

## CHAPTER 470

### THE INCOME TAX ACT

#### SUBSIDIARY LEGISLATION

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 289 of 1987]

The Cabinet Secretary responsible for Finance provides that the interest payable on the loan under the credit agreement specified in the Schedule shall be exempt from withholding tax.

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SCHEDULE

The credit agreement dated the 14th September, 1987, entered into between the Government as the borrower and the following syndicate of banks as lenders—

- (i) Banque Indosuez of 96 Boulevard Haussmann, 75008 Paris, France;
  - (ii) Banque Paribas of 3 Rue d'Antin, 75002 Paris, France;
  - (iii) Banque Francaise Du Commerce Exterieur of 21 Boulevard Haussmann, 75009 Paris, France.
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**THE INCOME TAX (P.A.Y.E) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Application of section 128 of Act
  4. Deduction of tax
  5. Calculation of monthly tax due
  6. Calculation of deduction and maintenance of records
  7. Notification of emoluments and tax deducted
  8. Objection to deduction of tax
  9. End of month procedure
  - 9A. Returns of emoluments
  10. Payment of tax by employer
  11. Employer failing to pay tax or to provide required certificate
  12. Recovery of tax
  13. *[Deleted by L.N. 84 of 2010, r. 3.]*
  14. Inspection of employer's records
  15. Death of employer
  16. Change of employer
  17. Penalty
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## THE INCOME TAX (P.A.Y.E) RULES

[Legal Notice 257 of 1973, Legal Notice 122 of 1986, Legal Notice 201 of 1986, Legal Notice 319 of 1987, Legal Notice 31 of 1994, Legal Notice 98 of 2001, Legal Notice 80 of 2008, Legal Notice 175 of 2001, Legal Notice 90 of 2009, Legal Notice 84 of 2010, Legal Notice 54 of 2011, Legal Notice 107 of 2015]

### 1. Citation and commencement

These Rules may be cited as the Income Tax (P.A.Y.E.) Rules and shall come into operation on 1st January, 1974.

### 2. Interpretation

(1) In these Rules, unless the context otherwise requires—

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise and perform functions conferred upon the Commissioner under these Rules;

"emoluments" means—

- (a) gains or profits from employment or services rendered which are payable in money; and
- (b) the value of housing provided by an employer ascertained under section 5(3) of the Act; and
- (c) the value of benefit or facility provided by the employer, where the total value exceeds three thousand shillings per month;
- (d) *deleted by L.N. 90 of 2009, s. 2,*

but does not include gains or profits which, in the opinion of the Commissioner, are in respect of casual employment only;

"employee" includes an individual receiving emoluments in respect of any employment, office, appointment or past employment;

"monthly pay", in relation to a month, means the emoluments receivable by an employee during that month, calculated in accordance with the Act and these Rules;

"monthly personal relief" in relation to any month, means that amount of personal relief to which an employee is entitled in that month in accordance with the relief claim form which he has completed together with any other amount for that month notified to the employer by the Commissioner, and any unused monthly personal relief, from a previous month or months in the same year of income;

"monthly personal relief notification" means a notification provided by the Commissioner to the employer with respect to monthly personal relief of the employee;

"relief claim form" means the relief claim form provided, or in a particular case authorized, by the Commissioner on which an employee claims the reliefs to which he is entitled under Part V of the Act;

"tax deduction card" means the tax deduction card in the form provided by the Commissioner, or such other document corresponding to a tax deduction card as may be authorized by the Commissioner in a particular case, and on which such information as the Commissioner may direct with respect to tax is recorded;

"tax tables" means the tables of income tax computed by the Commissioner in accordance with the rates of income tax specified in the Act for any year of income;

"unused personal relief" in relation to a month or months in the same year of income, means such amount of monthly personal relief as is in excess of the tax payable under these Rules in that month or months.

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(2) Nothing in these Rules shall apply to an employer none of whose employees receive emoluments exceeding three thousand six hundred shillings per annum or such greater sum as the Commissioner may, by notice in the *Gazette*, specify.

[LN 122 of 1986, s. 2, LN 201 of 1986, s. 2, L.N. 319 of 1987,  
Sch., L.N. 98 of 2001, s. 2, L.N. 80 of 2008, s. 2, LN 90 of 2009, s. 2.]

### **3. Application of section 128 of Act**

Section 128 of the Act shall apply to a notice or other document which is authorized or required to be given, served or issued by the Commissioner under these Rules.

### **4. Deduction of tax**

(1) An employer who makes a payment of, or on account of, emoluments during a month to an employee of his who is liable to payment of tax shall deduct tax from those emoluments in accordance with these Rules.

(2) An employer who fails to comply with the requirement of subrule (1) shall be guilty of an offence.

### **5. Calculation of monthly tax due**

An employer shall in each month calculate, by reference to the tax tables, the tax due from each of his employees in that month having regard to the monthly personal relief of that employee:

Provided that an employee shall be entitled to a relief from only one employer.

[L.N. 54 of 2011, s. 2.]

### **6. Calculation of deduction and maintenance of records**

(1) On the occasion of the last payment of emoluments in any month to an employee, the employer shall, except where these Rules otherwise provide, ascertain, in respect of that month, the monthly pay of the employee, the monthly tax chargeable thereon, and the monthly personal relief of the employee.

(2) If, in the case of an employee, the tax chargeable for a month exceeds his monthly personal relief then the employer shall deduct the amount of such excess from the last payment of emoluments in that month, but if the tax chargeable in a month is greater than the last payment of emoluments in that month:

Provided that if the tax chargeable in any month is greater than the last payment of emoluments to the employee in that month, the employer shall deduct such amount of tax as is not recoverable from such payment from the first payment of emoluments in the following month and from any subsequent such payments as may be necessary to recover that amount.

(3) The employer shall, on the tax deduction card, record for every month in which a payment of emoluments is made to an employee, such particulars as the Commissioner may direct in respect of any such payment.

(4) An employer who fails to comply with paragraph (2) or (3) of this rule shall be guilty of an offence.

### **7. Notification of emoluments and tax deducted**

On the occasion of the last payment of emoluments in any month to an employee, the employer shall in writing notify the employee of the total amount of the emoluments paid by the employer to the employee during such month, the total tax deducted from such emoluments and such other particulars as the Commissioner may require.

### **8. Objection to deduction of tax**

(1) If an employee is aggrieved by a calculation with respect to the deduction of tax from his emoluments and is unable to reach agreement with his employer, then—

- (a) the employer shall inform the employee of his rights under this rule and shall, at the request of the employee, furnish the employee with a written statement showing the manner in which the employer arrived at such calculation;
- (b) the employee may give notice of objection in writing to the Commissioner, but any such notice shall be valid only if-
  - (i) it states precisely the grounds of his objection;
  - (ii) there is enclosed therewith the written statement furnished by his employer; and
  - (iii) it is received by the Commissioner within thirty days of the date on which that statement was received by the employee.

(2) On receipt of a notice of objection under this rule the Commissioner shall consider the objection and, subject to and in accordance with these Rules, may amend the calculation or reject the objection.

(3) The Commissioner shall forthwith notify the employer and the employee in writing of his decision on an objection and thereafter on the occasion of any payment to such employee in any month of, or on account of, emoluments the amount of tax deducted therefrom by the employer shall be in accordance with such decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of any payment to the employee in any month of, or on account of, emoluments from which tax is to be deducted in accordance with these Rules, the amount of tax deducted by the employer shall be in accordance with the calculation by the employer until the employer is notified by the Commissioner of his decision with respect to the objection.

(5) Where an amount of tax has been deducted in excess of the amount payable by reason of a decision of the Commissioner under this rule, the Commissioner shall refund that amount to the employee.

## **9. End of month procedure**

At the end of every month, an employer shall compile, in such manner as the Commissioner may direct, a list which shall include the name of each employee in his employ from whose emoluments tax was deducted during that month together with the particulars of the amount of tax deducted and such other particulars as the Commissioner may require.

### **9A. Returns of emoluments**

Before the 10th day of the month following the end of each quarter, an employer shall render to the Commissioner a return of emoluments made to each employee in each of the three months, the tax deducted and such other particulars as the Commissioner may require:

Provided that an employer who furnishes the returns of emoluments on a monthly basis using information technology shall not be required to furnish quarterly returns under this paragraph.

[L.N. 90 of 2009, s. 3, L.N. 84 of 2010, s. 2.]

## **10. Payment of tax by employer**

(1) Before the tenth day following the end of every month or before any other day which may be notified to him by the Commissioner, an employer shall, subject to paragraph (2) of this rule, pay, to such person as the Commissioner shall direct, all amounts of tax which the employer has deducted under these Rules during such month:

Provided that in the case of a director, the due date shall be before the tenth day following the end of the month in which payment was made to the director, or on or before the last day of the fourth month after the accounting date, whichever is the earlier.

(2) Paragraph (1) of this rule shall not apply to any employer in respect of any month in which the total amount of tax deducted by him is less than one hundred shillings, and in that case, or where in a month no tax is deductible by an employer under these Rules, the employer shall send, before the tenth day following the end of such month or before

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any other day which may be notified to him by the Commissioner, to the Commissioner a certificate, in the form authorized or provided by the Commissioner, showing either that the amount of tax which he deducted in that month was less than one hundred shillings or that he deducted no tax in that month:

Provided that when the amount of tax deducted by an employer in any month is less than one hundred shillings, such amount shall be added to the amount of tax deducted by him in the following month, or months, and when in a month the total of all such amounts is greater than one hundred shillings, the employer shall comply with paragraph (1) of this rule; so however, that the employer shall comply with paragraph (1) of this rule in the month of December in each year notwithstanding that the total amounts of such tax is less than one hundred shillings.

(3) A person to whom the Commissioner has, under paragraph (1) of this rule, directed that an employer pay such amount of tax shall keep a record of payment in such form as the Commissioner may direct and shall enter therein particulars of tax which has been paid to him.

(4) Any employer who, having deducted tax under this rule fails to account therefor in the manner that the Commissioner may direct, or who fails to comply with paragraph (2) of this rule, shall be guilty of an offence.

[L.N. 31 of 1994, s. 2., L.N. 90 of 2009, s. 4., L.N. 107 of 2015, s. 2.]

