

**SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN  
THE PEOPLE’S REPUBLIC OF CHINA AND ROMANIA FOR THE  
ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON  
INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the People’s Republic of China and Romania for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance signed on 4 July, 2016 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the People’s Republic of China on 7 June, 2017 and by Romania on 7 June, 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the People’s Republic of China submitted to the Depositary upon approval on 25 May, 2022 and of the MLI position of Romania submitted to the Depositary upon ratification on 28 February, 2022. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

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

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

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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

**References**

The authentic legal texts of the MLI and the Agreement can be found on the webpage of

the State Taxation Administration of the People's Republic of China.

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

The MLI position of the People's Republic of China submitted to the Depositary upon approval on 25 May, 2022 and the MLI position of Romania submitted to the Depositary upon ratification on 28 February, 2022 can be found on the MLI Depositary (OECD) webpage.

(<http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>)

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

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

Dates of the deposit of instruments of ratification, acceptance or approval: 25 May, 2022 for the People's Republic of China and 28 February, 2022 for Romania.

Entry into force of the MLI: 1 September, 2022 for the People's Republic of China and 1 June, 2022 for Romania.

In accordance with paragraphs 1 and 7 of Article 35 of the MLI, the provisions of the MLI have effect with respect to this the application of this Agreement by the People's Republic of China:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January, 2024; and
- b) with respect to all other taxes levied by the People's Republic of China, for taxes levied with respect to taxable periods beginning on or after 5 October, 2023.

and,

In accordance with paragraphs 1, 3 and 7 of Article 35 of the MLI, the provisions of the MLI have effect with respect to this the application of this Agreement by Romania:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January, 2024; and
- b) with respect to all other taxes levied by Romania, for taxes levied with respect to taxable periods beginning on or after 1 January, 2024.

**AGREEMENT  
BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND ROMANIA  
FOR THE ELIMINATION OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME  
AND THE PREVENTION OF TAX  
EVASION AND AVOIDANCE**

The People's Republic of China and Romania,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

**[REPLACED by paragraph 1 of Article 6 of the MLI]** [Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income 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 States,]

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*

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

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

Have agreed as follows:

**ARTICLE 1  
PERSONS COVERED**

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

**ARTICLE 2  
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, local authorities or administrative - territorial units, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or

immovable property, as well as taxes on capital appreciation.

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

a) in the People's Republic of China:

- (i) the individual income tax;
- (ii) the enterprise income tax;

(hereinafter referred to as "Chinese tax");

b) in Romania:

- (i) the tax on income;
- (ii) the tax on profit;

(hereinafter referred to as "Romanian tax").

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

### **ARTICLE 3 GENERAL DEFINITIONS**

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

a) the terms "a Contracting State" and "the other Contracting State" mean the People's Republic of China or Romania, as the context requires;

b) the term "China" means the People's Republic of China; when used in geographical sense, means all the territory of the People's Republic of China, including its land territory, internal waters, territorial sea and the air space above them, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights or jurisdiction in accordance with international law and its internal law;

c) the term "Romania" means the state territory of Romania, including its territorial sea and air space above them, over which Romania exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which Romania exercises sovereign rights and jurisdiction, in accordance with its legislation and with the rules and principles of international law;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a

body corporate for tax purposes;

f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term “international traffic” means any transport by a ship, aircraft, railway or road vehicle operated by an enterprise of a Contracting State, except when such transport is operated solely between places in the other Contracting State;

h) the term “competent authority” means:

(i) in China, the State Administration of Taxation or its authorized representative;

(ii) in Romania, the Ministry of Public Finance or its authorized representative;

i) the term “national” means:

(i) in China, any individual possessing the nationality of China and any legal person, partnership or association deriving its status as such from the laws in force in China;

(ii) in Romania, any individual possessing the Romanian citizenship in accordance with the laws of Romania and any legal person, body of persons and any other entity set up and deriving its status as such from the laws in force in Romania.

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

## **ARTICLE 4 RESIDENT**

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

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

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to

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

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

3. **[REPLACED by paragraph 1 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.]

*The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Agreement:*

#### ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of this Agreement 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 States of which such person shall be deemed to be a resident for the purposes of this 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 this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

### ARTICLE 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;

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

3. The term “permanent establishment” also encompasses:

- a) a building site or a construction, assembly or installation project, but only if it lasts more than twelve months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve month period commencing or ending in the fiscal year concerned.

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 stock of goods or merchandise belonging to the enterprise, which is exhibited at a trade fair or exhibition, and which is sold by the enterprise at the end of such fair or exhibition;
- e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- f) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority

to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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 voting rights 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 voting rights and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

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

## **ARTICLE 6**

### **INCOME FROM IMMOVABLE PROPERTY**

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

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

2. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
3. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **ARTICLE 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

## **INTERNATIONAL TRANSPORT**

1. Profits derived by an enterprise of a Contracting State from the operation of ships, aircraft, railway or road vehicles in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9 ASSOCIATED ENTERPRISES**

### **1. Where**

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the 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 Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## **ARTICLE 10 DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 3 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting State and paid to the other Contracting State or a political subdivision, local authority or administrative - territorial unit thereof, or any entity wholly or mainly owned by the other Contracting State, shall be exempt from tax in the first-mentioned State.

