



KEMENTERIAN KEUANGAN

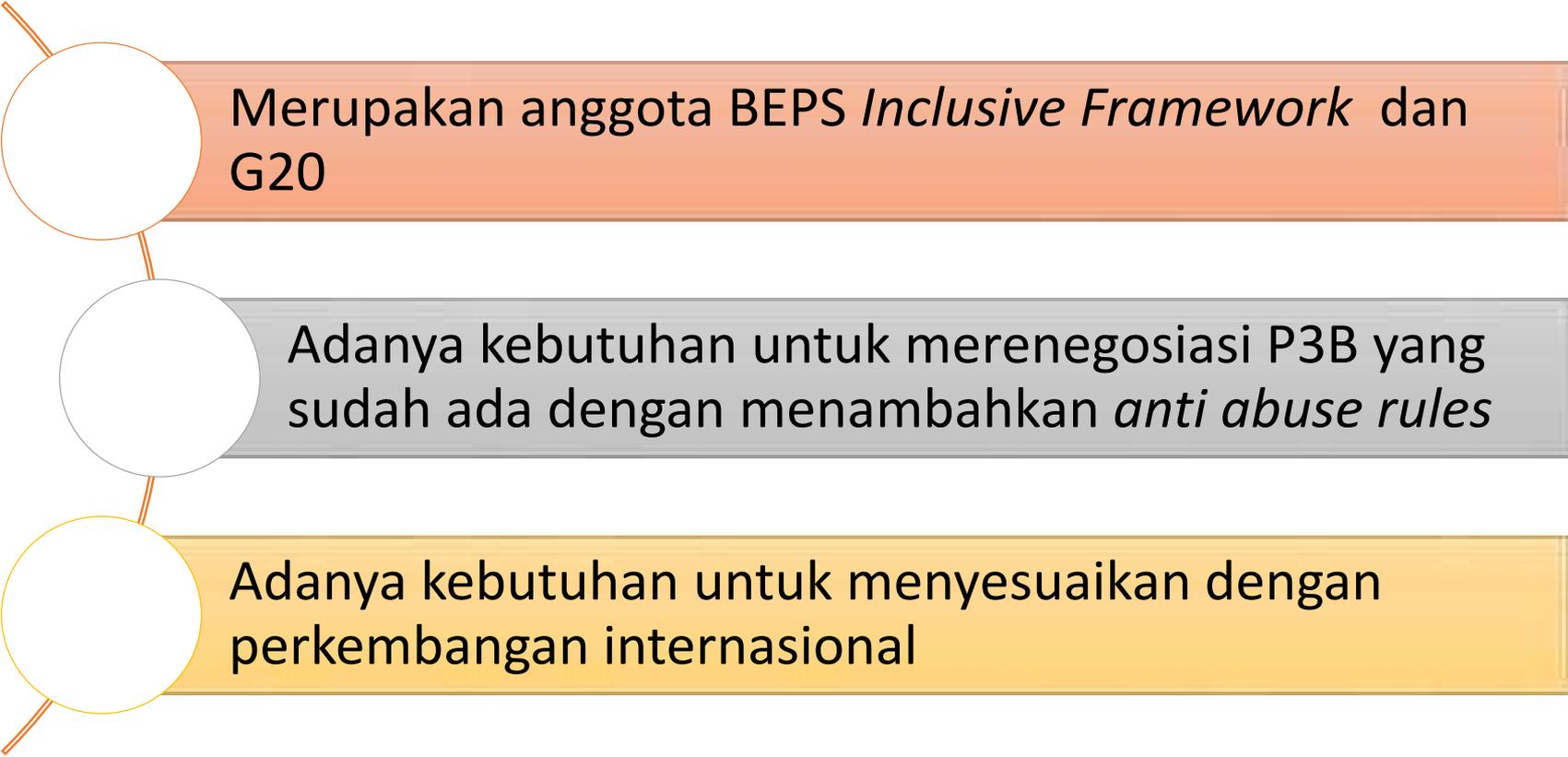


Sosialisasi *Multilateral Instrument on Tax Treaty (MLI)*

2020

General Overview

Latar Belakang

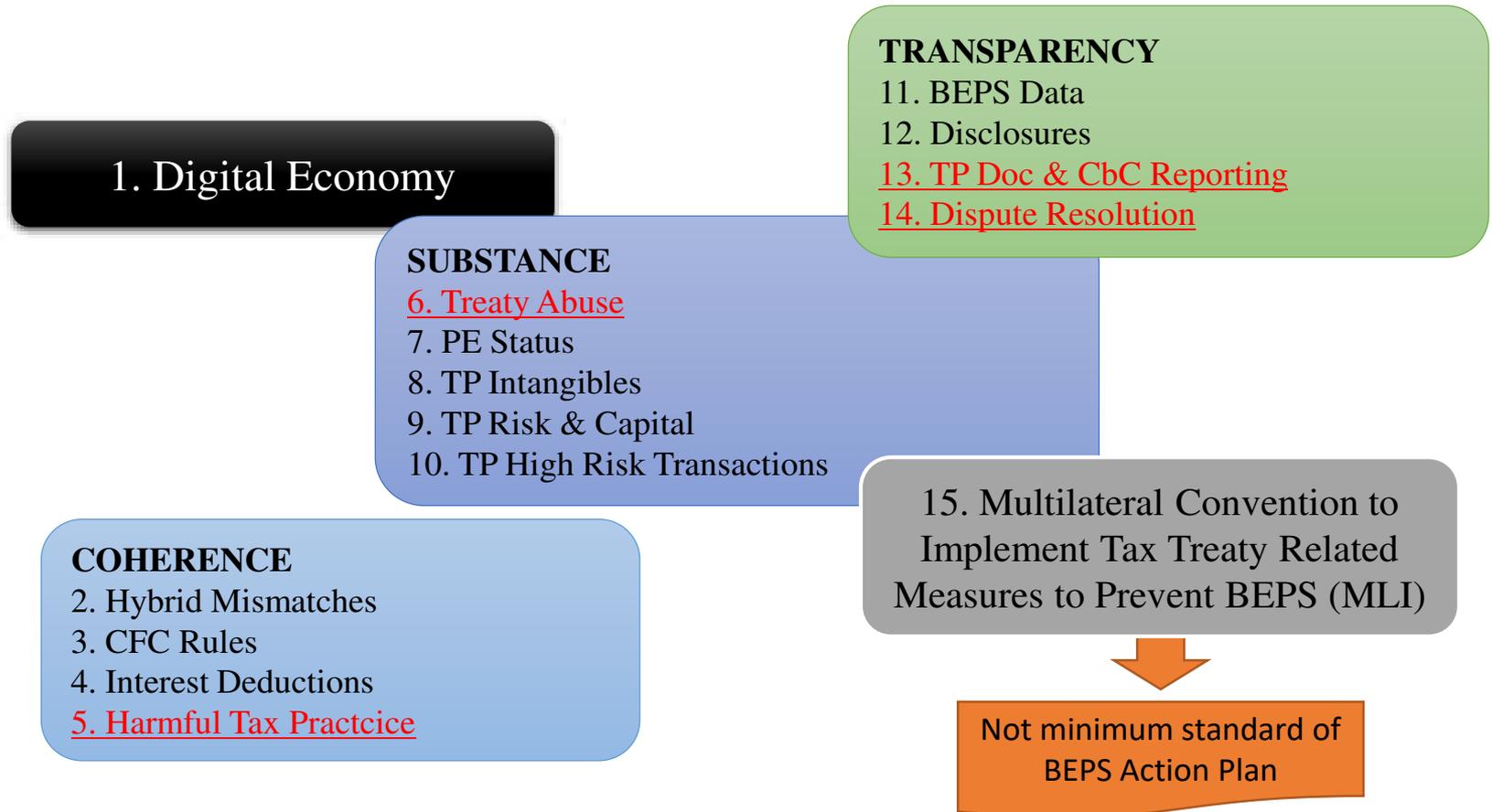


Merupakan anggota BEPS *Inclusive Framework* dan G20

Adanya kebutuhan untuk merenegosiasi P3B yang sudah ada dengan menambahkan *anti abuse rules*