### **11. Employer failing to pay tax or to provide required certificate**

(1) If, before the tenth day following the end of every month, or before a later day that may have been notified to him by the Commissioner, an employer has paid no amount of tax under rule 10 for that month and the Commissioner is unaware of the amount, if any, which the employer is liable to pay, or the employer has failed to provide the certificate mentioned in paragraph (2) of that rule, the Commissioner may give notice to the employer requiring him to render, within the time specified in the notice, a return showing the name of every employee to whom he made a payment of emoluments in the period stated in the notice, together with those particulars with regard to each employee that the notice may require, being particulars of—

- (a) a calculation under rule 5 appropriate to the employee's case;
- (b) the payments of emoluments made to the employee during that period; and
- (c) any other matter affecting the calculation of the tax which the employer was liable under these Rules to deduct from the payments of emoluments to the employee during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provisions of these Rules.

(3) The production of the return made by the employer under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the employer would have been liable to pay under rule 10 in respect of the month in question had he complied with the provisions of these Rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive months, these Rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount paid in respect of a month is the full amount which the employer would have been liable to pay under rule 10 had he complied with these Rules, he may notwithstanding that an amount of tax has been paid by the employer under that rule in respect of that month give a notice under paragraph (1) of this rule and thereupon this rule shall have effect monthly.



**12. Recovery of tax**

For the purposes of the recovery of tax which an employer would have been liable to pay under rule 10 had he complied with the provisions of these Rules, that employer shall be deemed to have been appointed an agent of his employee under section 96 of the Act.

**13.**

[Deleted by L.N. 84 of 2010, r. 3.]

**14. Inspection of employer's records**

(1) An employer, when called upon to do so by the Commissioner, shall produce, in English or any other language which the Commissioner may allow, for inspection, at the employer's premises or at any other place the Commissioner may require—

- (a) all wages sheets, salary vouchers, and other books, documents and records whatever relating to the calculation or payment of the emoluments of his employees in respect of the years or months specified by the Commissioner, or to the deduction of tax by reference to those emoluments; or
- (b) any of those wages sheets, salary vouchers and other books, documents and records as may be specified by the Commissioner.

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, by reference to the information obtained from the inspection, showing—

- (a) tax which it appears from the documents and records so produced that the employer would have been liable to pay under rule 10 for the years or months covered by the inspection had he complied with the provisions of these Rules;
- (b) tax which, to the best of his knowledge and belief, has not been paid as the Commissioner has directed.

(3) The production of the certificate mentioned in paragraph (2) shall be sufficient evidence that the employer is liable to pay, in respect of the years or months mentioned in the certificate, the amount shown therein pursuant to paragraph (2)(b), and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

**15. Death of employer**

If an employer dies, anything which he would have been liable to do under these Rules shall be done by his personal representatives, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or, if no person succeeds him, the person on whose behalf he paid such emoluments.

**16. Change of employer**

Where there has been a change in the employer from whom an employee receives emoluments in respect of the same employment, the employer after the change shall, in relation to a matter arising after the change, be liable to do anything which the employer before the change would have been liable to do under these rules if the change had not taken place, but the employer after the change shall not be liable for the payment of tax which was deductible from emoluments paid to the employee before the change took place.

**17. Penalty**

A person guilty of an offence under these Rules shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

[L.N. 98 of 2001, s. 2., L.N. 175 of 2001, s. 2.]



**THE INCOME TAX (RETIREMENT BENEFIT) RULES, 1974**

[Legal Notice 318 of 1974, Legal Notice 50 of 1980,  
Legal Notice 239 of 1991, Legal Notice 468 of 1991]

***Revoked by Legal Notice 136 of 1992 on 1st January, 1993***



**THE INCOME TAX (DISTRAINT) RULES**

[Legal Notice 6 of 1974, Legal Notice 73 of 2000, Legal Notice 83 of 2008]

1. These Rules may be cited as the Income Tax (Distraint) Rules, 1973.
2. In these Rules, unless the context otherwise requires-
  - "distrainee" means the debtor named in an order;
  - "distraint agent" means any person appointed as a distraint agent under rule 3 of these Rules;
  - "distress" means a distress levied pursuant to an order,
  - "distress debt" means the amount of any tax, and any interest charged thereon, specified in an order;
  - "distraintor" means an officer in the service of the Income Tax Department who is authorized to levy distress;
  - "goods" means all movable property of a distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;
  - "order" means an order issued by the Commissioner under section 102 of the Act.
3. The Commissioner may appoint distraint agents to assist distraintors in the execution of orders:
  - Provided that no person shall be appointed a distraint agent unless he satisfies the Commissioner—
    - (a) that he is of good repute and financial standing;
    - (b) that he is qualified under the law relating thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and
    - (c) that he has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of any goods which may be placed in his custody by reason of the performance by him of his duties as a distraint agent.
4. (1) Every distraint agent shall, on appointment, furnish the Commissioner with security, by means of a deposit or in such other manner as the Commissioner may approve, in the sum of ten thousand shillings, and such security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this rule.
  - (2) If any distraint agent is convicted of an offence involving fraud or dishonesty in connexion with any functions performed by him as such agent, the court by which he is convicted may make an order as to the forfeiture of the security furnished by him under paragraph (1) of this rule, or any part of such security, and the provisions of the Criminal Procedure Code, (Cap. 75) in so far as they relate to forfeiture of recognizances, shall apply mutatis mutandis to the forfeiture of any security under this rule.
5. (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by rule 6 of these Rules.
  - (2) An order shall be executed by attachment of such goods of the distrainees as, in the opinion of the distraintor, are of a value which, on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distraintor.
6. (1) Every order shall be issued by the Commissioner in duplicate and service thereof shall be effected by service by the distraintor of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence, the distrainee cannot be found, by service of a copy on any agent of the distrainee empowered to accept service, or on any adult member of the family of the distrainee who is residing with him.

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[Subsidiary]

(2) Any person served with a copy of an order under this rule shall endorse on the order an acknowledgment of service and if such person refuses to make endorsement the distrainor shall leave the copy of the order with that person after stating in writing thereon that the person upon whom he served the order refused to sign the acknowledgment and that he left, at the time, date and place stated therein, a copy of the order with such person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

(3) (3) *Deleted by L.N 83 of 2008*

[LN 73 of 2000, r. 2., LN 83 of 2008](/akn/ke/act/lm/2008/83), r. 2.]

7. (1) In executing any distress no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor or distraint agent executing any such distress has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any goods of the distrainee to be.

(2) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to her religion or local custom does not appear in public, the distrainor shall give notice to such woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing he may enter such room for the purpose of attaching any goods therein, using at the same time every precaution consistent with these provisions to prevent their clandestine removal.

[LN 73 of 2000, r. 3.]

8. As soon as practicable after the attachment of any goods under these Rules, the distrainor or distraint agent shall—

- (a) issue a receipt in respect thereof to the distrainee;
- (b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainor or distraint agent, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

[LN 73 of 2000, r. 4.]

9. On the sale by public auction of any goods attached under these Rules the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.

10. Immediately after the completion of a sale by public auction of goods attached under these Rules, the distrainor shall make a return to the Commissioner specifying the items which have been sold, the amounts realized by the sale and the manner in which the proceeds of the sale were applied.

11. (1) Where any distrainee has, within ten days of attachment of his goods under these Rules, paid or given security accepted by the Commissioner for the whole of the tax due from him together with the whole of the costs and expenses incurred by the distrainor in executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Commissioner who shall cancel the same.

(2) Any sum paid by a distrainee under this rule shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance, if any, in settlement of the distress debt or such part thereof as the Commissioner shall direct.

12. Where any goods attached under these Rules comprise or include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding of such livestock and any costs and expenses incurred thereby shall be recoverable from

the distrainee under rule 9 or 11 of these Rules, as the case may be, as costs and expenses incurred by the distrainor.

13. In addition to a claim for any other costs and expenses which may be incurred by the Commissioner or the distrainor in levying any distress under these Rules there may be claimed by the distrainor and recovered under rule 9 or 11 of these Rules, as the case may be, costs at the rate specified in the Schedule to these Rules.

14. The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Rules, and which may be recovered by the distrainor under rule 9 or 11 of these Rules, as the case may be, shall be those specified in the Schedule to these Rules.

15. The maximum rate of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of any goods attached under these Rules, and which may be recovered by the distrainor under rule 9 of these Rules, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent, he shall be entitled, in addition to any commission under this rule, to remuneration for such services as provided in rule 14 of these Rules.

16. The rates of remuneration specified in the Schedule to these Rules shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding any goods attached under these Rules.

SCHEDULE

[LN 73 of 2000, r. 5, LN 83 of 2008, r. 3.]

RATES OF REMUNERATION

1. Distrainor's Charges

Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distrainee shall pay the distrainor the following costs-

	<i>Shs.</i>
Where the distress debt does not exceed Shs. 3,000	300
Where the distress debt exceed Shs. 3,000	120

2. Distraint Agent's Charges

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to a remuneration of ..... Shs. 120

(b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less-

(i) does not exceed Shs. 30,000 Four per cent thereof

*Income Tax*

[Subsidiary]

- 
- (ii) exceed Shs. 30,000 Three per cent thereof
- (c) Where the goods or any part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed in paragraph (b) above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15
- (d) For keeping possession of any attached goods after the expiration of ten days from the date of attachment for each day, or part thereof  $\frac{1}{4}$  per cent of the value of the goods with a maximum of Shs. 60
- (e) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Commissioner may approve.
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**THE INCOME TAX (LOCAL COMMITTEES) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Appointment of clerk
  4. Form of and time for lodging an appeal
  5. Memorandum of appeal
  6. Statement of facts of appellant
  7. Service memorandum
  - 7A. Response by Commissioner
  8. *Revoked*
  9. Notice and place of hearing
  10. Procedure
  11. Local committee to determine own procedure in certain matters
  12. Copies of documents admissible
  13. Fees and costs
-



**THE INCOME TAX (LOCAL COMMITTEES) RULES**

[Legal Notice 7 of 1974, Legal Notice 103 of 1976, Legal Notice 53 of 2012]

**1. Citation**

These Rules may be cited as the Income Tax (Local Committees) Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires —

"appeal" means an appeal to a local committee under section 86 or section 89;

"appellant" means a person entering an appeal and the advocate or duly authorized agent of such person;

"clerk" means the clerk of a local committee appointed pursuant to rule 3 of these Rules;

"memorandum" means a memorandum of appeal presented under rule 4 of these Rules;

"respondent" includes a person who under section 89(3)(c) or (d) is entitled to appear on an appeal as if he were a party thereto and the advocate or duly authorized agent of that person;

"section" means a section of the Act.

