4)
21	India	Article 5(4)
22	Ireland	Article 5(4)
23	Israel	Article 5(4)
24	Italy	Article 5(3)
25	Kazakhstan	Article 5(4)
26	Korea	Article 5(4)
27	Kuwait	Article 5(4)
28	Kyrgyzstan	Article 5(4)
29	Latvia	Article 5(4)
30	Luxembourg	Article 5(4)
31	Macedonia	Article 5(4)
32	Malta	Article 5(4)
33	Mexico	Article 5(4)
34	Moldova	Article 5(4)
35	Morocco	Article 5(4)
36	Netherlands	Article 5(4)
37	Norway	Article 5(4)
38	Poland	Article 5(4)
39	Portugal	Article 5(4)
40	Romania	Article 5(4)
41	Russia	Article 5(4)
42	Serbia	Article 5(4)
43	Singapore	Article 5(4)
44	Slovakia	Article 5(4)
45	Slovenia	Article 5(4)
46	Spain	Article 5(4)
47	Sweden	Article 5(4)
48	Switzerland	Article 5(4)
49	Turkey	Article 5(4)
50	Turkmenistan	Article 5(4)
51	Ukraine	Article 5(4)
52	United Arab Emirates	Article 5(5)
53	United Kingdom	Article 5(4)
54	United States	Article 5(4)
55	Uzbekistan	Article 5(4)

#### Article 14 – Splitting-up of Contracts

## Reservation

Pursuant to Article 14(3)(b) of the Convention, Republic of Lithuania reserves the right for the entirety of Article 14 not to apply with respect to provisions of its Covered Tax Agreements relating to the exploration for or exploitation of natural resources. The following agreements contain provisions that are within the scope of this reservation.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 5(3b)
2	Austria	Article 21
3	Azerbaijan	Article 21
5	Belgium	Article 21
6	Bulgaria	Article 5 (3c)
7	Canada	Article 29
8	China	Article 22
9	Croatia	Article 21
11	Cyprus	Article 21
12	Denmark	Article 21
13	Estonia	Article 29
14	Finland	Article 21
16	Georgia	Article 21
17	Germany	Article 20a
18	Greece	Article 21
19	Hungary	Article 5(b)
20	Iceland	Article 21
21	India	Article 5(c)
22	Ireland	Article 22
23	Israel	Article 5 (3b)
24	Italy	Article 22
25	Kazakhstan	Article 21
27	Kuwait	Article 5(3c)
28	Kyrgyzstan	Article 21
29	Latvia	Article 29
30	Luxembourg	Article 21
31	Macedonia	Article 5(3c)
32	Malta	Article 21
33	Mexico	Article 21
34	Moldova	Article 5 (3b)
35	Morocco	Article 5(3c)
36	Netherlands	Article 25
37	Norway	Article 21
38	Poland	Article 22
39	Portugal	Article 22
40	Romania	Protocol
41	Russia	Article 21
42	Serbia	Article 5 (3 (2))
43	Slovakia	Protocol (para. III)
44	Slovenia	Article 5 (3b)
46	Spain	Article 21
47	Sweden	Article 21
51	Ukraine	Article 21
52	United Arab Emirates	Article 22
53	United Kingdom	Article 23