For the purposes of this paragraph, the term “mainly owned” means the ownership exceeds 50 per cent.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

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

8. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>1</sup>]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]

## **ARTICLE 11**

### **INTEREST**

1. Interest arising in a Contracting State and paid to a resident of the other

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<sup>1</sup> Refer to the text box inserted following Article 28 of the Agreement.

Contracting State may be taxed in that other State.

2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 3 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State to the extent that such interest is paid:

a) in respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services; or

b) on any loan of whatever kind granted by a financial institution of that other State; or

c) to that other State or a political subdivision, local authority or administrative – territorial unit thereof, or any entity wholly or mainly owned by that other State.

For the purposes of this paragraph, the term “mainly owned” means the ownership exceeds 50 per cent.

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

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

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

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

other provisions of this Agreement.

8. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>2</sup>]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.]

## **ARTICLE 12 ROYALTIES**

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

2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 3 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including software, cinematograph films, and films or tapes for radio or television broadcasting, transmission of every kind to the public, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the

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<sup>2</sup> Refer to the text box inserted following Article 28 of the Agreement.

amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>3</sup>]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.]

### **ARTICLE 13 CAPITAL GAINS**

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, railway or road vehicles operated in international traffic or movable property pertaining to the operation of such means of transport, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a stock exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

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

### **ARTICLE 14 INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that

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<sup>3</sup> Refer to the text box inserted following Article 28 of the Agreement.

State except in the following circumstances, when such income may also be taxed in the other Contracting State:

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

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

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

## **ARTICLE 15**

### **INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

## **ARTICLE 16**

### **DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting

State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

## **ARTICLE 17**

### **ENTERTAINERS AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities referred to in paragraph 1 shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or mainly supported by public funds of either Contracting State.

For the purposes of this paragraph, the term "mainly supported" means the contribution of public funds exceeds 50 per cent.

## **ARTICLE 18**

### **PENSIONS**

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

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made under a public scheme of the social security system of a Contracting State shall be taxable only in that State.

## **ARTICLE 19**

### **GOVERNMENT SERVICE**

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

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

- (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2. a) Pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or administrative - territorial unit thereof to an individual in respect of services rendered to that State or subdivision, authority or unit shall be taxable only in that State.
- b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision, local authority or administrative - territorial unit thereof.

## **ARTICLE 20 STUDENTS**

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

## **ARTICLE 21 TEACHERS AND RESEARCHERS**

Remuneration which an individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State solely for the purpose of teaching or carrying out research in a school, institute, university, or any other educational or research institution officially recognized by that State, receives for such activities shall be exempt from tax in that State for a period not exceeding three years from the date of his or her first arrival in that State, provided that such remuneration is derived by him or her from sources outside that State.

## **ARTICLE 22 OTHER INCOME**

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

2. The provisions of paragraph 1 shall not apply to income, other than income from

immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>4</sup>]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.]

## **ARTICLE 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. In China, in accordance with the provisions of the law of China, double taxation shall be eliminated as follows:

- a) Where a resident of China derives income from Romania, the amount of tax on that income payable in Romania in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
- b) Where the income derived from Romania is a dividend paid by a company which is a resident of Romania to a company which is a resident of China and which owns at least 20 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid in Romania by the company paying the dividend in respect of its income.

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

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

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

## **ARTICLE 24**

### **MISCELLANEOUS RULE**

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<sup>4</sup> Refer to the text box inserted following Article 28 of the Agreement.

Nothing in this Agreement shall prejudice the right of each Contracting State to apply its domestic laws and measures concerning the prevention of tax avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement.

## **ARTICLE 25**

### **NON-DISCRIMINATION**

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

## **ARTICLE 26**

### **MUTUAL AGREEMENT PROCEDURE**

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

to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavor, 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching an agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

## **ARTICLE 27**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their political subdivisions, local authorities or administrative - territorial units, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

a) to carry out administrative measures at variance with the laws and

administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **ARTICLE 28**

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

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

*The following paragraph 1 of Article 7 of the MLI replaces paragraph 8 of Article 10, paragraph 8 of Article 11, paragraph 7 of Article 12, and paragraph 3 of Article 22 of this Agreement:*

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

*(Principal purposes test provision)*

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

## **ARTICLE 29**

### **ENTRY INTO FORCE**

1. Both Contracting States shall notify each other through diplomatic channels that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day upon the receipt of the latter notification and shall have effect in respect of income derived during the taxable years beginning on or after the first day of January in the calendar year next following the year in which this Agreement enters into force.

2. The Agreement between the Government of the People's Republic of China and the Government of Romania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Beijing on 16 January 1991, shall be deemed as terminated on the date of entry into force of this Agreement and shall cease to have effect from the date upon which this Agreement has effect.

### **ARTICLE 30 TERMINATION**

This Agreement shall remain in force indefinitely but either of the Contracting States may give written notice of termination to the other Contracting State through diplomatic channels, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, this Agreement shall be deemed as terminated and cease to have effect in respect of income derived during the taxable years beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

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

DONE at Bucharest on the 4<sup>th</sup> day of July, 2016 in duplicate in the Chinese, Romanian and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

**FOR  
THE PEOPLE'S REPUBLIC OF CHINA**

**FOR  
ROMANIA**