Adanya kebutuhan untuk menyesuaikan dengan perkembangan internasional

15 BEPS Action Plan



- BEPS Action Plan Minimum Standards: Action 5, 6, 13, and 14
- Compliance towards the minimum standards subjects to annual peer review.
- MLI is an initiative to include treaty related BEPS

BEPS Implementation

Incorporating BEPS in the domestic law

- Action 1, 3, 4, 5, 6, 7, 8-10, 13, and 14

Incorporating BEPS in the tax treaties

- Action 2, 6, 7, and 14

MLI

- Action 2, 6, 7, and 14

Study & review

- Action 2, 11, 12

Changing in the international standards

- Action 8-10, 13

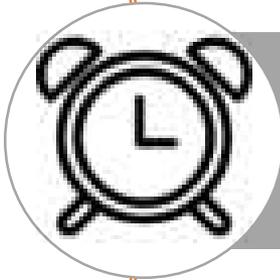
Tujuan MLI

Memodifikasi ketentuan dalam Persetujuan Penghindaran Pajak Berganda (P3B) secara serentak, sinkron, dan efisien, tanpa harus melalui proses negosiasi bilateral yang pada umumnya memerlukan alokasi tenaga dan waktu yang banyak dan panjang.

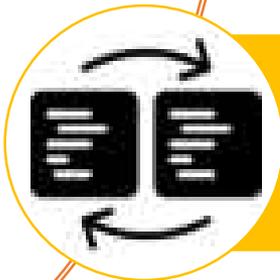
Manfaat Keikutsertaan dalam MLI



Memberikan sinyal positif kepada dunia internasional terkait komitmen Indonesia (sebagai anggota G20) untuk mewujudkan *tax fairness* dan melawan upaya penghindaran/pengelakan pajak melalui implementasi BEPS *Action Plans*, khususnya yang terkait *Tax Treaty*.

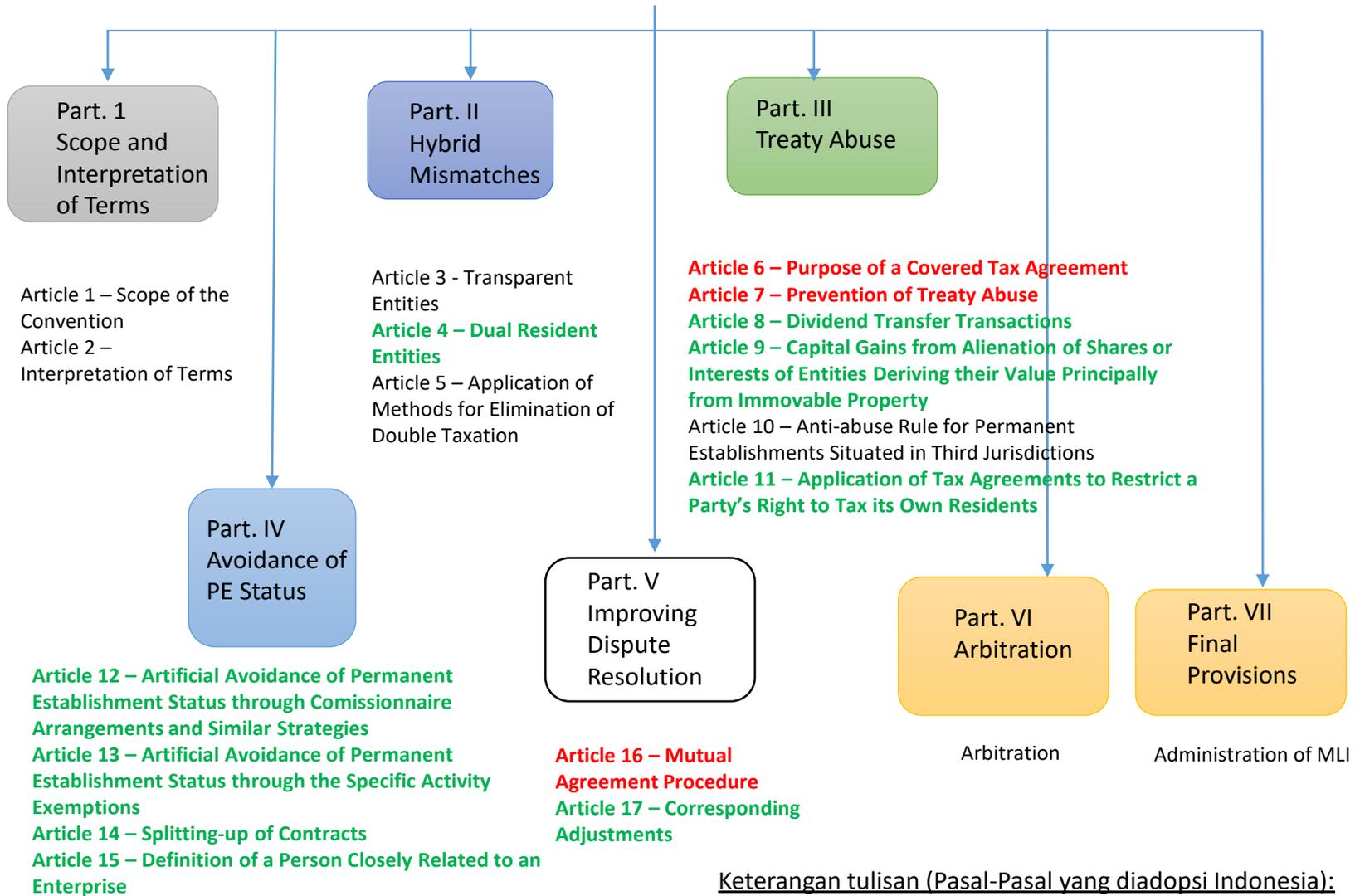


Memberi kesempatan mengadopsi rekomendasi BEPS *Action Plans* ke-15 secara serentak serta meminimalkan biaya dan waktu yang signifikan dibandingkan melalui renegosiasi bilateral.



MLI merupakan pelengkap dari pertukaran informasi secara otomatis (*Automatic Exchange of Information/AEOI*).