54	United States	Article 21
55	Uzbekistan	Article 21

## Article 16 – Mutual Agreement Procedure

### *Notification of Existing Provisions in Listed Agreements*

Pursuant to Article 16(6)(a) of the Convention, Republic of Lithuania considers that the following agreements contain a provision described in Article 16(4)(a)(i). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 25(1), first sentence
2	Austria	Article 26(1), first sentence
3	Azerbaijan	Article 26(1), first sentence
4	Belarus	Article 24(1), first sentence
5	Belgium	Article 25(1), first sentence
6	Bulgaria	Article 26(1), first sentence
7	Canada	Article 25(1), first sentence
8	China	Article 27(1), first sentence
9	Croatia	Article 25(1), first sentence
10	Czech Republic	Article 25(1), first sentence
11	Cyprus	Article 25(1), first sentence
12	Denmark	Article 26(1), first sentence
13	Estonia	Article 25(1), first sentence
14	Finland	Article 26(1), first sentence
15	France	Article 25(1), first sentence
16	Georgia	Article 26(1), first sentence
17	Germany	Article 25(1), first sentence
18	Greece	Article 26(1), first sentence
19	Hungary	Article 25(1), first sentence
20	Iceland	Article 26(1), first sentence
21	India	Article 26(1), first sentence
22	Ireland	Article 25(1), first sentence
23	Israel	Article 25(1), first sentence
24	Italy	Article 27(1), first sentence
25	Kazakhstan	Article 26(1), first sentence
26	Korea	Article 25(1), first sentence
27	Kuwait	Article 25(1), first sentence
28	Kyrgyzstan	Article 25(1), first sentence
29	Latvia	Article 25(1), first sentence
30	Luxembourg	Article 26(1), first sentence
31	Macedonia	Article 25(1), first sentence
32	Malta	Article 25(1), first sentence
33	Mexico	Article 26(1), first sentence
34	Moldova	Article 25(1), first sentence
35	Morocco	Article 25(1), first sentence
36	Netherlands	Article 27(1), first sentence
37	Norway	Article 26(1), first sentence
38	Poland	Article 27(1), first sentence
39	Portugal	Article 26(1), first sentence
40	Romania	Article 27(1), first sentence
41	Russia	Article 26(1), first sentence

42	Serbia	Article 26(1), first sentence
43	Singapore	Article 25(1), first sentence
44	Slovakia	Article 25(1), first sentence
45	Slovenia	Article 26(1), first sentence
46	Spain	Article 26(1), first sentence
47	Sweden	Article 26(1), first sentence
48	Switzerland	Article 25(1), first sentence
49	Turkey	Article 24(1), first sentence
50	Turkmenistan	Article 25(1), first sentence
51	Ukraine	Article 27(1), first sentence
52	United Arab Emirates	Article 26(1), first sentence
53	United Kingdom	Article 28(1)
54	United States	Article 26(1), first sentence
55	Uzbekistan	Article 26(1), first sentence

Pursuant to Article 16(6)(b)(i) of the Convention, Republic of Lithuania considers that the following agreement contains a provision that provides that a case referred to in the first sentence of Article 16(1) must be presented within a specific time period that is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
7	Canada	Article 25(1), second sentence

Pursuant to Article 16(6)(b)(ii) of the Convention, Republic of Lithuania considers that the following agreements contain a provision that provides that a case referred to in the first sentence of Article 16(1) must be presented within a specific time period that is at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Covered Tax Agreement. The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 25(1), second sentence
2	Austria	Article 26(1), second sentence
3	Azerbaijan	Article 26(1), second sentence
4	Belarus	Article 24(1), second sentence
5	Belgium	Article 25(1), second sentence
6	Bulgaria	Article 26(1), second sentence
8	China	Article 27(1), second sentence
9	Croatia	Article 25(1), second sentence
10	Czech Republic	Article 25(1), second sentence
11	Cyprus	Article 25(1), second sentence
12	Denmark	Article 26(1), second sentence
13	Estonia	Article 25(1), second sentence
14	Finland	Article 26(1), second sentence
15	France	Article 25(1), second sentence
16	Georgia	Article 26(1), second sentence
17	Germany	Article 25(1), second sentence
18	Greece	Article 26(1), second sentence
19	Hungary	Article 25(1), second sentence
20	Iceland	Article 26(1), second sentence
21	India	Article 26(1), second sentence
22	Ireland	Article 25(1), second sentence
23	Israel	Article 25(1), second sentence

24	Italy	Article 27(1), second sentence
25	Kazakhstan	Article 26(1), second sentence
26	Korea	Article 25(1), second sentence
27	Kuwait	Article 25(1), second sentence
28	Kyrgyzstan	Article 25(1), second sentence
29	Latvia	Article 25(1), second sentence
30	Luxembourg	Article 26(1), second sentence
31	Macedonia	Article 25(1), second sentence
32	Malta	Article 25(1), second sentence
33	Mexico	Article 26(1), second sentence
34	Moldova	Article 25(1), second sentence
35	Morocco	Article 25(1), second sentence
36	Netherlands	Article 27(1), second sentence
37	Norway	Article 26(1), second sentence
38	Poland	Article 27(1), second sentence
39	Portugal	Article 26(1), second sentence
40	Romania	Article 27(1), second sentence
41	Russia	Article 26(1), second sentence
42	Serbia	Article 26(1), second sentence
43	Singapore	Article 25(1), second sentence
44	Slovakia	Article 25(1), second sentence
45	Slovenia	Article 26(1), second sentence
46	Spain	Article 26(1), second sentence
47	Sweden	Article 26(1), second sentence
48	Switzerland	Article 25(1), second sentence
49	Turkey	Article 24(1), second sentence
50	Turkmenistan	Article 25(1), second sentence
51	Ukraine	Article 27(1), second sentence
52	United Arab Emirates	Article 26(1), second sentence
54	United States	Article 26(1), second sentence
55	Uzbekistan	Article 26(1), second sentence