**3. Appointment of clerk**

(1) The Commissioner shall appoint an officer of the Income Tax Department to be the clerk to a local committee:

Provided that one officer may, in the discretion of the Commissioner, be appointed as clerk to two or more local committees.

(2) A clerk shall, in matters relating to appeals to the local committee and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) A clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purpose of these Rules and shall in the same manner notify any change in such address.

**4. Form of and time for lodging an appeal**

An appeal shall be entered by presentation of a memorandum of appeal to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86 (1):

Provided that where the local committee is satisfied that owing to absence from his normal place of residence, sickness or other reasonable cause the appellant was prevented from presenting a memorandum within such period and that there has been no unreasonable delay on his part, the local committee may extend that period within which such memorandum may be presented.

**5. Memorandum of appeal**

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

**6. Statement of facts of appellant**

(1) A memorandum shall be accompanied by—

- (a) a copy of the confirming notice, the amending notice or the notice of the decision of the Commissioner as the case may be;
- (b) a copy of the notice of appeal;

[Subsidiary]

- (c) a statement, signed by the appellant, setting out the facts on which the appeal is based and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal;
- (d) *deleted by L.N. 53/2012, r. 2.*

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85 (3)(a);

"confirming notice" means a notice confirming an assessment served under section 85 (3)(b);

"decision of the Commissioner" means a decision or act of the Commissioner which, under section 90, may be the subject of an appeal.

[L.N. 53 of 2012, r. 2.]

## **7. Service memorandum**

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant shall be served by the appellant upon the Commissioner and upon every other respondent.

### **7A. Response by Commissioner**

(1) The Commissioner shall, within thirty days of being served with a memorandum and statement of facts in accordance rule 7 file a response, with the clerk, stating the facts upon which the response is based and specifying any documentary or other evidence that he proposes to adduce at the hearing of the appeal.

(2) The Commissioner shall, upon filing a response in accordance with paragraph (1), serve a copy of the response together with copies of any documents annexed thereto, upon the appellant.

(3) Where a local committee is satisfied that, the Commissioner was for any reasonable ground, unable to file the statement of facts with the clerk within the prescribed period, the local committee may extend the time within which the Commissioner shall file a response.

[L.N. 53 of 2012, r. 3.]

## **8. Revoked**

*Revoked by L.N. 103/1976, r. 2.*

## **9. Notice and place of hearing**

(1) As soon as may be convenient after receipt by him of a memorandum the clerk shall notify the chairman of such receipt.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the local committee for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant, the Commissioner and every other respondent.

(3) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

## **10. Procedure**

At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner and any other respondent shall be entitled to be present or to be represented;
- (b) the appellant shall state the ground of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the local committee and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a

ground stated in the memorandum and may not adduce any evidence other than evidence previously adduced to the Commissioner;

- (c) at the conclusion of the statement and evidence on behalf of the appellant, the Commissioner and any other respondent shall be entitled to make such submissions, supported by such relevant evidence as may be necessary to support his case;
- (d) the appellant shall be entitled to reply but may not rely on any ground of appeal or on evidence other than that adduced at the hearing;
- (e) the chairman or a member of the local committee may at any stage of the hearing to ask any questions of the appellant or the Commissioner, or any other respondent, or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by a party may be cross-examined by another party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the local committee may be cross-examined by a party to the appeal;
- (h) the local committee may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary and on such terms as it may determine;
- (i) before the local committee considers its decision the parties to the appeal shall withdraw from the meeting, and the local committee shall deliberate the issue according to law;
- (j) the decision of the local committee shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the local committee recorded therein.

#### **11. Local committee to determine own procedure in certain matters**

In matters of procedure not governed by these Rules or the Act, a local committee may determine its own procedure.

#### **12. Copies of documents admissible**

Save where a local committee in a particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admissible in evidence:

Provided that the local committee may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

#### **13. Fees and costs**

No fees shall be payable, and a local committee shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the committee to be frivolous, in which case the committee may order the appellant to pay as costs to the Commissioner and each other respondent a sum not exceeding five hundred shillings.



**THE INCOME TAX (PRESCRIBED DWELLING HOUSE) RULES**

[Legal Notice 8 of 1974, Legal Notice 266 of 1986]

1. These Rules may be cited as the Income Tax (Prescribed Dwelling-house) Rules.

2. For the purposes of item (b) of paragraph 5 (1) of the Second Schedule to the Act the conditions with which a dwelling-house shall conform in order to be a prescribed dwelling-house shall be—

That the dwelling-house is certified by a Labour Officer, as defined in section 2 of the Employment Act (Cap. 226) as having been provided under section 9 of that Act.

[L.N. 266 of 1986, s. 2.]

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**THE INCOME TAX (TRIBUNAL) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Appointment of clerk
  4. Form of and time for lodging an appeal
  5. Memorandum of appeal
  6. Statement of facts of appellant
  7. Service of memorandum of appeal
  8. Statement of facts of Commissioner
  9. Notice and place of hearing
  10. Procedure
  11. Tribunal to determine own procedure in certain matters
  12. Copies of documents admissible
  13. Fees and costs
-



**THE INCOME TAX (TRIBUNAL) RULES**

[Legal Notice 5 of 1974]

**1. Citation**

These Rules may be cited as the Income Tax (Tribunal) Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"**appeal**" means an appeal to the Tribunal under section 86(1)(a);

"**appellant**" means a person entering an appeal and the advocate or duly authorized agent of that person;

"**chairman**" means the chairman of the Tribunal appointed under section 83(2);

"**clerk**" means the clerk of the Tribunal appointed pursuant to rule 3 of these Rules;

"**memorandum**" means a memorandum of appeal presented under rule 4 of these Rules;

"**section**" means a section of the Act.

**3. Appointment of clerk**

(1) The Commissioner shall appoint a person to be the clerk of the Tribunal, and such person may be an officer of the Income Tax Department.

(2) The clerk shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with any general and special directions lawfully given by the chairman.

(3) The clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in such address.

**4. Form of and time for lodging an appeal**

An appeal shall be entered by presentation of a memorandum of appeal, together with five copies thereof, to the clerk within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 86(1):

Provided that where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within such period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

**5. Memorandum of appeal**

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

**6. Statement of facts of appellant**

(1) Each copy of a memorandum shall be accompanied by—

- (a) a copy of the confirming notice, or the amending notice, as the case may be;
- (b) a copy of the notice of appeal; and
- (c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

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[Subsidiary]

(2) In this rule—

"amending notice" means a notice setting out an amendment to an assessment served under section 85(3)(a);

"confirming notice" means a notice confirming an assessment served under section 85(3)(b).

## 7. Service of memorandum of appeal

Within forty-eight hours after the presentation of a memorandum to the clerk, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

## 8. Statement of facts of Commissioner

(1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7 of these Rules, file with the clerk a statement of facts together with five copies thereof and the provisions of rule 6(1)(c) shall *mutatis mutandis* apply to that statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1) of these Rules, the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the clerk and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

## 9. Notice and place of hearing

(1) As soon as may be convenient after receipt by him of the memorandum the clerk shall notify the chairman of such receipt.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the clerk that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the clerk shall cause notice thereof to be served on the appellant and the Commissioner.

(3) The clerk shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

## 10. Procedure

At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner shall be entitled to be present or to be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence:

Provided that, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than any grounds stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;

- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner shall be entitled to make such submissions, supported by relevant evidence and the provisions of subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;

- (d) the appellant shall be entitled to reply but may not raise any new issue or argument;
- (e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, as he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;
- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) before the Tribunal considers its decision the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;
- (j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the Tribunal recorded therein.

#### **11. Tribunal to determine own procedure in certain matters**

In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

#### **12. Copies of documents admissible**

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence:

Provided that the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

#### **13. Fees and costs**

No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay as costs to the Commissioner a sum not exceeding five hundred shillings.