Struktur MLI



Keterangan tulisan (Pasal-Pasal yang diadopsi Indonesia):
Warna merah → Minimum Standard MLI (wajib diadopsi)
Warna hijau → Pasal Tambahan (opsional)

MLI signatories

135

Indonesia merupakan salah satu dari 135 negara yang bergabung dengan BEPS *Inclusive Frameworks*

93

Indonesia merupakan salah satu negara penandatanganan MLI bersama 92 negara lainnya to MLI (per 19 Desember 2019)

39

Indonesia merupakan salah satu dari 39 negara yang telah meratifikasi MLI (per Januari 2020)

MLI Signatories (ASEAN Countries)



Cambodia



Philippines



Lao PDR

Malaysia



Indonesia

Myanmar



Thailand

Singapore



Vietnam

Brunei Darussalam





Indonesia's Tax Treaty Network

1. Algeria
2. Armenia
3. Australia
4. Austria
5. Bangladesh
6. Belarus
7. Belgium
8. Brunei Darussalam
9. Bulgaria
10. Canada
11. Croatia
12. Czech Republic
13. Denmark
14. Egypt
15. Finland
16. France
17. Germany
18. Hong Kong
19. Hungary
20. India
21. Iran
22. Italy
23. Japan
24. Jordan
25. Korea, North
26. Kuwait
27. Lao pdr
28. Luxembourg
29. Malaysia
30. Mongolia
31. Morocco
32. Netherlands
33. New Zealand
34. Norway
35. Pakistan
36. Papua New Guinea
37. Philippines
38. Poland
39. Portuguese
40. Qatar
41. Romania
42. Russia
43. Saudi arabia
44. Seychelles
45. Serbia
46. Singapore
47. Slovak
48. South africa
49. South korea
50. Spain
51. Srilanka
52. Sudan
53. Suriname
54. Sweden
55. Swiss
56. Syria
57. Taiwan
58. Thailand
59. Tunisia
60. Turkey
61. UEA
62. UK
63. Ukraine
64. USA
65. Uzbekistan
66. Venezuela
67. Vietnam
68. Mexico
69. China
70. Tajikistan

