

CONVENTION

BETWEEN THE REPUBLIC OF TUNISIA

AND

MALTA

**FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

THE GOVERNMENT OF THE REPUBLIC OF TUNISIA

AND

THE GOVERNMENT OF MALTA

**Desiring to conclude a Convention for the avoidance
of double taxation and the prevention of fiscal evasion with
respect to taxes on income**

Have agreed as follows :

CHAPTER 1 SCOPE OF THE CONVENTION

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

- 1) This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or of its local authorities, 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, taxes on the total amounts of wages or salaries, as well as taxes on capital appreciation.
- 3) The existing taxes to which the Convention shall apply are :
 - a - - in the case of Tunisia :
 - the income tax;
 - the corporation tax;

(hereinafter referred to as “Tunisian tax”);

b - - in the case of Malta :
- the income tax;
(hereinafter referred to as “Malta tax”).

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

5) Notwithstanding the other provisions of this Article this Convention shall not apply to tax paid or payable in Malta in accordance with the provisions of subsection (13) of section 56 of the Income Tax Act (Cap.123), concerning the chargeable income of any person engaged in the production of petroleum produced in Malta, or any substantially similar provision which is imposed after the date of signature of this Convention.

CHAPTER II DEFINITIONS

Article 3

GENERAL DEFINITIONS

- 1) For the purposes of this Convention:
- a - the terms “a Contracting State” and “the other Contracting State” mean Tunisia or Malta, as the context requires;
 - b - the term “Tunisia” means the Republic of Tunisia;
 - c - the term “Malta” means the Republic of Malta;
 - d - the term “person” includes an individual, a company and any other body of persons;
 - e - the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - f - the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - g - the term “national” means :
 - any individual possessing the nationality of a Contracting State;

- any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;

h - the term “international traffic” means any transport by a ship, aircraft or road vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State; and

i - the term “competent authority” means :
- in the case of Tunisia, the Minister of Finance or his authorised representative ;
- in the case of Malta, the Minister responsible for finance or his authorised representative.

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

Article 4

RESIDENT

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

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 solely of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident solely of the Contracting 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 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 solely of the Contracting State of which he is a national;

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

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

Article 5

PERMANENT ESTABLISHMENT

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

2) The term “ permanent establishment” includes especially:

- a - a place of management;
- b - a branch;
- c - an office;
- d - a factory;
- e - a workshop;
- f - a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including an offshore drilling site;
- g - a building site or construction or assembly project or supervisory activities where such site, project or activity continues for more than 6 months.

3) 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 or display 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 publicity;
- e - the maintenance of a fixed place of business solely for the purpose of exercising any other activities which have a preparatory or auxiliary character for the enterprise;
- f - the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

- a - there is being used by the enterprise sufficient equipment as is necessary to carry out its activities in that other State ; or

b - it carries on supervisory activities in that State in connection with the use of equipment referred to in sub-paragraph (a).

5) Where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State, on behalf of the enterprise of the other Contracting State, the enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if such a person :

a - has and habitually exercises in the first-mentioned State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

b - has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;

c - has no such authority, but habitually secures orders in the first-mentioned State wholly or almost wholly for the enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

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

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered as agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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.

CHAPTER III TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

- 1) Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
- 2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work or to explore for, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
- 3) The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
- 4) 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 income or 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 income or 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 income or 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 or with other associated enterprises with which it deals.

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

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) For the purposes of the preceding paragraphs, the income or 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.

6) The provisions of this Article shall also apply to the participation of a partner in the profits of an association of persons (*société de personnes*) including de facto partnership (*société de fait*) and an arrangement in participation (*association en participation*).

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

Article 8

INTERNATIONAL TRAFFIC

1) Profits derived from the operation of ships, aircraft or road vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2) If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in a Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3) Profits derived from the operation of ships, aircraft or road vehicles between points which are situated in a Contracting State are taxable only in that state.

4) 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 income or 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 income or profits of that enterprise and taxed accordingly.

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

Article 10

DIVIDENDS

1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3) Notwithstanding the provisions of paragraph 2, where under the law of Malta a shareholder in receipt of a dividend is entitled to set off against his tax an amount corresponding to the tax paid or payable by the company in respect of the profits distributed to him by way of such

dividend, then Malta tax on the dividends may exceed the rate set out in paragraph 2 hereof but shall not exceed that chargeable on the profits out of which dividends are paid and, in any case, shall not exceed 35 per cent of the gross amount of the dividends. The provisions of this paragraph shall be applicable only as long as Malta does not introduce corporation tax or a similar tax.

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

5) 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.

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

Article 11

INTEREST

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

2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

3) Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a local authority thereof.

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

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

Article 12

ROYALTIES

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

2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 12 per cent of the gross amount of the royalties.

3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, agricultural, or scientific equipment, or for information concerning industrial, commercial or scientific experience or for technical or economic studies or for technical assistance.