**THE EXEMPTION NOTICES UNDER SECTION 13(2)**

[Legal Notice 93 of 1974, Legal Notice 44 of 1975, Legal Notice 43 of 1975, Legal Notice 118 of 1975, Legal Notice 147 of 1975, Legal Notice 148 of 1975, Legal Notice 149 of 1975, Legal Notice 186 of 1976, Legal Notice 97 of 1977, Legal Notice 123 of 1977, Legal Notice 124 of 1977, Legal Notice 125 of 1977, Legal Notice 122 of 1977, Legal Notice 126 of 1977, Legal Notice 147 of 1977, Legal Notice 163 of 1977, Legal Notice 272 of 1977, Legal Notice 15 of 1978, Legal Notice 13 of 1978, Legal Notice 14 of 1978, Legal Notice 35 of 1978, Legal Notice 129 of 1978, Legal Notice 258 of 1978, Legal Notice 259 of 1978, Legal Notice 45 of 1979, Legal Notice 83 of 1979, Legal Notice 79 of 1979, Legal Notice 127 of 1979, Legal Notice 179 of 1979, Legal Notice 285 of 1979, Legal Notice 168 of 1980, Legal Notice 169 of 1980, Legal Notice 169 of 1982, Legal Notice 10 of 1981, Legal Notice 52 of 1981, Legal Notice 155 of 1981, Legal Notice 240 of 1983, Legal Notice 72 of 1984, Legal Notice 240 of 1985, Legal Notice 3 of 1986, Legal Notice 59 of 1986, Legal Notice 144 of 1986, Legal Notice 205 of 1986, Legal Notice 270 of 1986, Legal Notice 61 of 1987, Legal Notice 72 of 1987, Legal Notice 121 of 1987, Legal Notice 193 of 1987, Legal Notice 5 of 1988, Legal Notice 6 of 1988, Legal Notice 114 of 1988, Legal Notice 167 of 1988, Legal Notice 273 of 1988, Legal Notice 302 of 1988, Legal Notice 327 of 1988, Legal Notice 434 of 1988, Legal Notice 4 of 1989, Legal Notice 51 of 1989, Legal Notice 52 of 1989, Legal Notice 161 of 1989, Legal Notice 167 of 1989, Legal Notice 248 of 1989, Act No. 5 of 1989, Legal Notice 394 of 1989, Legal Notice 7 of 1990, Legal Notice 48 of 1990, Legal Notice 49 of 1990, Legal Notice 58 of 1990, Legal Notice 226 of 1990, Legal Notice 225 of 1990, Legal Notice 356 of 1990, Legal Notice 478 of 1990, Legal Notice 446 of 1990, Legal Notice 515 of 1990, Legal Notice 54 of 1991, Legal Notice 99 of 1991, Legal Notice 267 of 1991, Legal Notice 514 of 1991, Legal Notice 531 of 1991, Legal Notice 30 of 1992, Legal Notice 31 of 1992, Legal Notice 72 of 1992, Legal Notice 82 of 1992, Legal Notice 83 of 1992, Legal Notice 27 of 1993, Legal Notice 73 of 1993, Legal Notice 164 of 1993, Legal Notice 277 of 1993, Legal Notice 322 of 1993, Legal Notice 350 of 1993, Legal Notice 352 of 1993, Legal Notice 365 of 1993, Legal Notice 408 of 1993, Legal Notice 32 of 1994, Legal Notice 43 of 1994, Legal Notice 143 of 1994, Legal Notice 153 of 1994, Legal Notice 219 of 1994, Legal Notice 330 of 1994, Legal Notice 379 of 1994, Legal Notice 484 of 1994, Legal Notice 4 of 1995, Legal Notice 136 of 1995, Legal Notice 137 of 1995, Legal Notice 152 of 1995, Legal Notice 205 of 1995, Legal Notice 218 of 1995, Legal Notice 262 of 1995, Legal Notice 330 of 1995, Legal Notice 262 of 1996, Legal Notice 289 of 1996, Legal Notice 288 of 1996, Legal Notice 302 of 1996, Legal Notice 39 of 1997, Legal Notice 45 of 1997, Legal Notice 82 of 1997, Legal Notice 156 of 1997, Legal Notice 155 of 1997, Legal Notice 548 of 1997, Legal Notice 19 of 1998, Legal Notice 20 of 1998, Legal Notice 61 of 1998, Legal Notice 62 of 1998, Legal Notice 93 of 1998, Legal Notice 3 of 1999, Legal Notice 2 of 1999, Legal Notice 97 of 1999, Legal Notice 178 of 1999, Legal Notice 28 of 2000, Legal Notice 135 of 2000, Legal Notice 44 of 2001, Legal Notice 45 of 2001, Legal Notice 117 of 2001, Legal Notice 167 of 2001, Legal Notice 182 of 2001, Legal Notice 34 of 2002, Legal Notice 131 of 2002, Legal Notice 153 of 2002, Legal Notice 155 of 2002, Legal Notice 154 of 2002, Legal Notice 177 of 2002, Legal Notice 45 of 2003, Legal Notice 24 of 2003, Legal Notice 25 of 2003, Legal Notice 44 of 2003, Legal Notice 70 of 2003, Legal Notice 155 of 2003, Legal Notice 164 of 2003, Legal Notice 207 of 2003, Legal Notice 208 of 2003, Legal Notice 51 of 2005, Legal Notice 104 of 2005, Legal Notice 138 of 2005, Legal Notice 137 of 2005, Legal Notice 139 of 2005, Legal Notice 5 of 2006, Legal Notice 68 of 2006, Legal Notice 94 of 2006, Legal Notice 95 of 2006, Legal Notice 110 of 2006, Legal Notice 116 of 2006, Legal Notice 163 of 2006, Legal Notice 164 of 2006, Legal Notice 21 of 2007, Legal Notice 61 of 2007, Legal Notice 2 of 2008, Legal Notice 13 of 2008, Legal Notice 63 of 2008, Legal Notice 158 of 2009, Legal Notice 16 of 2011, Legal Notice 46 of 2010, Legal Notice 47 of 2010, Legal Notice 73 of 2010, Legal Notice 72 of 2010, Legal Notice 82 of 2010, Legal Notice 83 of 2010, Legal Notice 147 of 2010, Legal Notice 164 of 2010, Legal Notice 178 of 2010, Legal Notice 32 of 2011, Legal Notice 85 of 2011, Legal Notice 86 of 2011, Legal Notice 131 of 2011, Legal Notice 65 of 2012, Legal Notice 62 of 2013, Legal Notice 62 of 2014, Legal Notice 56 of 2014, Legal Notice 55 of 2014, Legal Notice 86 of 2014, Legal Notice 87 of 2014, Legal Notice 121 of 2014, Legal Notice 91 of 2015, Legal Notice 146 of 2015, Legal Notice 165 of 2015, Legal Notice 200 of 2016, Legal Notice 115 of 2017, Legal Notice 156 of 2017, Legal Notice 221 of 2017, Legal Notice 45 of 2018, Legal Notice 44 of 2018, Legal Notice 234 of 2018, Legal Notice 22 of 2019, Legal Notice 181 of 2019, Legal Notice 158 of 2020, Legal Notice 15 of 2021, Legal Notice 24 of 2021, Legal Notice 193 of 2022]

[L.N. 93/1974]

The Cabinet Secretary responsible for Finance and Economic Planning hereby provides that income in respect of dividends received by the Industrial and Commercial Development Corporation Investment Company Limited, where the company controls, directly or indirectly,

*Income Tax*

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[Subsidiary]

less than twenty-five per cent of the voting power of the company paying the dividends shall, with effect from 1st January, 1974, be exempt from tax.

[L.N. 43/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that such part of the income of the Executive Secretary of the African Social Studies Programme as is paid to him in respect of his employment as such and received by him from outside Kenya shall, where such Executive Secretary is not ordinarily resident in Kenya or is ordinarily resident in Kenya solely for the purpose of his employment as such, be exempt from tax.

[L.N. 44/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that such part of the income of the Regional Director and the Deputy Regional Director of the Christian Children's Fund, Incorporated as is paid to them in respect of their employment as such and received by them from outside Kenya shall, where such Regional Director and Deputy Regional Director are not ordinarily resident in Kenya or are ordinarily resident in Kenya solely for the purposes of their employment as such, be exempt from tax.

[L.N. 147/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Morgan Grenfell & Co. Ltd. (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Morgan Grenfell & Co. Ltd., to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 23rd January, 1975, made between the Industrial Development Bank and Morgan Grenfell & Co. Ltd., shall be exempt from tax.

[L.N. 148/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Industrial Development Bank, Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

[L.N. 149/1975]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Development Finance Company of Kenya Limited and Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

[L.N. 97/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (a company incorporated in the Grand Duchy of Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million European Units of Account (equivalent to approximately twenty million Kenya shillings) made by the European Investment Bank



to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 27th October, 1976, made between the Development Finance Company of Kenya Limited and the European Investment Bank, shall exempt from tax.

[L.N. 122/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., (a company incorporated in the Kingdom of the Netherlands), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve and a half million shillings made by Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V. to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 6th May, 1976, made between the Development Finance Company of Kenya Limited and Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., shall be exempt from tax.

[L.N. 123/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of six million deutsche mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated the 2nd day of December, 1976, made between the Industrial Development Bank Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, shall be exempt from tax.

[L.N. 124/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred and fifty thousand pounds sterling made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 17th December, 1976, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

[L.N. 125/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Manufacturers Hanover Export Finance Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Manufacturers Hanover Export Finance Limited to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Financial Agreement dated 3rd November, 1976, made between the Development Finance Company of Kenya Limited and Manufacturers Hanover Export Finance Limited, shall be exempt from tax.

[L.N. 126/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Morgan Grenfell & Company Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million pounds sterling made by Morgan Grenfell & Company Limited to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated the 14th

*Income Tax*

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[Subsidiary]

day of January, 1977, made between the Industrial Development Bank Limited and Morgan Grenfell & Company Limited, shall be exempt from tax.

[L.N. 147/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the United States Agency for International Development, in so far as such income represents a Guaranty Fee accrued in or derived from Kenya under the provisions contained in a document described as an Implementation Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the United States Agency for International Development, shall be exempt from tax.

[L.N. 163/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of three million European Units of Account (equivalent to approximately thirty million shillings) made by the European Investment Bank to the East African Portland Cement Company Limited (a company incorporated in Kenya), under the provisions of a document described as a Finance Contract dated 11th May, 1977, made between the East African Portland Cement Company Limited and the European Investment Bank, shall be exempt from tax.

[L.N. 272/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Danish Turnkey Dairies Limited (a company incorporated in Denmark) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of eight million, seven hundred twenty-four thousand and nine hundred and sixty-one danish kroner made by the Danish Turnkey Dairies Limited to the Kenya Co-operative Creameries Limited (a Company incorporated in Kenya) under the provisions of a document described as a Form of Agreement dated 16th September, 1972, made between the Kenya Co-operative Creameries Limited and the Danish Turnkey Dairies Limited, shall be exempt from tax.

[L.N. 13/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Danish Turnkey Dairies Limited (a company incorporated in Denmark) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of eight million, seven hundred twenty-four thousand and nine hundred and sixty-one danish kroner made by the Danish Turnkey Dairies Limited to the Kenya Co-operative Creameries Limited (a Company incorporated in Kenya) under the provisions of a document described as a Form of Agreement dated 16th September, 1972, made between the Kenya Co-operative Creameries Limited and the Danish Turnkey Dairies Limited, shall be exempt from tax.

[L.N. 14/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of five million European Units of Account (equivalent to approximately fifty million Kenya shillings) made by the European Investment Bank to the Industrial Development Bank of Kenya (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 8th November, 1977, made between the Industrial Development Bank of Kenya and the European Investment Bank, shall be exempt from tax.

[L.N. 15/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European

Units of Account (equivalent to approximately one hundred and twenty million Kenya shillings) made by the European Investment Bank to the South Nyanza Sugar Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 8th September, 1977, made between the South Nyanza Sugar Company Limited and the European Investment Bank, shall be exempt from tax.