Cara MLI Memodifikasi Ketentuan dalam P3B

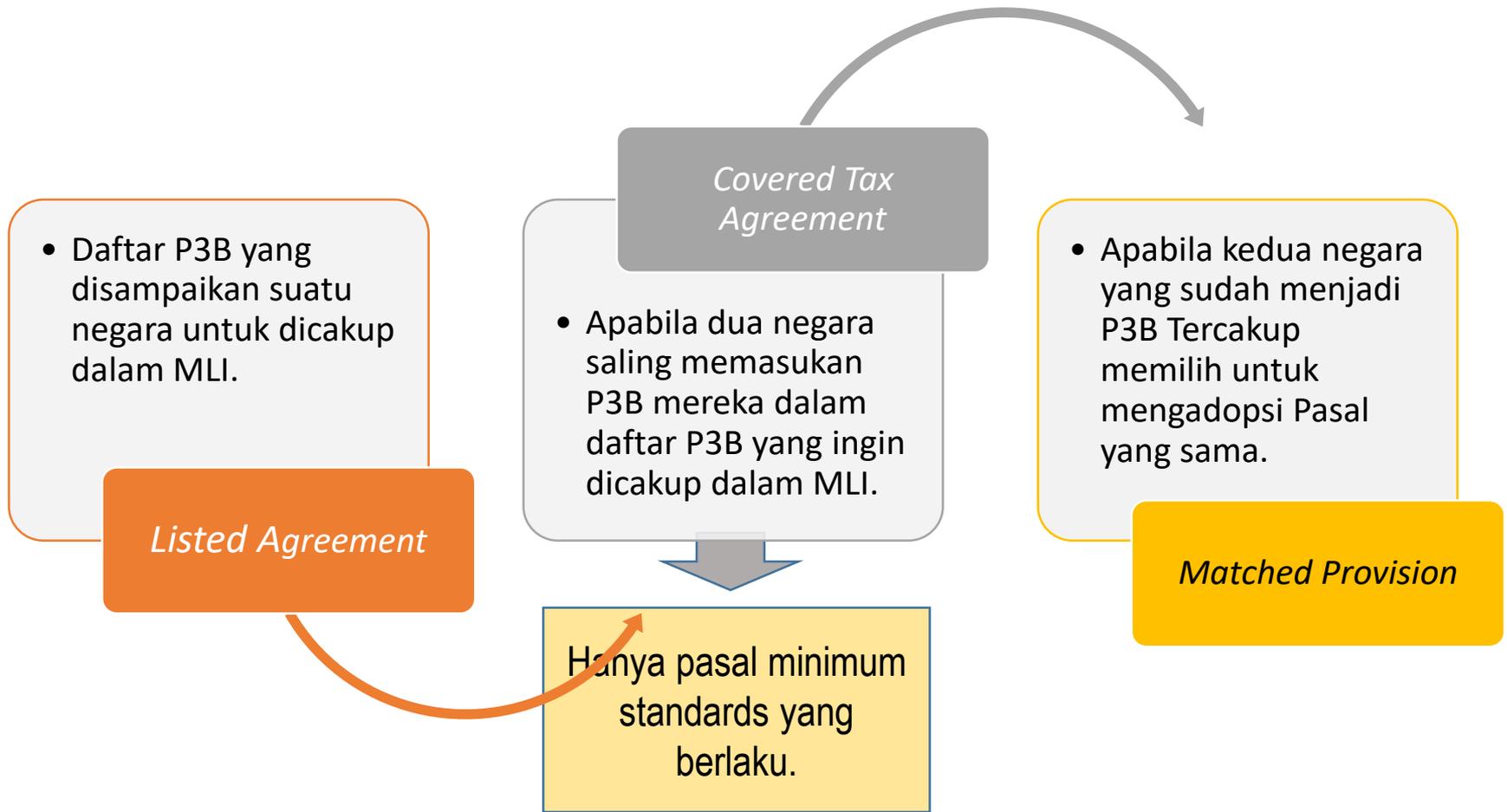
Kedudukan MLI terhadap P3B

MLI merupakan perjanjian internasional

MLI akan memodifikasi Pasal dalam P3B terkait

Pasal lain dalam P3B yang tidak dimodifikasi oleh MLI TETAP BERLAKU

Matching Exercise

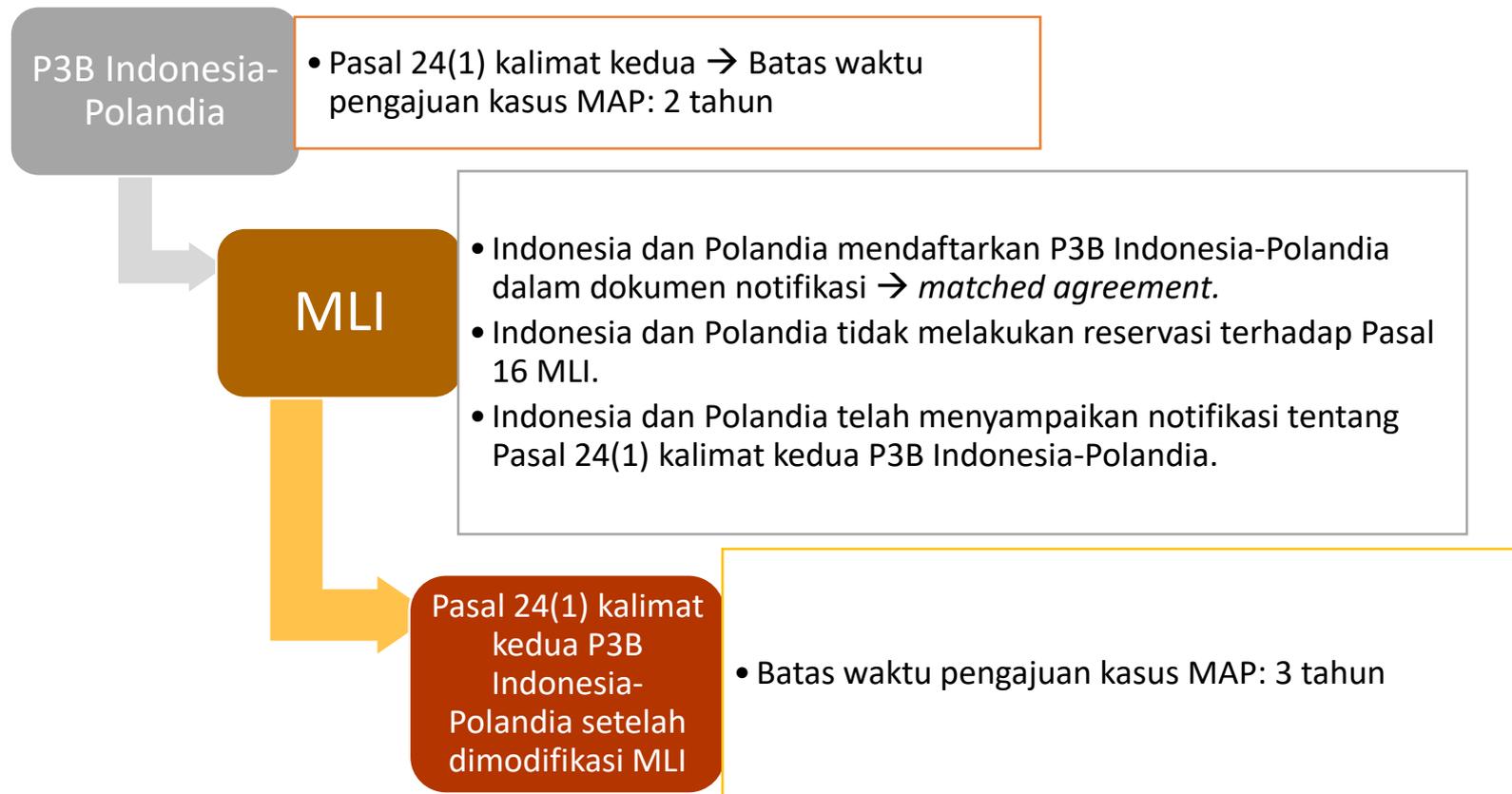


Jenis Modifikasi dalam MLI

1. Ketentuan MLI berlaku **“in place of”** ketentuan dalam P3B *existing*. Sebagai contoh: ketentuan MLI menggantikan ketentuan *existing* yang sudah ada.
2. Ketentuan MLI **“applies to”** atau **“modifies”** ketentuan dalam P3B *existing*. Sebagai contoh: Ketentuan MLI mengubah ketentuan yang ada dalam P3B *existing* tanpa menggantikan ketentuan secara keseluruhan suatu Pasal.
3. Ketentuan MLI berlaku **“in the absence of”** ketentuan dalam P3B *existing*. Sebagai contoh: ketentuan MLI pada dasarnya ditambahkan kedalam ketentuan P3B *existing* jika tidak ada ketentuan *existing* sebelumnya.
4. Ketentuan dalam MLI berlaku **“in place of or in the absence of”** ketentuan P3B *existing*. Sebagai contoh: Ketentuan MLI baik menggantikan ketentuan yang ada atau, pada dasarnya, ditambahkan kedalam P3B *existing* jika tidak ada ketentuan *existing* sebelumnya.

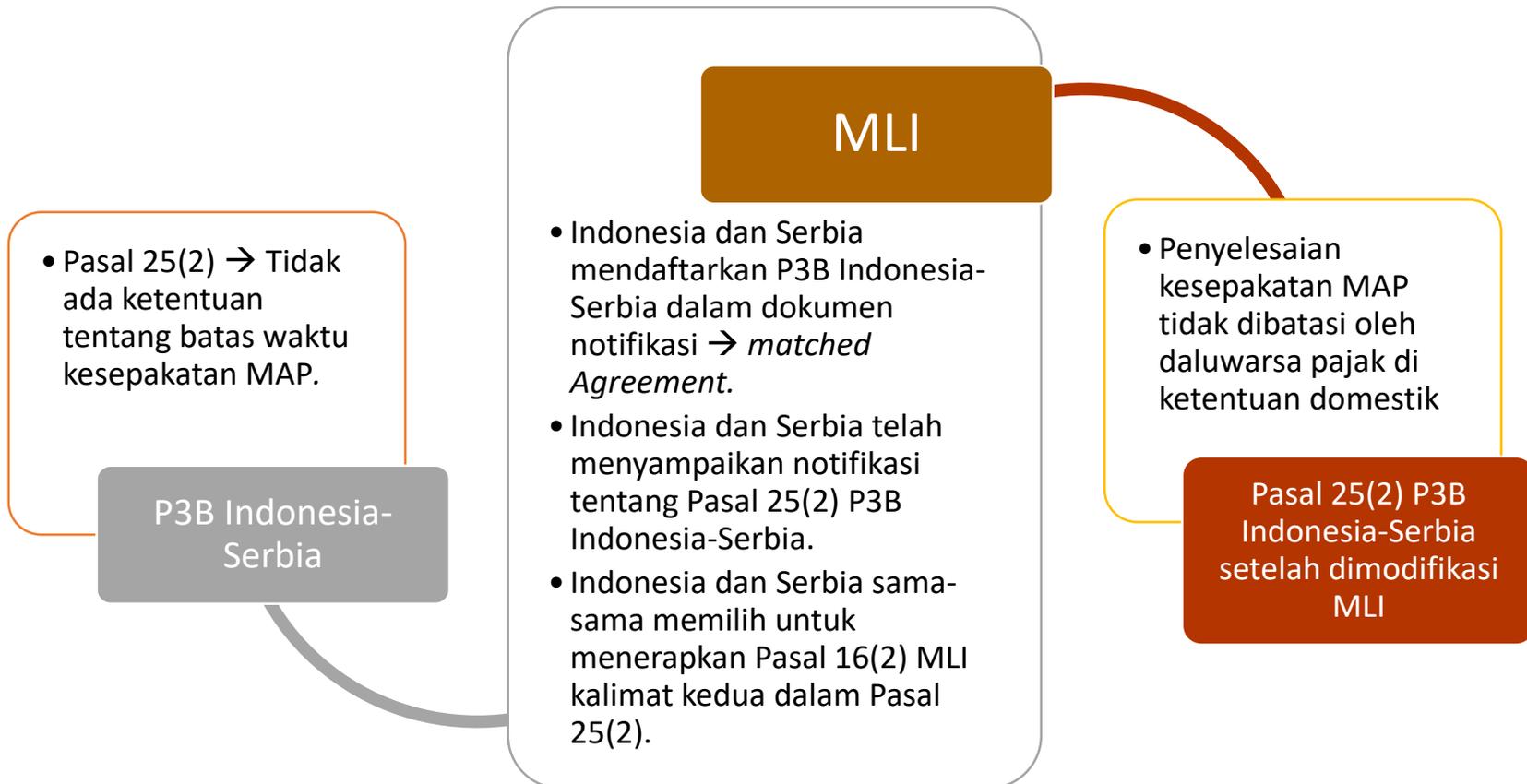
1. Kedudukan MLI terhadap P3B: “in place of”

Menggantikan ketentuan P3B yang mengatur hal serupa, tetapi belum sesuai dengan rekomendasi BEPS *Action Plan*. contohnya: Pasal 16(1) kalimat kedua MLI yang mengatur tentang batas waktu pengajuan *mutual agreement procedure* (MAP) akan menggantikan Pasal 24(1) kalimat kedua P3B Indonesia-Polandia.