Pursuant to Article 16(6)(c)(ii) of the Convention, Republic of Lithuania considers that the following agreements do not contain a provision described in Article 16(4)(b)(ii).

Listed Agreement Number	Other Contracting Jurisdiction
7	Canada
24	Italy
33	Mexico
48	Switzerland
53	United Kingdom

Pursuant to Article 16(6)(d)(ii) of the Convention, Republic of Lithuania considers that the following agreements do not contain a provision described in Article 16(4)(c)(ii).

Listed Agreement Number	Other Contracting Jurisdiction
5	Belgium
22	Ireland
24	Italy
51	Ukraine
53	United Kingdom

## Article 17 – Corresponding Adjustments

### *Notification of Existing Provisions in Listed Agreements*

Pursuant to Article 17(4) of the Convention, Republic of Lithuania considers that the following agreements contain a provision described in Article 17(2). The article and paragraph number of each such provision is identified below.

Listed Agreement Number	Other Contracting Jurisdiction	Provision
1	Armenia	Article 9(2)
2	Austria	Article 9(2)
3	Azerbaijan	Article 9(2)
4	Belarus	Article 9(2)
5	Belgium	Article 9(2)
6	Bulgaria	Article 9(2)
7	Canada	Article 9(2)
8	China	Article 9(2)
9	Croatia	Article 9(2)
11	Cyprus	Article 9(2)
12	Denmark	Article 9(2)
13	Estonia	Article 9(2)
14	Finland	Article 9(2)
15	France	Article 9(2)
16	Georgia	Article 9(2)
18	Greece	Article 9(2)
19	Hungary	Article 9(2)
20	Iceland	Article 9(2)
21	India	Article 9(2)
22	Ireland	Article 9(2)
23	Israel	Article 9(2)
24	Italy	Protocol (g)
25	Kazakhstan	Article 9(2)
26	Korea	Article 9(2)
27	Kuwait	Article 9(2)
28	Kyrgyzstan	Article 9(2)
29	Latvia	Article 9(2)
30	Luxembourg	Article 9(2)
31	Macedonia	Article 9(2)
32	Malta	Article 9(2)
33	Mexico	Article 9(2)
34	Moldova	Article 9(2)
35	Morocco	Article 9(2)
36	Netherlands	Article 9(2)
37	Norway	Article 9(2)
38	Poland	Article 9(2)
39	Portugal	Article 9(2)
40	Romania	Article 9(2)
41	Russia	Article 9(2)
42	Serbia	Article 9(2)
43	Singapore	Article 9(2)
44	Slovakia	Article 9(2)
45	Slovenia	Article 9(2)
46	Spain	Article 9(2)

47	Sweden	Article 9(2)
48	Switzerland	Article 9(2)
49	Turkey	Article 9(2)
50	Turkmenistan	Article 9(2)
51	Ukraine	Article 9(2)
52	United Arab Emirates	Article 9(2)
53	United Kingdom	Article 9(2)
54	United States	Article 9(2)
55	Uzbekistan	Article 9(2)



## LIETUVOS RESPUBLIKOS TEISINGUMO MINISTERIJA

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Duomenys kaupiami ir saugomi Juridinių asmenų registre, kodas 188604955

Lietuvos Respublikos finansų ministerijai

2017-12- Nr.