[L.N. 35/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the European Development Fund (an institution of the European Economic Commission established by the Treaty of Rome and having its Head Office in Brussels, Belgium), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of 26,340,000 European Units of Accounts (equivalent to approximately two hundred and sixty million Kenya Shillings) made by the European Development Fund to the Government of Kenya for the construction of the Upper Tana Multi-Purpose Reservoir under the provisions of a document described as a Finance Contract dated December 20th, 1977, made between the Government of Kenya and the European Development Fund, shall be exempt from tax.

[L.N. 129/1978]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of Guinness Mahon & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as such income represents interests accrued in or derived from Kenya in respect of a Loan of four million six hundred and fifty thousand pounds sterling (equivalent to approximately sixty-five million eight hundred and forty-four thousand Kenya shillings) made by Guinness Mahon & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated 21st day of July, 1977, made between the Kenya Furfural Company Limited and Guinness Mahon & Company Limited, shall be exempt from tax.

[L.N. 258/1978]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg, in so far, as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European Units of Account (equivalent to approximately one hundred and twelve million Kenya shillings) made by the European Investment Bank to the Government of Kenya for the Upper Tana Reservoir Project under the provisions of a document described as a Finance Contract dated 3rd October, 1978 made between the Government of Kenya and the European Investment Bank, shall be exempt from

[L.N. 259/1978]

The Cabinet Secretary responsible for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

[L.N. 45/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of Osterreichische Landerbank Aktiengesellschaft (a company incorporated in Austria), in so far as such income represents interest occurred in, or derived from Kenya in respect of a Loan of one hundred forty-seven million six hundred and eighty thousand Austrian Schellings (equivalent to approximately seventy-nine million, three hundred and eighty thousand Kenya

*Income Tax*

[Subsidiary]

Shillings) made by Osterreichische Landerbank Aktiengesellschaft to the Kenya Fibre Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated the provisions of a document described as a Loan Agreement dated 1st December 1977, made between the Kenya Fibre Corporation Limited and Osterreichische Landerbank Aktiengesellschaft, shall be exempt from tax.

[L.N. 83/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the Union Bank of Switzerland (a company incorporated in Switzerland), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of ninety-seven million and three hundred and twenty-five thousand Swiss francs (equivalent to approximately four and twenty-five million, three hundred and ten thousand Kenya shillings) made by the Union Bank of Switzerland to the Kenya Chemical and Food Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 2nd December, 1977 made between the Kenya Chemical and Food Corporation Limited and Union Bank of Switzerland shall be exempt from tax.

[L.N. 79/1979]

The Cabinet Secretary responsible for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

[L.N. 179/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million, three hundred and forty thousand pounds sterling (equivalent to approximately twenty million, eight hundred and ninety thousand Kenya Shillings) made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya) under the provisions of a document described as a Further Loan Agreement dated 15th September, 1978, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

[L.N. 127/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Development Fund (an institution of the European Economic Community established by the Treaty of Rome and having its head office in Brussels, Belgium), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of ten million, six hundred and eighteen thousand European Units of Account (equivalent to approximately one hundred and six million, one hundred and eighty thousand Kenya shillings) made by the European Development Fund to the Government of the Republic of Kenya under the provisions of a document described as a Finance Contract, dated 11th April, 1979, made between the Government of the Republic of Kenya and the European Development Fund, shall be exempt from tax.

[L.N. 128/1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its head office provisionally in Luxembourg), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of five million European Units of

*Income Tax*

[Subsidiary]

Account (equivalent to approximately fifty million Kenya Shillings) made by the European Investment Bank to the Development Finance Company of Kenya (a limited liability company incorporated under the Laws of Kenya and having its head office provisionally in Bima House, Nairobi) under the provisions of a document described as a Finance Contract, dated 22nd May, 1979, made between the Development Finance Company of Kenya and the European Investment Bank, shall be exempt from tax.

[L.N. 285/1979]

The Cabinet Secretary responsible for Finance provides that the income of the Industrial Development Bank of India (a corporation constituted in India), in so far as such income represents interest accrued in or derived from Kenya in respect of a credit of twenty million Indian Rupees (equivalent to approximately eighteen million, five hundred and fifty-four thousand Kenya Shillings) made by the Industrial Development Bank of India to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Credit Agreement dated 11th July, 1978, made between the Industrial Development Bank Limited and the Industrial Development Bank of India, shall be exempt from tax.

[L.N. 167/1980]

The Cabinet Secretary responsible for Finance provides that the income of the Institute of Certified Public Accountants of Kenya shall be exempt from tax.

This notice shall be deemed to have come into force on 1st January, 1980.

[L.N. 169/1980]

The Cabinet Secretary responsible for Finance provide that the incomes of the Kenya Medical Association and the East African Medical Journal shall be exempt from tax.

This notice shall be deemed to have come into force on the 1st January, 1978.

[L.N. 10/1981]

The Cabinet Secretary responsible for Finance provides that the income of Guinness Mohan & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as that income represents interest accrued in or derived from Kenya in respect of a loan of approximately one million seven hundred and thirty one thousand three hundred and ninety nine pounds sterling, made by Guineas Mohan & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya), as an additional loan to the original loan of four million six hundred and fifty thousand pounds sterling, shall be exempt from tax.

[L.N. 52/1981]

The Cabinet Secretary responsible for Finance provides that the income of the Rift Valley Development Trust together with the income of its subsidiary Deloraine Estate Limited shall be exempt from tax.

This notice shall be deemed to have come into force on the 13th July, 1973.

[L.N. 155/1981]

The Cabinet Secretary responsible for Finance provides that all payments to be made under the agreement referred to in the Schedule hereto shall be exempt from withholding tax.

## SCHEDULE

<i>S/No.</i>	<i>Agreement</i>	<i>Date</i>
1.	The Project for the Improvement of the Power Distribution System in and	18th September, 2020

*Income Tax*

[Subsidiary]

- around Nakuru City, and  
around Mombasa City
2. The Project for Infrastructure Development in Mombasa Special Economic Zone near Dongo Kundu Area 27th February, 2020
3. The Project for Enhancing Trade Facilitation and Border Control Capacity in East Africa 6th November, 2019
4. The Project for Human Resource Development Scholarship 18th September, 2020
5. Health Sector Policy Loan for Attainment of the Universal Health Coverage (Phase 2) 27th August, 2020
6. Olkaria I Unit 4 Geothermal Power Project 31st March, 2010
7. Mwea Irrigation Development Project 16th August, 2010
8. Olkaria- Lessos- Kisumu Transmission Lines Project 10th December, 2010
9. Mombasa Port Area Road Development Project (Phase 1) 2nd June, 2012
10. Mombasa Port Area Road Development Project (Phase 2) 4th July, 2017
11. Mombasa Port Development Project (Phase 1) 20th November, 2007
12. Mombasa Port Development Project (Phase 2) 9th March, 2015
13. Olkaria V Geothermal Power Development Project 9th March, 2016
14. Olkaria I Unit 1, 2 and 3 Geothermal Power Plant Rehabilitation Project 16th March, 2018
15. Mombasa Gate Bridge Construction Project (1) 5th December, 2019
16. Mombasa Special Economic Zone Development Project (1) 27th February, 2020

[L.N. 24/2021]

The Cabinet Secretary for National Treasury and Planning directs that the income which accrued in or was derived from Kenya by Spanish companies, Spanish consultants and Spanish employees involved in—

(a) the construction of the Rabai — New Bamburi — Kilifi and New Bamburi — Bamburi Cement Power Generation and Evacuation Lines; and

(b) the New Bamburi Cement Substation, Extension of the Existing Rabai, Bamburi and Kilifi Substations Project,

under the Financing Agreement between the Government of Kenya and the Government of Spain signed on the 7th April, 2017 shall be exempt from withholding tax.

[L.N. 115/2021]

IN EXERCISE of the powers conferred by section 13(2) of the Income Tax Act (cAP. 470), the Cabinet Secretary for the National Treasury and Planning directs that three-months salary paid in lieu of notice, the severance pay and payments for the accumulated leave days to the one hundred and eighty-seven employees of Kenya Airways Limited who were retrenched and left services between January, 2021 and March, 2021, shall be exempt from the provisions of the Act.

Provided that—

(a) The exemption shall not apply to other pension benefits paid to the employees;

(b) The retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;

(c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner; and

(d) Kenya Airways Limited shall furnish the Commissioner with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter to the employees confirming the retrenchment.

[L.N. 193/2022]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the six employees of Kenya Airways Limited who were retrenched and left service between August 2021 and December 2021 shall be exempt from the provisions of the Act:

Provided that-

(a) the exemption shall not apply to other pension benefits paid to the employees;

(b) the employees who are retrenched shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;

(c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and

(d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of each retrenched employee, the date the employee left the service of Kenya Airways Limited, the amount paid to the employee and a copy of the letter to the employees confirming the retrenchment.





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**THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. In these Rules, unless the context otherwise requires—
  3. Form of and time for filing appeal
  4. Form of memorandum
  5. Statement of facts of appellant
  6. Registration of memorandum
  - 6A. Abatement of appeals
  7. Service of memorandum of appeal
  8. Statement of facts of respondent
  9. Notice and place of hearing
  10. Right to begin
  11. Dismissal of appeal for appellant's default
  12. Readmission of appeal dismissed for default
  13. Rehearing on application of respondent against whom *ex parte* decree made
  14. Grounds of appeal
  15. Additional evidence
  16. Copies of documents admissible
  17. Proceedings in Chambers
  18. Execution of decree where tax payable not set out therein
  19. Fees
  20. Extent to which rules on civil procedure apply
-



**THE INCOME TAX (APPEALS TO THE HIGH COURT) RULES**

[Legal Notice 105 of 1974, Legal Notice 41 of 1980]

**1. Citation**

These Rules may be cited as the Income Tax (Appeals to the High Court) Rules.

**2. In these Rules, unless the context otherwise requires—**

"address for service" means a place of residence or a place of business within the jurisdiction;

"appeal" means an appeal to the Court under subsection (2) of section 86 of the Act;

"memorandum" means a memorandum of appeal presented under rule 3 of these Rules;

"Registrar" means the Registrar or a Deputy Registrar of the Court;

"respondent" includes any person who under subsection (3) of section 89 of the Act is entitled to appear before a committee.