2. Kedudukan MLI terhadap P3B: “*applies to*” atau “*modifies*”

Mengubah penerapan yang ada dalam P3B *existing* tanpa menggantikan ketentuan secara keseluruhan. contohnya: Pasal 16(2) MLI kalimat kedua tentang penyelesaian kesepakatan MAP tidak dibatasi oleh daluwarsa pajak di ketentuan domestik berlaku untuk Pasal 25(2) P3B Indonesia-Serbia sehingga Pasal 25(2) P3B Indonesia-Serbia.



3. Kedudukan MLI terhadap P3B: “in the absence of”

Menambah ketentuan MLI ke dalam P3B yang belum memiliki ketentuan serupa. Contoh: Pasal 16(3) MLI yang mengatur tentang *Competent Authority* dapat menempuh mekanisme konsultasi dalam rangka menghilangkan pemajakan berganda atas kasus yang tidak diatur dalam P3B.

P3B Indonesia-Denmark

- Pasal 25(4) → Tidak ada ketentuan tentang mekanisme konsultasi dalam rangka menghilangkan pemajakan berganda atas kasus yang tidak diatur dalam P3B

MLI

- Indonesia dan Denmark mendaftarkan P3B Indonesia-Denmark dalam dokumen notifikasi → *matched Agreement*.
- Indonesia dan Denmark telah menyampaikan notifikasi tentang Pasal 25(4) P3B Indonesia-Denmark.
- Indonesia dan Denmark sama-sama memilih untuk menerapkan Pasal 16(3) MLI kalimat kedua dalam Pasal 25(4).

Pasal 25(4) P3B Indonesia-Denmark setelah dimodifikasi MLI

- *Competent Authority* dapat menempuh mekanisme konsultasi dalam rangka menghilangkan pemajakan berganda atas kasus yang tidak diatur dalam P3B.

4. Kedudukan MLI terhadap P3B: “*in place of or in the absence of*”

Ketentuan dalam MLI akan berlaku sebagai pengganti atau dalam hal ketiadaan ketentuan-ketentuan-ketentuan dalam suatu P3B tercakup, ketentuan MLI akan ditambahkan. Contoh: Pasal 7 ayat (1) MLI tentang *Principle Purpose Test* (PPT) yang mengatur tentang Pencegahan penyalahgunaan P3B dilakukan dengan tidak memberikan manfaat P3B atas penghasilan atau modal yang memperoleh manfaat P3B adalah salah satu tujuan utama dari pengaturan atau transaksinya, kecuali jika dapat dibuktikan bahwa memberikan manfaat P3B dalam keadaan-keadaan tersebut sesuai dengan maksud dan tujuan ketentuan-ketentuan terkait dalam P3B Tercakup (*Covered Tax Agreements*).



Matched Countries

Modifikasi P3B oleh MLI

47

Negara yang dipilih Indonesia sebagai partner MLI

39

Negara yang dipilih Indonesia dan juga memilih Indonesia sebagai partner MLI sehingga tercakup dalam covered tax agreement (CTAs)

19

19 negara dalam CTAs yang telah meratifikasi MLI

Daftar negara yang dipilih Indonesia sebagai partner MLI

Australia	Korea Selatan	Armenia
Brunei Darussaalam	Switzerland	Bulgaria
Canada	Thailand	Denmark
China	UK	Hungary
France	UAE	Mexico
Hong Kong	US	Egypt
India	Vietnam	Pakistan
Japan	Belgium	Portugal
Laos	Croatia	Czech Republic
Louxeburg	Finland	Romania
Malaysia	Italy	Russia
Netherlands	Norway	Serbia
New Zealand	Poland	Spain
Philippine	Qatar	Sweden
Singapore	South Africa	Slovak
Seychelles	Turky	

Non-CTA countries
 2 negara (Swiss dan
 Norwegia tidak memilih
 Indonesia)
 6 negara belum
 menandatangani MLI

47

P3B Tercakup dalam MLI (CTAs)

OECD Matching Database (27-11-2019)

1. Australia	11. Japan	21. South Africa	31. Mexico
2. Belgium	12. South Korea	22. Turkey	32. Pakistan
3. Canada	13. Louxembourg	23. UK	33. Portugal
4. China	14. Malaysia	24. UEA	34. Romania
5. Croatia	15. Netherlands	25. Armenia	35. Russia
6. Finland	16. New Zealand	26. Bulgaria	36. Serbia
7. France	17. Poland	27. Czech Republic	37. Spain
8. Hong Kong	18. Seychelles	28. Denmark	38. Sweden
9. India	19. Singapore	29. Egypt	39. Qatar
10. Italy	20. Slovakia	30. Hungary	40. Vietnam*

*Vietnam telah menyampaikan posisi awal namun belum menandatangani MLI

39

19 negara dalam CTAs yang telah meratifikasi MLI

No.	Jurisdiction	Signature	Deposit of instrument of ratification	Entry into Force
1	Serbia	07-06-2017	05-06-2018	01-10-2018
2	Inggris	07-06-2017	29-05-2019	01-10-2018
3	Slovak Republik	07-06-2017	20-09-2018	01-01-2019
4	Singapura	07-06-2017	21-12-2018	01-04-2019
5	Australia	07-06-2017	26-09-2018	01-01-2019
6	Jepang	07-06-2017	26-08-2019	01-01-2019
7	Selandia Baru	07-06-2017	27-06-2018	01-10-2018
8	Polandia	07-06-2017	23-01-2018	01-07-2018
9	Swedia	07-06-2017	22-06-2018	01-10-2018
10	UAE	27-06-2018	08-08-2019	01-12-2019
11	Rusia	07-06-2017	18-06-2019	01-10-2019
12	Finlandia	07-06-2017	25-02-2019	01-06-2019
13	Prancis	07-06-2017	26-09-2018	01-01-2019
14	India	07-06-2017	25-06-2019	01-10-2019
15	Belanda	07-06-2017	29-03-2019	01-07-2019
16	Luksemburg	07-06-2017	09-04-2019	01-08-2019
17	Belgia	07-06-2017	26-06-2019	01-10-2019
18	Kanada	07-06-2017	29-08-2019	01-12-2019
19	Denmark	07-06-2017	30-09-2019	01-01-2020

19

Rangkuman Pasal MLI yang akan memodifikasi P3B Indonesia dengan negara mitra

No.	Negara	Pasal dalam MLI													
		4	6	7 (PPT)	8	9	9 (4)	11	12	13	13 (4)	14	15	16	17
17	South Korea		✓	✓											
18	Swiss	Tidak memilih Indonesia sebagai mitra MLI													
19	Thailand	Belum menandatangani MLI													
20	Inggris	✓	✓	✓				✓			✓		✓	✓	✓
21	UAE		✓	✓										✓	✓
22	Amerika Serikat	Belum menandatangani MLI													
23	Vietnam		✓	✓					✓	✓	✓		✓	✓	✓
24	Belgia		✓	✓	✓			✓	✓		✓		✓	✓	✓
25	Kroasia		✓	✓			✓		✓	✓	✓		✓	✓	
26	Finlandia		✓	✓											
27	Italia		✓	✓			✓			✓	✓		✓	✓	✓
28	Norwegia	Tidak memilih Indonesia sebagai mitra MLI													
29	Polandia	✓	✓	✓	✓		✓	✓						✓	
30	Qatar		✓	✓										✓	
31	Slowakia	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓		
32	Afrika Selatan	✓	✓	✓	✓		✓	✓		✓	✓		✓	✓	✓
33	Turki		✓	✓			✓		✓	✓	✓		✓	✓	

Pemberlakuan MLI

Proses Pemberlakuan MLI

Penandatanganan
(7 Juni 2017)



dilengkapi dokumen notifikasi
dan reservasi awal

Ratifikasi



Perpres MLI terbit dengan
nomor Perpres 77 Tahun 2019
(13 November 2019)

Penyampaian
instrumen ratifikasi



dilengkapi dokumen
notifikasi dan reservasi final

Kapan MLI Berlaku?