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 that State itself, a political subdivision, a local authority or 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 fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 13

ALIENATION OF PROPERTY

1) Income or 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) Income or gains from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of immovable property, may be taxed in the Contracting State in which such assets are situated.

3) Income or 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 a fixed base, may be taxed in that other State.

4) Income or gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or road vehicles operated in international traffic or movable property pertaining to

the operation of such ships, aircraft or road vehicles shall be taxable only in that Contracting State in which the place of effective management is situated.

5) Income or gains from the alienation of any property or assets, other than those 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 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 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 within any twelve-month period; in that case, only so much of the income as is derived from the activity exercised in the other Contracting State may be taxed in that other State; or

c - if the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds 5000 United States Dollars or its equivalent during the calendar year, notwithstanding that his stay in that State is for a period or periods amounting in the aggregate to less than 183 days during that year.

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

Article 15

DEPENDENT PERSONAL SERVICES

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

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

a - the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within an twelve-month period, 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 or road vehicle operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors, or other comparable body however described, of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSMEN

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

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

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 payments made under a public scheme which is part of the social security system of a Contracting State shall be taxable in that State. However the tax so charged shall not exceed 10 per cent of the gross amount of the pensions or other payments.

Article 19

GOVERNMENT SERVICE

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

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

(i) is national of that State; or
(ii) did not become a resident of that State solely for the purposes of rendering the services.

2) a - Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable in that State. However the tax so charged shall not exceed 10 per cent of the gross amount of the pensions.

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

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

Article 20

STUDENTS AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.

Article 21

OTHER INCOME

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

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

CHAPTER IV ELIMINATION OF DOUBLE TAXATION

Article 22

ELIMINATION OF DOUBLE TAXATION

1) Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a credit against the relative tax on the income of that resident an amount equal to the income tax paid in that other Contracting State. However such credit shall not exceed that part of the tax which is attributable to this income.

2) For the purposes of allowance as a credit under paragraph 1, the tax payable in a Contracting State, shall be deemed to include the tax which is otherwise payable in that Contracting State but has been reduced or waived by that State under its domestic law. For the purpose this paragraph, interest and royalties shall be deemed to have been charged at the rates laid down in paragraph 2 of Article 11 and paragraph 2 of Article 12 respectively.

3) Where a company which is a resident of a Contracting State pays a dividend to a person resident in the other Contracting State, the credit in that other Contracting State shall take into account (in addition to any tax for which credit may be allowed under paragraph 1 of this

Article) the tax paid or that which would be payable by the first-mentioned company, in respect of which such dividend is paid, but which has been reduced or waived by that State under its domestic law.

However such credit shall not exceed that part of the tax which is attributable to these dividends. No tax shall be paid by shareholders on such dividends when these are redistributed.

4) Where the Convention provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

CHAPTER V SPECIAL PROVISIONS

Article 23

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.

2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reduction 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, notwithstanding the provisions of Article 2, apply to taxes of every kind and description which are the subject of this Convention.

Article 24

MUTUAL AGREEMENT PROCEDURE

1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, 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 this Convention.

2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25

EXCHANGE OF INFORMATION

1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection, of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

a - to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

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

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

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 27

ENTRY INTO FORCE

The Contracting States shall notify each other of the completion of the procedures required by their law for the entry into force of this Convention. This Convention shall enter into force thirty days after the date of the later of these notifications. These provisions shall have effect:

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

(ii) in respect of other taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the Convention enters into force.

Article 28

TERMINATION

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the Convention enters into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, this Convention shall cease to have effect as follows:

(i) in respect of taxes withheld at source, on income paid or credited on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective governments, have signed this Convention.

DONE in duplicate at Valletta, this 31st day of May of the year two thousand in the Arabic, French and English languages and, in case there is any divergence of interpretation, the English and the French texts shall prevail.

Dr. Joe Borg
Minister of Foreign Affairs

Mr. Habib Ben Yahia
Minister of Foreign Affairs

FOR THE GOVERNMENT OF
MALTA

FOR THE GOVERNMENT OF
THE REPUBLIC OF TUNISIA

PROTOCOL

At the moment of signature of the Convention between the Government of the Republic of Tunisia and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both parties have agreed upon the following provisions, which will form an integral part of the Convention:

- 1) With reference to Article 7, each Contracting State shall tax the profit from the business of insurance in accordance with the provisions of its own law.
- 2) With reference to Article 22, it is understood that the provisions of paragraph 3 thereof shall also apply to distributions of the profits of a company of a Contracting State attributable to a permanent establishment in the other Contracting State.

IN WITNESS whereof the undersigned, being duly authorised therein by their respective Governments, have signed this Protocol.

DONE in duplicate at Valletta this 31st day of May of the year two thousand in the Arabic, French and English languages and, in case there is any divergence of interpretation, the English and the French texts shall prevail.

Dr. Joe Borg
Minister of Foreign Affairs

Mr. Habib Ben Yahia
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