**3. Form of and time for filing appeal**

No appeal shall be filed unless a memorandum of appeal is presented to the Registrar during office hours, and a copy served upon the respondent, within 30 days after the date of service upon the respondent of a notice of appeal under section 86(2) of the Act:

Provided that, where the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was prevented from presenting such memorandum of appeal within such period and that there has been no unreasonable delay on his part, the Court may extend the period within which such memorandum of appeal shall be presented.

[L.N. 41 of 1980.]

**4. Form of memorandum**

Every memorandum shall contain an address for service, shall be signed by the appellant or his advocate and shall set forth concisely under distinct heads, numbered consecutively, the grounds of appeal without any argument or narrative.

**5. Statement of facts of appellant**

Every memorandum shall be accompanied by—

- (a) a copy of the decision or the notice of the decision appealed against;
- (b) a copy of the notice of appeal served on the respondent; and
- (c) a statement, signed by the appellant or his advocate, setting out the facts upon which the appeal is based, and respectively specifying and referring to any documentary or other evidence which it is proposed to adduce at the hearing of the appeal.

**6. Registration of memorandum**

(1) After the memorandum and the documents referred to in rule 5 of these Rules have been presented, and all filing and service fees due in relation thereto have been paid, the Registrar shall cause the date of presentation to be date-stamped thereon, and the appeal shall be numbered and entered (as an Income Tax Appeal) in the register of appeals, in accordance with rule 8 (1) of Order XL1 of the Civil Procedure (Revised) Rules, 1948.

(2) After entry of an appeal in the register of appeals as provided in sub-rule (1) of this rule, the Registrar shall ensure that, in respect of all documents relating to the appeal, the words "Income Tax Appeal" and the number of such appeal are included in the title of the appeal wherever the title occurs.

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[Subsidiary]

(3) The date on which the memorandum is presented is the date of filing of the appeal notwithstanding any dispute as to the amount of any service fee payable.

#### **6A. Abatement of appeals**

An appeal shall abate in any case where any filing and service fees due in relation to that case have not been paid in full within fourteen days of the appellant having been notified of the total amount of the fees payable by him; and where an appellant is so notified by post then he shall be deemed, until the contrary is proved, to have received notification at the time at which the letter would be delivered in the ordinary course of post.

[L.N. 41 of 1980.]

#### **7. Service of memorandum of appeal**

A copy of the memorandum of appeal and the documents referred to in rule 5 of these Rules shall be served by the Registrar upon the respondent upon payment of the prescribed fee for service thereof:

Provided that in any case referred to in paragraph(c) of subsection (3) of section 89 of the Act such service shall be made by the appellant.

#### **8. Statement of facts of respondent**

The respondent shall, if he intends to contest the appeal, present to the Registrar, during office hours and within thirty days of the service upon him of the copy memorandum and the documents referred to in rule 5 of these Rules, a statement in duplicate each signed by him, giving an address for service, setting out the facts on which he relies, and respectively specifying and referring to any documentary or other evidence which he proposes to adduce at the hearing of the appeal; and a copy of such statement shall be served by the Registrar upon the appellant upon payment of the prescribed fee for service thereof.

#### **9. Notice and place of hearing**

Unless the parties otherwise agree, the Registrar shall give fifteen clear days' notice in writing to the parties of the date and place fixed for the hearing of the appeal.

#### **10. Right to begin**

(1) On the day and at the time fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent and the appellant shall be entitled to reply.

#### **11. Dismissal of appeal for appellant's default**

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may, subject to paragraph (a) of subsection (2) of section 87 of the Act, make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the Court may proceed to hear the appeal *ex parte*.

#### **12. Readmission of appeal dismissed for default**

Where an appeal is dismissed under rule 11 of these Rules the appellant may apply to the Court to which such appeal is preferred for the readmission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

**13. Rehearing on application of respondent against whom *ex parte* decree made**

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Court to which the appeal is preferred to rehear the appeal; and if he satisfies the Court that the memorandum of appeal and the documents referred to in rule 5 of these Rules were not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

**14. Grounds of appeal**

The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on any ground other than a ground stated in the memorandum of appeal.

**15. Additional evidence**

Should it appear to the Court at the hearing of the appeal that any documentary or oral evidence other than that referred to in the statement of facts of the appellant or respondent should be admitted, the Court may admit such evidence.

**16. Copies of documents admissible**

Subject to the provisions of section 121 of the Act and save where the Court in any particular case otherwise directs or where any party to the appeal objects, copies of documents shall be admissible in evidence:

Provided that the Court may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

**17. Proceedings in Chambers**

(1) Ancillary applications to a judge, if not made at the hearing, shall be made by summons intituled in the matter of the appeal, supported by affidavit.

(2) If no appeal is pending, the summons shall be intituled in the matter of the intended appeal.

**18. Execution of decree where tax payable not set out therein**

Where any decree following the decision of the Court does not specify the amount of tax payable under the assessment as determined by the Court then, for the purposes of the execution of any such decree, the Commissioner shall—

- (a) where the decision of the Court results in any amendment to the assessment, file with the Registrar a copy, certified by him, of a notice served under paragraph (f) of subsection (2) of section 87 of the Act on the person assessed; or
- (b) where the decision does not result in any amendment to the assessment, file with the Registrar a statement signed by him setting out the amount of tax payable under the notice of assessment served under section 78 of the Act or the amending notice, as the case may be,

and thereupon such decree shall have effect as if it were a decree for the payment of such amount of tax as is set out in such notice or statement, as the case may be.

**19. Fees**

A filing fee of one hundred shillings shall be payable on presentation of an appeal under these Rules, and the scale of fees for the time being in force in civil matters in the Court shall apply in respect of the service of all documents, and to all subsequent acts, applications or proceedings, in relation to such appeal.

[Subsidiary]

**20. Extent to which rules on civil procedure apply**

The rules determining procedure in civil suits before the Court in so far as such rules relate to recognized agents and advocates, to service, to consolidation, to admissions, to the production, impounding and return of documents, to the summoning and attendance of witnesses, to adjournments, to the examination of witnesses, to affidavits, to judgment and decree, to the execution of decrees, to the attachment of debts, to the death, bankruptcy and marriage of parties, to withdrawal, discontinuance and adjustment, to security for costs, to commissions, to corporations, to trustees, executors and administrators, and to the enlargement of time shall, to the extent to which such rules are not inconsistent with the Act or these Rules, apply to an appeal as if it were a civil suit but, save as provided in these Rules, the procedure relating to civil suits before the Court shall not apply to an appeal.

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**DECLARATIONS OF CROPS**

[Legal Notice 17 of 1975, Legal Notice 19 of 1985, Legal Notice 269 of 1986,  
Legal Notice 158 of 1989, Legal Notice 54 of 2005, Legal Notice 66 of 2006]

The Cabinet Secretary responsible for Finance and Economic Planning hereby declares the following to be permanent or semi-permanent crops for the purposes of the Act.

- Cashew nuts
- Citrus
- Cloves
- Coconuts
- Coffee
- Pyrethrum
- Sisal
- Wattle
- Sugar-cane
- Tea
- Rubber
- Vanilla
- Apples
- Pears
- Peaches
- Plums
- Apricots
- Cocoa
- Macadamia
- Cinchona
- Tara
- Jojoba* plant
- Bananas
- Roses
- Grape Vines
- Eucalyptus
- Pine
- Cypress
- Avocadoes and
- Mangoes





**EXEMPTIONS**

[Legal Notice 43 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that such part of the income of the Executive Secretary of the African Social Studies Programme as is paid to him in respect of his employment as such and received by him from outside Kenya shall, where such Executive Secretary is not ordinarily resident in Kenya or is ordinarily resident in Kenya solely for the purpose of his employment as such, be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 44 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that such part of the income of the Regional Director and the Deputy Regional Director of the Christian Children's Fund, Incorporated as is paid to them in respect of their employment as such and received by them from outside Kenya shall, where such Regional Director and Deputy Regional Director are not ordinarily resident in Kenya or are ordinarily resident in Kenya solely for the purposes of their employment as such, be exempt from tax.

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**THE INCOME TAX -EXEMPTION**

[Legal Notice 116 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the Kenya Accountants and Secretaries National Examinations Board shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 118 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income, of any non-resident person not having a permanent establishment in Kenya, arising from any management or professional fee or royalty paid (otherwise than from Kenya) by a licensee under the Oil Production Act (Cap. 308) in connexion with an oil exploration licence or oil prospecting licence, after 1st January, 1974, but before the commencement of the term of an oil mining lease granted to such licensee under that Act, shall, where the services or rights in respect of which the management or professional fee or royalty is paid are rendered or exercised outside Kenya, be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 147 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Morgan Grenfell & Co. Ltd. (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Morgan Grenfell & Co. Ltd., to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 23rd January, 1975, made between the Industrial Development Bank and Morgan Grenfell & Co. Ltd., shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 148 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Industrial Development Bank, Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 149 of 1975]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of four million deutsch mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 13th December, 1974, made between the Development Finance Company of Kenya Limited and Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbh, shall be exempt from tax.

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**UNTITLED**

[Legal Notice 103 of 1976]

[This is a stub. Please see the publication document for the original content.]





**THE INCOME TAX-EXEMPTION**

[Legal Notice 186 of 1976]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million and three hundred thousand deutsche mark made by Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH to the Rift Valley Textiles Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 25th August, 1975, made between the Rift Valley Textiles Limited and Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 97 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Investment Bank (a company incorporated in the Grand Duchy of Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million European Units of Account (equivalent to approximately twenty million Kenya shillings) made by the European Investment Bank to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 27th October, 1976, made between the Development Finance Company of Kenya Limited and the European Investment Bank, shall exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 122 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., (a company incorporated in the Kingdom of the Netherlands), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve and a half million shillings made by Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V. to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 6th May, 1976, made between the Development Finance Company of Kenya Limited and Nederlandse Financierings—Maatschappij Voor Ontwikkelingslanden N.V., shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 123 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, (a company incorporated in the Federal Republic of Germany), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of six million deutsche mark made by Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH to the Industrial Development Bank Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated the 2nd day of December, 1976, made between the Industrial Development Bank Limited and the Deutsche Gesellschaft Fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 124 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred and fifty thousand pounds sterling made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Loan Agreement dated 17th December, 1976, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 125 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Manufacturers Hanover Export Finance Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million pounds sterling made by Manufacturers Hanover Export Finance Limited to the Development Finance Company of Kenya Limited (a company incorporated in Kenya), under the provisions of a document described as a Financial Agreement dated 3rd November, 1976, made between the Development Finance Company of Kenya Limited and Manufacturers Hanover Export Finance Limited, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 126 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Morgan Grenfell & Company Limited (a company incorporated in the United Kingdom) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of two million pounds sterling made by Morgan Grenfell & Company Limited to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated the 14th day of January, 1977, made between the Industrial Development Bank Limited and Morgan Grenfell & Company Limited, shall be exempt from tax.