Entry into force

1 Mei 2020*

* Dengan asumsi, Kemlu akan menyampaikan instrumen ratifikasi Januari 2020

Entry into effect

For W/H Tax

1 Jan 2021

For others

1 Nov 2020

Posisi Per 14 Januari 2020

1. 19 P3B dari 39 CTAs Indonesia akan dimodifikasi oleh MLI per 1 Mei 2020 karena 19 negara tersebut telah menyelesaikan proses ratifikasi
2. Jumlah tersebut akan bertambah sesuai dengan penyelesaian proses ratifikasi negara mitra MLI Indonesia
3. Jumlah CTAs dapat bertambah sesuai dengan penambahan negara penandatangan MLI

What's next?

**Masih dimungkinkan untuk
menambah negara sebagai
Partner MLI**

**Masih dimungkinkan untuk
menambah Pasal Adopsi MLI**

Tidak dimungkinkan untuk mengurangi jumlah negara maupun pasal adopsi MLI setelah ratifikasi.

**Pasal-Pasal Adopsi
Indonesia dalam MLI &
*Matched Provisions***

Posisi MLI Indonesia

PART I

Scope and Interpretation of term

Article 1	Scope of the Convention
Article 2	Interpretation of Terms

PART II

Hybrid Mismatches

Article 3	Transparent Entities
Article 4	Dual Resident Entities
Article 5	Application of Methods for Elimination of Double Taxation

PART III

Treaty Abuse

Article 6	Purpose of a Covered Tax Agreement
Article 7	Prevention of Treaty Abuse
Article 8	Dividend Transfer Transactions
Article 9	Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property
Article 10	Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions
Article 11	Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents

PART IV

Avoidance of PE Status

Article 12	Artificial Avoidance of Permanent Establishment Status through Comissionnaire Arrangements and Similar Strategies
Article 13	Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions
Article 14	Splitting-up of Contracts
Article 15	Definition of a Person Closely Related to an Enterprise

PART V

Improving Dispute Resolution

Article 16	Mutual Agreement Procedure
Article 17	Corresponding Adjustments

PART VI

Arbitration

Article 18-26	Arbitration
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PART VII

Final Provisions

Article 27-39	Administration of MLI
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X	Pasal yang diadopsi Indonesia (minimum standards)
X	Pasal yang diadopsi Indonesia (opsional)
	Pasal yang tidak diadopsi Indonesia



Minimum Standard

Article 6 – Purpose of Covered Tax Agreement

Pasal 6(1) MLI merupakan ketentuan yang **belum ada** pada P3B Indonesia saat ini

Mukadimah P3B Indonesia-Australia

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,



Modifikasi melalui MLI

*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),*

Pasal 6(1) MLI menegaskan bahwa Tujuan P3B tidak untuk mendukung terciptanya *double non-taxation* sebagai akibat dari upaya *tax avoidance* dan *tax evasion*.

P3B Terdampak

Teks dalam Pasal 6(1) MLI **mengganti** mukadimah P3B Indonesia dengan negara-negara berikut:

- | | |
|--------------------|---------------------|
| 1. Afrika Selatan | 21. Polandia |
| 2. Australia | 22. Portugal |
| 3. Belanda | 23. Prancis |
| 4. Belgia | 24. Qatar |
| 5. Bulgaria | 25. Romania |
| 6. Republik Ceko | 26. Rusia |
| 7. Denmark | 27. Selandia Baru |
| 8. Finlandia | 28. Serbia |
| 9. Hong Kong | 29. Seychelles |
| 10. Hungaria | 30. Singapura |
| 11. Inggris | 31. Slowakia |
| 12. Italia | 32. Spanyol |
| 13. Jepang | 33. China |
| 14. Republik Korea | 34. Turki |
| 15. Kroasia | 35. Uni Emirat Arab |
| 16. Luksemburg | 36. Armenia |
| 17. Malaysia | 37. India |
| 18. Meksiko | 38. Kanada |
| 19. Mesir | 39. Swedia |
| 20. Pakistan | |

Article 7 – Prevention of Treaty Abuse

Principal Purpose Test (PPT) merupakan ketentuan yang **belum ada** pada P3B Indonesia saat ini

Meskipun demikian, beberapa P3B Indonesia dengan negara mitra seperti Hong Kong, Inggris, Serbia, memiliki klausul *anti-treaty abuse*/mini-PPT pada ketentuan tertentu seperti dividen, bunga, dan royalti.

Pasal 10(7) P3B Indonesia-Hong Kong

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.



Modifikasi melalui MLI

*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.*

PPT akan **berlaku untuk keseluruhan ketentuan dalam P3B**, tidak terbatas pada pasal-pasal tertentu.

P3B Terdampak

Ketentuan Pasal 7(1) MLI **mengganti** ketentuan dalam P3B Indonesia dengan negara-negara berikut yang tidak memberikan manfaat P3B apabila tujuan utama atau salah satu tujuan utama transaksi atau orang pribadi/badan yang terlibat adalah untuk memperoleh manfaat P3B tersebut:

- | | |
|--------------|------------|
| 1. Hong Kong | 4. Meksiko |
| 2. India | 5. Serbia |
| 3. Inggris | 6. Rusia |

Ketentuan Pasal 7(1) MLI **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan ketentuan Article 7(1):

- | | |
|--------------------|---------------------|
| 1. Afrika Selatan | 19. Pakistan |
| 2. Armenia | 20. Polandia |
| 3. Australia | 21. Portugal |
| 4. Belanda | 22. Prancis |
| 5. Belgia | 23. Qatar |
| 6. Bulgaria | 24. Rumania |
| 7. Republik Ceko | 25. Selandia Baru |
| 8. Denmark | 26. Seychelles |
| 9. Finlandia | 27. Singapura |
| 10. Hungaria | 28. Slowakia |
| 11. Italia | 29. Spanyol |
| 12. Jepang | 30. Swedia |
| 13. Kanada | 31. China |
| 14. Republik Korea | 32. Turki |
| 15. Kroasia | 33. Uni Emirat Arab |
| 16. Luksemburg | |
| 17. Malaysia | |
| 18. Mesir | |

Article 16 – Mutual Agreement Procedure

MLI menawarkan tiga ketentuan dalam tiga paragraf yang mengatur mengenai prosedur persetujuan bersama (*Mutual Agreement Procedure/MAP*), sebagai berikut:

Para 1	1. Akses untuk mengajukan MAP di kedua negara, terlepas dari mekanisme penyelesaian sengketa domestik.	Indonesia tidak mengadopsi Pasal 16 para 1 kalimat pertama
	2. Batas waktu pengajuan kasus MAP: 3 tahun.	
Para 2	1. Pejabat berwenang (<i>Competent Authority/CA</i>) akan mengupayakan penyelesaian sengketa melalui MAP untuk menghindari pemajakan yang tidak sesuai P3B.	Indonesia mengadopsi Pasal 16 para 1 kalimat kedua, Pasal 16 para 2, dan Pasal 16 para 3
	2. Penyelesaian kesepakatan MAP tidak dibatasi oleh daluwarsa pajak di ketentuan domestik.	
Para 3	1. CA akan mengupayakan penyelesaian atas kesulitan/keraguan interpretasi/aplikasi P3B melalui MAP.	
	2. CA dapat menempuh mekanisme konsultasi dalam rangka menghilangkan pemajakan berganda atas kasus yang tidak diatur dalam P3B.	