I 2017-11-30 Nr. (14.36-01)-6K-1707074

### **DĖL TEISĖS AKTŲ PROJEKTŲ DĖL DAUGIAŠALĖS KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI, RATIFIKAVIMO**

Teisingumo ministerija, pagal kompetenciją išnagrinėjusi Finansų ministerijos pateiktus derinti Lietuvos Respublikos įstatymo „Dėl Daugiašalės Konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo“ (toliau – Įstatymas) projektą, Lietuvos Respublikos Prezidento dekreto „Dėl teikimo Lietuvos Respublikos Seimui ratifikuoti Daugiašalę Konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ (toliau – Dekretas) projektą bei Lietuvos Respublikos Vyriausybės nutarimo „Dėl kreipimosi į Respublikos Prezidentą su prašymu pateikti Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektą, teikia šias pastabas dėl pateiktų derinti teisės aktų projektų numatomo teisinio reguliavimo priemonių ir teisės technikos.

1. Dekreto projekto 2 straipsnyje vietoj žodžio „pateiks“ įrašytinas – „pristatys“.
2. Vadovaujantis Lietuvos Respublikos tarptautinių sutarčių rengimo ir sudarymo taisyklių, patvirtintų Lietuvos Respublikos Vyriausybės 2001 m. spalio 1 d. nutarimu Nr. 1179 „Dėl Lietuvos Respublikos tarptautinių sutarčių rengimo ir sudarymo taisyklių patvirtinimo“, 20 punkto nuostatomis bei siekiant teisinio aiškumo ir apibrėžtumo, siūlytina teikiamų derinti teisės aktų projektų nuostatose vietoj žodžio „pranešimai“ vartoti – „pareiškimai“. Be to, Įstatymo projekto priedo nuostatose vietoj formuluočių „Lietuvos Respublika pageidauja“, „Lietuvos Respublika teigia“, „Lietuvos Respublika nutaria“ siūlytina vartoti formuluotę „Lietuvos Respublika pareiškia, kad [...]“, o Įstatymo projekto priedo nuostatose esantį žodį „pranešimas“ keisti į – „pareiškimas“.

Teisingumo viceministras  
Ruseckas

Giedrius

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Originalas nebus siunčiamas



## LIETUVOS RESPUBLIKOS UŽSIENIO REIKALŲ MINISTERIJA

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Finansų ministerijai

2017-12-19 Nr. (22.23)3-6456

I 2017-11-30 Nr. (14.36-01)-6K-1707074

### **DĖL TEISĖS AKTŲ PROJEKTŲ DĖL DAUGIAŠALĖS KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI, RATIFIKAVIMO**

Užsienio reikalų ministerijoje išnagrinėjome pateiktus derinti teisės aktų projektus (Lietuvos Respublikos Vyriausybės nutarimo, Lietuvos Respublikos Prezidento dekreto ir Lietuvos Respublikos įstatymo) dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, (toliau – Konvencija) ratifikavimo, taip pat susipažinome su kitų institucijų pateiktomis išvadomis.

Informuojame, kad minėtiems teisės aktų projektams iš esmės pritariame, tačiau siūlome pagal galimybes atsižvelgti į Teisingumo ministerijos pateiktas pastabas, ypač kiek tai susiję su termino „pareiškimas“ vartojimu vietoje termino „pranešimas“. Įvertindami tai, kad Lietuvos Respublikos teisės aktuose vartojamas pirmasis terminas, o pačios Konvencijos 29 straipsnyje – antrasis, ir siekdami užtikrinti, kad depozitarui teikiami Konvencijos ratifikavimo dokumentai atitiktų Konvencijos keliamus reikalavimus, siūlome:

- teisės aktų projektuose vietoje žodžių „su Lietuvos Respublikos išlygomis ir pranešimais“ rašyti žodžius „su išlygomis ir pareiškimais“, ir dėstyti juos po žodžio „ratifikuoti“ (ar „ratifikuoja“);
- įstatymo projekte įterpti naują 2 straipsnį „Lietuvos Respublikos išlygos ir pareiškimai“, ir jį išdėstyti taip: „Vadovaudamasis Konvencijos 28 straipsnio 7 dalimi ir Konvencijos 29 straipsnio 4 dalimi, Lietuvos Respublikos Seimas pareiškia, kad Lietuvos Respublika taikys išlygas ir teiks pareiškimus (Konvencijoje nustatyta pranešimų forma), išdėstytus šio įstatymo priede“.
- įstatymo projekto priede palikti terminą „pranešimas“, kaip vartojama Konvencijoje.