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**THE INCOME TAX, 1973-EXEMPTION**

[Legal Notice 148 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the Federal Home Loan Bank of New York, (a Corporation incorporated in the United States of America), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of ten million United States dollars made by the Federal Home Loan Bank of New York to the City Council of Nairobi (a municipal corporate entity established under the laws of Kenya), under the provisions of a document described as a Loan Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the Federal Home Loan Bank of New York shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 147 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the United States Agency for International Development, in so far as such income represents a Guaranty Fee accrued in or derived from Kenya under the provisions contained in a document described as an Implementation Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the United States Agency for International Development, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 163 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of three million European Units of Account (equivalent to approximately thirty million shillings) made by the European Investment Bank to the East African Portland Cement Company Limited (a company incorporated in Kenya), under the provisions of a document described as a Finance Contract dated 11th May, 1977, made between the East African Portland Cement Company Limited and the European Investment Bank, shall be exempt from tax.

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**DOUBLE TAXATION UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND**

ARRANGEMENT OF ARTICLES

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**DOUBLE TAXATION UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND**

[Legal Notice 253 of 1977]

The Cabinet Secretary responsible for Finance and Plan declares that the arrangements specified in the Schedule arrangements made between the Government of the Kenya and the Government of the United Kingdom of and Northern Ireland in articles of agreement signed 1973, as amended by a protocol signed on 20th January by an exchange of letters signed on 8th February, 1977 to affording relief from double taxation in relation to under the Act and any taxes of a similar character imposed by the laws of the United Kingdom of Great Britain and Northern Ireland, shall, notwithstanding anything to the contrary in the Act or in any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows:

**ARTICLE 1*****Personal Scope***

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

**ARTICLE 2*****Taxes Covered***

(1) The taxes which are the subject of this Agreement are:—

- (a) in the United Kingdom of Great Britain and Northern Ireland:
  - (i) the income tax;
  - (ii) the corporation tax; and
  - (iii) the capital gains tax;
- (b) in Kenya:
  - (i) the income tax; and
  - (ii) the graduated personal tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

**ARTICLE 3*****General Definitions***

(1) In this Agreement, unless the context otherwise requires-

- (a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

*Income Tax*

[Subsidiary]

- (b) the term "Kenya" means the Republic of Kenya, including any area adjacent to the territorial waters of Kenya designated, in accordance with international law, as an area within which Kenya may exercise rights with respect to the sea bed and sub-soil and their natural resources;
- (c) the term "nationals" means-
  - (i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;
  - (ii) in relation to Kenya, all citizens of the Republic of Kenya and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya;
- (d) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Agreement applies by virtue of the provisions of Article 2; the term "Kenya tax" means tax imposed by Kenya being tax to which this Agreement applies by virtue of the provisions of Article 2; but neither of these terms are to include any tax payable in the United Kingdom or Kenya which is payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of the United Kingdom or Kenya relating to those taxes;
- (e) the term "tax" means United Kingdom tax or Kenya tax, as the context requires;
- (f) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Kenya, as the context requires;
- (g) the term "persons" means-
  - (i) in relation to the United Kingdom an individual, a company and any other body of persons;
  - (ii) in relation to Kenya an individual, a company and any other body of persons treated as an entity for tax purposes;
- (h) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (i) 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;
- (j) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorized representative, and in the case of Kenya the Minister for Finance or his authorized representative.

(2) As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

**ARTICLE 4*****Fiscal Domicile***

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms "resident of the United Kingdom" and "resident of Kenya" shall be construed accordingly.



(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then, his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities shall settle the question by mutual agreement.

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

## ARTICLE 5

### *Permanent Establishment*

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

(2) The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction of assembly project which exists for more than six months;
- (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project.

(3) The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

*Income Tax*

[Subsidiary]

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 19.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (7) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purpose of goods or merchandise for the enterprise; or
- (b) he maintains in that State a stock of goods or merchandise belonging to the enterprise from which he regularly fulfils orders on behalf of that enterprise.

(6) An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph (7).

(7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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. An agent shall not, however, be deemed to be an agent of an independent status within the meaning of this paragraph if his activities are devoted wholly or almost wholly to the business of that enterprise.

(8) 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*****Limitation of Relief***

Where under any provision of this Agreement any person is relieved from tax in a Contracting State on certain income if (with or without other conditions) that person is subject to tax in the other Contracting State in respect of that income and that person is subject to tax in respect of that income in that other State by reference to the amount thereof which is remitted to or received in that other State, the relief from tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to the amounts so remitted or received.

**ARTICLE 7*****Income from Immovable Property***

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

- (2) (a) The term "immovable property" shall, subject to the provisions of subparagraph (b) below be defined in accordance with the law of the Contracting State in which the property in question is situated.
- (b) The term "immovable property" 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, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraph (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

(4) In so far as it has been customary in a Contr according to its law, to determine the profits to be at permanent establishment on the basis of an apportion total profits of the enterprise to its various parts, not graph (2) of this Article shall preclude that Contractin determining the profits to be taxed by such an apportion be customary; the method of apportionment adopted sh be such that the result shall be in accordance with the this Article.

(5) Notwithstanding the preceding provisions of this Article profits derived by an agricultural, forestry or plantation enterprise shall be dealt with in accordance with the provisions of Article 8.

## **ARTICLE 8**

### **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) 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 at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment situated in a Contracting State, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible under the law of that State if the permanent establishment were a separate enterprise) 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) In so far as it has been customary in a Contracting State, according to its law, 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) of this Article 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 of 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 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 9**

### ***Shipping and Air Transport***

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

[Subsidiary]

**Article 10****Associated Enterprises**

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.

**Article 11****Dividends**

- (1) (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of Kenya may be taxed in Kenya.
- (b) Where a resident of Kenya is entitled to tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
- (c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom by a resident of Kenya who is subject to tax in Kenya on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Kenya who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is subject to tax in Kenya on the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over the liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purpose of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends derived from a company which is a resident of Kenya by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Kenya but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends if the recipient of the dividends is subject to tax on them in the United Kingdom.

(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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article 12 or Article 13 of this Agreement) which under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(6) If the recipient of the dividends being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraphs (1) and (2) or as the case may be paragraph (4) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the

company paying the dividends earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the recipient of the dividends became the owner of 10 per cent or more of the class of shares in question:

Provided that this paragraph shall apply only if the shares are acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(7) The provisions of paragraphs (1) and (2), or as the case may be paragraph (4) of this Article shall not apply where a resident of a Contracting State has in the other Contracting State a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(8) 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 to persons who are not resident of that other State or subject the company's undistributed profits to a tax on undistributed profits, even the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

## Article 12

### 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 be taxed in the Contracting State in which it arises, and according to the law of that State; but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provision of paragraph (2)-

- (a) interest arising in a Contracting State, and paid to the Government of the other Contracting State or a local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax in the firstmentioned Contracting State. The competent authorities of the Contracting States may determine by mutual agreement any other Governmental institution to which this paragraph shall apply;
- (b) interest arising in Kenya which is paid to a resident of the United Kingdom, other than to a person mentioned in subparagraph (a) of this paragraph, may be exempt from Kenya tax at the discretion of the competent authority of Kenya.

(4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is home by that permanent

[Subsidiary]

establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(7) Any provision of the law of one of the Contracting State which relates only to interest paid to a non-resident company with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution. The preceding sentence shall not however apply to interest received by a company which is a resident of one of the Contracting States in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

(8) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Agreement.

### **ARTICLE 13**

#### **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 be taxed in the Contracting State in which they arise, and according to the law of that State; but where such royalties are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the royalties arise shall not exceed 15 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 or 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 or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship, between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

**ARTICLE 14****Management Fees**

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

(2) Notwithstanding Article 8, management fees may also be taxed in the State in which they arise and according to the law of that State; but where such management fees are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the management fees arise shall not exceed 12 per cent of the gross amount of the management fees arising there.

(3) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the management fees, being a resident of a Contracting State, has in the other Contracting State in which the management fees arise a permanent establishment with which the management fees are effectively connected. In such a case the provisions of Article 8 shall apply.

**ARTICLE 14****Management Fees**

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

(2) Notwithstanding Article 8, management fees may also be taxed in the State in which they arise and according to the law of that State; but where such management fees are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the management fees arise shall not exceed 12% per cent of the gross amount of the management fees arising there.

(3) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the management fees, being a resident of a Contracting State, has in the other Contracting State in which the management fees arise a permanent establishment with which the management fees are effectively connected. In such a case the provisions of Article 8 shall apply.

**ARTICLE 15****Capital Gains**

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

*Income Tax*

[Subsidiary]

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(5) The provisions of paragraph (4) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by a person who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the ten years immediately preceding the alienation of the property.

**Article 16****Independent Personal Services**

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

(b) he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned, in which case so much of the income may be taxed in that other Contracting State as is attributable to the activities performed in that other Contracting 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 17*****Employments***

(1) Subject to the provisions of Articles 18, 20, 21, 22 and 23, 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 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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

**Article 18****Directors' Fees**

Directors' fees and 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 19*****Artistes and Athletes***

Notwithstanding the provisions of Articles 16 and 17, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised. Provided that this Article shall not apply to public entertainers and athletes whose visit to a Contracting State is supported wholly or substantially from the public funds of the other Contracting State.

**Article 20*****Pensions***

(1) Any pension (other than a pension of the kind referred to in paragraph (2) of this Article) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State, but if the individual is subject to tax in the other Contracting State in respect of the pension or annuity the tax so charged in the first-mentioned Contracting State shall not exceed the lower of—

- (a) 5 per cent of the pension or annuity; or
- (b) the amount of tax chargeable on the pension or annuity in the other Contracting State.