Article 16 ayat (1) MLI dan P3B Terdampak

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.

Pasal 16(1), *second sentence* MLI

Ketentuan Pasal 16(1) MLI kalimat kedua **mengganti** ketentuan dalam P3B Indonesia dengan negara-negara berikut yang mengatur bahwa sengketa sebagaimana dimaksud dalam Pasal 16(1) MLI kalimat pertama harus diajukan dalam jangka waktu yang lebih pendek dari 3 (tiga) tahun:

- | | |
|-------------------|---------------------|
| 1. Afrika Selatan | 10. Portugal |
| 2. Bulgaria | 11. Qatar |
| 3. Hungaria | 12. Romania |
| 4. Italia | 13. Rusia |
| 5. Kanada | 14. Selandia Baru |
| 6. Luksemburg | 15. Serbia |
| 7. Mesir | 16. Seychelles |
| 8. Pakistan | 17. Spanyol |
| 9. Polandia | 18. Uni Emirat Arab |

Ketentuan Pasal 16(1) MLI kalimat kedua **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan Pasal 16(1) kalimat kedua:

- | | |
|------------------|----------|
| 1. Republik Ceko | 3. Turki |
| 2. Inggris | |

Article 16 ayat (2) MLI dan P3B Terdampak

any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.

Pasal 16(2), *second sentence* MLI

Ketentuan Pasal 16(2) MLI kalimat kedua **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan Pasal 16(2) kalimat kedua:

- | | |
|------------------|---------------------|
| 1. Armenia | 14. Portugal |
| 2. Belanda | 15. Prancis |
| 3. Belgia | 16. Qatar |
| 4. Bulgaria | 17. Rumania |
| 5. Republik Ceko | 18. Rusia |
| 6. Inggris | 19. Selandia Baru |
| 7. Italia | 20. Serbia |
| 8. Kroasia | 21. Seychelles |
| 9. Luksemburg | 22. Spanyol |
| 10. Malaysia | 23. China |
| 11. Meksiko | 24. Turki |
| 12. Mesir | 25. Uni Emirat Arab |
| 13. Polandia | |

Article 16 ayat (3) MLI dan P3B Terdampak

*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.*

Pasal 16(3), *first sentence* MLI

Ketentuan Pasal 16(3) MLI kalimat pertama **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan Pasal 16(3) kalimat pertama:

- | | |
|--------------|------------|
| 1. Australia | 2. Prancis |
|--------------|------------|

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.

Pasal 16(3), *second sentence* MLI

Ketentuan Pasal 16(3) MLI kalimat kedua **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan Pasal 16(3) kalimat kedua:

- | | |
|--------------|------------|
| 1. Australia | 4. Inggris |
| 2. Belgia | 5. Italia |
| 3. Denmark | 6. Kanada |



Non-Minimum Standard

Article 4- Dual Resident Entities

Pasal 4(3) OECD Model 2014

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.



Modifikasi melalui MLI

*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.*

Pasal 4(1) MLI akan **mengganti** ketentuan dalam P3B Indonesia dengan negara-negara berikut yang mengatur penentuan subjek pajak selain orang pribadi sebagai penduduk salah satu yurisdiksi dalam hal kependudukan ganda:

- | | | | |
|-------------------|------------|--------------|-------------------|
| 1. Afrika Selatan | 5. India | 8. Kanada | 11. Romania |
| 2. Australia | 6. Inggris | 9. Mesir | 12. Selandia Baru |
| 3. Belanda | 7. Jepang | 10. Polandia | 13. Serbia |
| 4. Slowakia | | | |

Article 8 – Dividend Transfer Transaction

Pasal 10(2)(a) OECD Model 2014

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:

- 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**;



Modifikasi melalui MLI

*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).*

Ketentuan Article 8(1) **berlaku untuk** ketentuan dalam P3B Indonesia dengan negara-negara berikut:

- | | | |
|-------------------|-------------|------------|
| 1. Afrika Selatan | 4. Belgia | 7. Prancis |
| 2. Armenia | 5. Kanada | 8. Romania |
| 3. Belanda | 6. Polandia | 9. Spanyol |

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

Pasal 13(4) OECD Model 2014

Gains derived by a resident of a Contracting State from the alienation of shares 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.



Modifikasi melalui MLI

- *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)):*
 - ***shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and***
 - ***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.
- *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.*

Pasal 9(1) dan 9(4) MLI

P3B Terdampak

Ketentuan Pasal 9(4) MLI **mengganti** ketentuan dalam P3B Indonesia dengan negara-negara berikut yang mengatur bahwa keuntungan dari pengalihan saham atau hak partisipasi lainnya dapat dipajaki di yurisdiksi sumber sepanjang bagian tertentu dari nilai saham atau hak tersebut berasal dari harta tak bergerak:

- | | |
|------------|------------|
| 1. India | 4. Mesir |
| 2. Kanada | 5. Prancis |
| 3. Kroasia | 6. Serbia |
| 4. Meksiko | |

Ketentuan Pasal 9(4) MLI **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan ketentuan Article 9(4):

- | | |
|-------------------|------------------|
| 1. Afrika Selatan | 7. Rusia |
| 2. Armenia | 8. Selandia Baru |
| 3. Italia | 9. Slowakia |
| 4. Jepang | 10. Spanyol |
| 5. Polandia | 11. Turki |
| 6. Portugal | |

Ketentuan Pasal 9(1) MLI **berlaku untuk** ketentuan dalam P3B Indonesia dengan negara berikut yang mengatur bahwa keuntungan dari pengalihan saham atau hak partisipasi lainnya dapat dipajaki di yurisdiksi sumber sepanjang bagian tertentu dari nilai saham atau hak tersebut berasal dari harta tak bergerak:

1. Australia

Ketentuan Pasal 9(1)(b) MLI **berlaku untuk** ketentuan dalam P3B Indonesia dengan negara berikut yang mengatur bahwa keuntungan dari pengalihan saham atau hak partisipasi lainnya dapat dipajaki di yurisdiksi sumber sepanjang bagian tertentu dari nilai saham atau hak tersebut berasal dari harta tak bergerak:

1. China

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

Saving Clause merupakan ketentuan yang **belum ada** pada P3B Indonesia saat ini



Modifikasi melalui MLI

The Agreement shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under provisions of (i) correlative adjustment for permanent establishment, (ii) corresponding adjustment, (iii) government service, (iv) students, (v) methods for elimination of double taxation, (vi) non-discrimination, (vii) mutual agreement procedure, or (viii) members of diplomatic missions and consular posts of the Agreement

Ketentuan Pasal 11(1) MLI **mengganti** ketentuan dalam P3B Indonesia dengan negara berikut yang menyatakan bahwa P3B tersebut tidak akan mempengaruhi pengenaan pajak oleh suatu yurisdiksi atas penduduknya:

1. Inggris

Ketentuan Pasal 11(1) MLI **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan ketentuan Article 11(1):

- | | | | | | |
|-------------------|--------------|-------------|-------------|-------------------|--------------|
| 1. Afrika Selatan | 3. Australia | 6. Meksiko | 8. Portugal | 10. Rusia | 12. Slowakia |
| 2. Armenia | 4. Belgia | 7. Polandia | 9. Romania | 11. Selandia Baru | 13. China |
| | 5. India | | | | |

Article 12 – Artificial Avoidance of PE Status through Commissionaire Arrangements and Similar Strategies

Pasal 5(5) OECD Model 2014

Modifikasi melalui Pasal 12(1) MLI dan Pasal 12(2) MLI

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.