Ministerijos kanclerė

Jūratė Raguckienė

A. Dambrauskas, 870652217, [aleksas.dambrauskas@urm.lt](mailto:aleksas.dambrauskas@urm.lt)



**EUROPOS TEISĖS DEPARTAMENTAS  
PRIE LIETUVOS RESPUBLIKOS TEISINGUMO MINISTERIJOS**

Biudžetinė įstaiga, Vilniaus g. 23-7A, LT-01402 Vilnius, tel. 8 706 63 687, faks. 8 706 63 679,  
el. p. [etd@etd.lt](mailto:etd@etd.lt). Duomenys kaupiami ir saugomi Juridinių asmenų registre, kodas 188600362

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Lietuvos Respublikos finansų ministerijai

2017-12-

Nr.

į 2017-11-30

Nr. (14.36-01)-6K-1707074

**DĖL TEISĖS AKTŲ PROJEKTŲ DĖL DAUGIAŠALĖS KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO PERKĖLIMUI RATIFIKAVIMO**

Išnagrinėję Lietuvos Respublikos finansų ministerijos 2017 m. lapkričio 30 d. raštu Nr. (14.36-01)-6K-1707074 pateiktus derinti Lietuvos Respublikos įstatymo dėl Daugiašalės Konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui, ratifikavimo projektą, Lietuvos Respublikos Prezidento dekreto „Dėl teikimo Lietuvos Respublikos Seimui ratifikuoti Daugiašalę Konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektą bei Lietuvos Respublikos Vyriausybės nutarimo „Dėl kreipimosi į Respublikos Prezidentą su prašymu pateikti Lietuvos Respublikos Seimui ratifikuoti Daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projektą, pažymime, kad pagal kompetenciją pastabų ir pasiūlymų pateiktiems derinti teisės aktų projektams neturime.

Generalinio direktoriaus pavaduotojas

Karolis Dieninis

**LIETUVOS RESPUBLIKOS VYRIAUSYBĖS KANCELIARIJA  
TEISĖS GRUPĖ**

**IŠVADA**

**DĖL LIETUVOS RESPUBLIKOS ĮSTATYMO „DĖL DAUGIAŠALĖS  
KONVENCIJOS, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS  
SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS  
EROZIJAI IR PELNO PERKĖLIMUI RATIFIKAVIMO“ PROJEKTO, LIETUVOS  
RESPUBLIKOS PREZIDENTO DEKRETO „DĖL TEIKIMO LIETUVOS  
RESPUBLIKOS SEIMUI RATIFIKUOTI DAUGIAŠALĘ KONVENCIJĄ, KURIA  
ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS SUSIJUSIOS PRIEMONĖS,  
SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS EROZIJAI IR PELNO  
PERKĖLIMUI“ PROJEKTO IR LIETUVOS RESPUBLIKOS VYRIAUSYBĖS  
NUTARIMO „DĖL KREIPIMOSI Į RESPUBLIKOS PREZIDENTĄ SU PRAŠYMU  
PATEIKTI LIETUVOS RESPUBLIKOS SEIMUI RATIFIKUOTI DAUGIAŠALĘ  
KONVENCIJĄ, KURIA ĮGYVENDINAMOS SU MOKESČIŲ SUTARTIMIS  
SUSIJUSIOS PRIEMONĖS, SKIRTOS UŽKIRSTI KELIĄ MOKESČIŲ BAZĖS  
EROZIJAI IR PELNO PERKĖLIMUI“ PROJEKTO**

**(TAP Nr. 18-14; TAIS Nr. 17-13846(2))**

2018-01-11 Nr.NV-124

Vilnius

Įvertinę Lietuvos Respublikos įstatymo „Dėl Daugiašalės konvencijos, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui ratifikavimo“ projekto, Lietuvos Respublikos Prezidento dekreto „Dėl teikimo Lietuvos Respublikos Seimui ratifikuoti daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projekto ir Lietuvos Respublikos Vyriausybės nutarimo „Dėl kreipimosi į Respublikos Prezidentą su prašymu pateikti Lietuvos Respublikos Seimui ratifikuoti daugiašalę konvenciją, kuria įgyvendinamos su mokesčių sutartimis susijusios priemonės, skirtos užkirsti kelią mokesčių bazės erozijai ir pelno perkėlimui“ projekto atitiktį Konstitucijai, įstatymams, Vyriausybės nutarimams bei teisės technikos reikalavimams, pastabų ir pasiūlymų neturime.

Teisės grupės vyresnioji patarėja

Ieva Peciukonienė

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