*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;*
- 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).

*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.*

P3B Terdampak

Ketentuan Pasal12(1) dan Pasal 12(2) MLI **berlaku untuk** ketentuan dalam P3B Indonesia dengan negara-negara berikut yang menggambarkan kondisi di mana suatu perusahaan dianggap memiliki bentuk usaha tetap terkait agen yang berkedudukan tidak bebas

- | | |
|-------------|-------------------|
| 1. Armenia | 10. Prancis |
| 2. Belanda | 11. Romania |
| 3. Belgia | 12. Rusia |
| 4. India | 13. Selandia Baru |
| 5. Jepang | 14. Serbia |
| 6. Kroasia | 15. Slowakia |
| 7. Malaysia | 16. Spanyol |
| 8. Meksiko | 17. Turki |
| 9. Mesir | |

Article 13 – Artificial Avoidance of PE Status through the Specific Activity Exemptions

Pasal 5(4) OECD Model 2014

Modifikasi melalui Pasal 13(2) MLI dan Pasal 13(4) MLI

Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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.

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.

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.

P3B Terdampak

Indonesia memilih untuk menerapkan Opsi A sehingga **Opsi A berlaku** untuk P3B Indonesia dengan negara-negara berikut yang memuat daftar kegiatan-kegiatan yang dikecualikan dari pengertian bentuk usaha tetap:

- | | |
|-------------------|-------------------|
| 1. Afrika Selatan | 10. Meksiko |
| 2. Armenia | 11. Mesir |
| 3. Australia | 12. Romania |
| 4. Belanda | 13. Rusia |
| 5. India | 14. Selandia Baru |
| 6. Italia | 15. Serbia |
| 7. Jepang | 16. Slowakia |
| 8. Kroasia | 17. Spanyol |
| 9. Malaysia | 18. Turki |

Ketentuan Pasal13(4) MLI **berlaku untuk** P3B Indonesia dengan negara-negara berikut yang memuat daftar kegiatan-kegiatan yang dikecualikan dari pengertian bentuk usaha tetap:

- | | |
|-------------------|-------------------|
| 1. Afrika Selatan | 12. Meksiko |
| 2. Armenia | 13. Mesir |
| 3. Australia | 14. Portugal |
| 4. Belanda | 15. Prancis |
| 5. Belgia | 16. Romania |
| 6. India | 17. Rusia |
| 7. Inggris | 18. Selandia Baru |
| 8. Italia | 19. Serbia |
| 9. Jepang | 20. Slowakia |
| 10. Kroasia | 21. Spanyol |
| 11. Malaysia | 22. Turki |

Article 14 – Splitting-up of Contracts

Pasal 5(3) OECD Model 2014

Modifikasi melalui Pasal 14(1) MLI

A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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*

P3B Terdampak

Ketentuan Pasal 14(1) MLI **mengganti** ketentuan dalam P3B Indonesia dengan negara berikut terkait dengan pemecahan kontrak menjadi beberapa bagian dalam rangka menghindari status bentuk usaha tetap:

1. Selandia Baru

*Ketentuan Pasal 14 MLI **tidak berlaku untuk kegiatan eksplorasi atau eksploitasi sumber daya alam.**

Ketentuan Article 14(1) **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan ketentuan Pasal 14(1):

1. Armenia
2. Australia
3. Belanda
4. India
5. Mesir

6. Romania
7. Rusia
8. Serbia
9. Slowakia

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

Pasal 15(1) MLI merupakan ketentuan yang **belum ada** pada P3B Indonesia saat ini

Jika sebuah negara memilih untuk menerapkan salah satu atau keseluruhan pasal terkait pengindaran status BUT (Pasal 12, Pasal 13, dan/atau Pasal 14), negara tersebut wajib mengadopsi Pasal 15 yang memberikan definisi atas *Closely Related Person*.



Modifikasi melalui MLI

*For the purposes of the provisions of a Covered Tax Agreement that is 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.*

P3B Terdampak

No.	Negara Mitra P3B	Pasal			No.	Negara Mitra P3B	Pasal		
		12(2)	13(4)	14(1)			12(2)	13(4)	14(1)
1.	Afrika Selatan		✓		12.	Meksiko	✓	✓	
2.	Armenia	✓	✓	✓	13.	Mesir	✓	✓	✓
3.	Australia		✓	✓	14.	Portugal		✓	
4.	Belanda		✓	✓	15.	Prancis	✓	✓	
5.	Belgia	✓	✓		16.	Romania	✓	✓	✓
6.	India	✓	✓	✓	17.	Rusia	✓	✓	✓
7.	Inggris		✓		18.	Selandia Baru	✓	✓	✓
8.	Italia		✓		19.	Serbia	✓	✓	✓
9.	Jepang	✓	✓		20.	Slowakia	✓	✓	✓
10.	Kroasia	✓	✓		21.	Spanyol	✓	✓	
11.	Malaysia	✓	✓		22.	Turki	✓	✓	

Article 17 – Corresponding Adjustments

Pengaturan terkait *corresponding adjustment* sudah ada sejak OECD Model Convention Tahun 1977. Ketentuan ini bertujuan untuk memberikan kepastian hukum bagi Wajib Pajak.

*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.*

Ketentuan Pasal 17(1) MLI **mengganti** ketentuan dalam P3B Indonesia dengan negara-negara berikut terkait dengan penyesuaian lanjutan:

- | | | | |
|-------------------|---------------|-------------|----------|
| 1. Afrika Selatan | 3. Belanda | 5. Pakistan | 7. China |
| 2. Armenia | 4. Luksemburg | 6. Portugal | 8. UAE |

Ketentuan Pasal 17(1) MLI **berlaku untuk** ketentuan-ketentuan dalam P3B Indonesia dengan negara-negara berikut sepanjang ketentuan-ketentuan dalam P3B tersebut bertentangan dengan ketentuan Pasal 17(1):

- | | | | | | |
|-------------|-----------|-------------|------------|-------------------|---------------|
| 1. Belgia | 4. Italia | 6. Malaysia | 8. Prancis | 10. Rusia | 12. Singapura |
| 2. Hungaria | 5. Jepang | 7. Meksiko | 9. Rumania | 11. Selandia Baru | 13. Spanyol |
| 3. Inggris | | | | | |

Terima kasih...

Bahan dapat diunduh di:

<https://s.id/cgHKh>



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