(2) Pensions paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions may be taxed only in that Contracting State.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

**ARTICLE 21*****Governmental Functions***

(1) Remuneration paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions shall be exempt from tax in the other Contracting State if the individual is not a resident of that other Contracting State or is resident there solely for the purpose of rendering those services.

(2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States for purposes of profit.

**Article 22*****Students***

(1) A student or business apprentice who is or was before visiting a Contracting State a resident of the other State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on—

- (a) payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that first-mentioned Contracting State, provided that the remuneration constitutes earnings reasonably necessary for his maintenance and education.

(2) The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in

*Income Tax*

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[Subsidiary]

no event shall any individual have the benefits of this Article for more than three consecutive years.

**ARTICLE 23*****Teachers***

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

**ARTICLE 24*****Income Not Expressly mentioned***

Items of income of a resident of a Contracting State being income of a class or from sources not expressly mentioned in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State shall be taxable only in that State. Provided that this Article shall not be construed as affecting the taxation of income attributable to a permanent establishment which a resident of one Contracting State has in the other Contracting State.

**ARTICLE 25*****Capital***

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Notwithstanding the provisions of paragraph (2) of this Article, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the operator is a resident.

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

**Article 26*****Elimination of Double Taxation***

(1) Subject to the provisions of the law of regarding the allowance as a credit against Un tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

- (a) Kenya tax payable under the laws of Kenya and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Kenya shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Kenya tax is computed. Provided that in the case of a dividend the credit shall take into account only such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.
- (b) In the case of a dividend paid by a company which is a resident of Kenya to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend the credit shall take into account (in addition to any Kenya tax for which credit may be allowed under the provisions of subparagraph (a)

of this paragraph) the Kenya tax payable by the company in respect of the profits out of which such dividend is paid.

(2) For the purpose of paragraph (1) of this Article, the term "Kenya tax payable" shall be deemed to include any amount which would have been payable as Kenya tax for any year but for—

- (a) a reduction of tax granted for that year or any part thereof under paragraph (2) (b) of the Second Schedule to the Income Tax (Allowances and Rates) (No. 2) Act, 1971, so far as it was in force on, and has not been modified since, the date when this Agreement was signed, or has been modified only in minor respects so as not to affect its general character; or
- (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the United Kingdom and Kenya to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Kenya tax was first granted in respect of that source.

(3) Where a resident of Kenya—

- (a) derives income from sources within the United Kingdom which, in accordance with the provisions of this Agreement, is exempt from Kenya tax but may be taxed in the United Kingdom, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within the United Kingdom had not been so exempted;
- (b) derives income from sources within the United Kingdom which may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the United Kingdom. Such deduction, however, shall not exceed that part of the Kenya tax as computed before the deduction is given, which is appropriate to the income derived from the United Kingdom.

(4) For the purposes of paragraphs (1) and (3) of this Article income, profits and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

## **ARTICLE 27**

### ***Personal Allowances***

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Kenya shall be entitled to the same personal allowances, reliefs and reductions for the purpose of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Kenya tax as Kenya citizens not resident in Kenya.

(3) Nothing in this Agreement shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of a combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purpose of taxation in that other Contracting State.

[Subsidiary]

**Article 28*****Non-Discrimination***

(1) The 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 are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on an enterprise of that other Contracting State carrying on the same activities. Provided that this paragraph shall not prevent the Government of one of the Contracting States from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State a tax not exceeding 7% per cent of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of that Contracting State.

(3) 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 Contracting 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 that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

**ARTICLE 29*****Mutual Agreement Procedure***

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(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 an appropriate 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 not in accordance with the Agreement.

(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 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 the preceding paragraphs.

**Article 30*****Exchange of Information***

The competent authorities of the Contracting States shall exchange such information (being information which is provided under their respective taxation laws in the normal administration) as is necessary for carrying out the provisions of the Agreement or for the prevention of fraud or for the administrative statutory provisions against legal avoidance in relation to which are the subject of this Agreement. Any information exchanged shall be treated as secret but may be disclosed (including to a court or administrative body) concerned with collection, enforcement or prosecution in respect of tax the subject of this Agreement. No information shall be disclosed which would disclose any trade, business, industrial or secret or any trade process.

**Article 31*****Territorial Extension***

(1) This Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

(2) Unless otherwise agreed by both Contracting States, the termination of this Agreement shall terminate the application of this Agreement to any territory to which it has been extended under the provisions of this Article.

**ARTICLE 32*****Entry into Force***

This Agreement shall come into force on the date when the last of all such things shall have been done in Kenya and the United Kingdom as are necessary to give the Agreement the force of law in Kenya and the United Kingdom respectively, and shall thereupon have effect—

(a) in the United Kingdom—

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6th April, 1976;
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1976;

(b) in Kenya—

as respects income arising for the year of income 1976 and subsequent years.

**Article 33*****Termination***

This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the thirtieth day of June in any calendar year after the year 1978, give notice of termination to the other Contracting Government and, in such event, the Agreement shall cease to be effective—

(a) in the United Kingdom—

- (i) as respects income tax, surtax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(b) in Kenya—

as respects income arising for the year of income next following that in which the notice is given and subsequent years.



**THE INCOME TAX-EXEMPTION**

[Legal Notice 272 of 1977]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the Danish Turnkey Dairies Limited (a company incorporated in Denmark) in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of eight million, seven hundred twenty-four thousand and nine hundred and sixty-one danish kroner made by the Danish Turnkey Dairies Limited to the Kenya Co-operative Creameries Limited (a Company incorporated in Kenya) under the provisions of a document described as a Form of Agreement dated 16th September, 1972, made between the Kenya Co-operative Creameries Limited and the Danish Turnkey Dairies Limited, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 13 of 1978]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of five point eighty-eight (5.88) million European Units of Account equivalent to approximately fifty-eight million Kenya shillings) made by the European Investment Bank to the Kenya Furfural Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 21st July, 1977, made between the Kenya Furfural Company Limited and the European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 14 of 1978]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of five million European Units of Account (equivalent to approximately fifty million Kenya shillings) made by the European Investment Bank to the Industrial Development Bank of Kenya (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 8th November, 1977, made between the Industrial Development Bank of Kenya and the European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 15 of 1978]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxemburg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European Units of Account (equivalent to approximately one hundred and twenty million Kenya shillings) made by the European Investment Bank to the South Nyanza Sugar Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Finance Contract dated 8th September, 1977, made between the South Nyanza Sugar Company Limited and the European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 35 of 1978]

The Cabinet Secretary for Finance and Planning hereby provides that the income of the European Development Fund (an institution of the European Economic Commission established by the Treaty of Rome and having its Head Office in Brussels, Belgium), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of 26,340,000 European Units of Accounts (equivalent to approximately two hundred and sixty million Kenya Shillings) made by the European Development Fund to the Government of Kenya for the construction of the Upper Tana Multi-Purpose Reservoir under the provisions of a document described as a Finance Contract dated December 20th, 1977, made between the Government of Kenya and the European Development Fund, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 129 of 1978]

The Cabinet Secretary for Finance and Planning hereby provides that the income of Guinness Mahon & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as such income represents interests accrued in or derived from Kenya in respect of a Loan of four million six hundred and fifty thousand pounds sterling (equivalent to approximately sixty-five million eight hundred and forty-four thousand Kenya shillings) made by Guinness Mahon & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya) under the provisions of a document described as a Financial Agreement dated 21st day of July, 1977, made between the Kenya Furfural Company Limited and Guinness Mahon & Company Limited, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 258 of 1978]

The Cabinet Secretary for Finance hereby provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg, in so far, as such income represents interest accrued in or derived from Kenya in respect of a loan of twelve million European Units of Account (equivalent to approximately one hundred and twelve million Kenya shillings) made by the European Investment Bank to the Government of Kenya for the Upper Tana Reservoir Project under the provisions of a document described as a Finance Contract dated 3rd October, 1978 made between the Government of Kenya and the European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 259 of 1978]

The Cabinet Secretary for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 45 of 1979]

The Cabinet Secretary for Finance hereby provides that the income of Osterreichische Landerbank Aktiengesellschaft (a company incorporated in Austria), in so far as such income represents interest occurred in, or derived from Kenya in respect of a Loan of one hundred forty-seven million six hundred and eighty thousand Austrian Schellings (equivalent to approximately seventy-nine million, three hundred and eighty thousand Kenya Shillings) made by Osterreichische Landerbank Aktiengesellschaft to the Kenya Fibre Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated the provisions of a document described as a Loan Agreement dated the provisions of a document described as a Loan Agreement dated 1st December 1977, made between the Kenya Fibre Corporation Limited and Osterreichische Landerbank Aktiengesellschaft, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 79 of 1979]

The Cabinet Secretary for Finance hereby Provides that the income of the European Investment Bank (an institution established by the Treaty of Rome having its Head Office provisionally in Luxembourg), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one hundred thousand European Units of Account (equivalent to approximately one million Kenya shillings) made by the European Investment Bank to Kenya Tourist Development Corporation (a body incorporated in Kenya under Cap. 382 of the Laws of Kenya) under provisions of a document described as a Finance Contract dated 31st October, 1978, made between the Kenya Tourist Development Corporation and European Investment Bank, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 83 of 1979]

The Cabinet Secretary for Finance hereby provides that the income of the Union Bank of Switzerland (a company incorporated in Switzerland), in so far as such income represents interest accrued in, or derived from Kenya in respect of a loan of ninety-seven million and three hundred and twenty-five thousand Swiss francs (equivalent to approximately four and twenty-five million, three hundred and ten thousand Kenya shillings) made by the Union Bank of Switzerland to the Kenya Chemical and Food Corporation Limited (a company incorporated in Kenya) under the provisions of a document described as a Loan Agreement dated 2nd December, 1977 made between the Kenya Chemical and Food Corporation Limited and Union Bank of Switzerland shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 127 of 1979]

The Cabinet Secretary responsible for Finance hereby provides that the income of the European Development Fund (an institution of the European Economic Community established by the Treaty of Rome and having its head office in Brussels, Belgium), in so far as such income represents interest accrued in, or derived from, Kenya in respect of a loan of ten million, six hundred and eighteen thousand European Units of Account (equivalent to approximately one hundred and six million, one hundred and eighty thousand Kenya shillings) made by the European Development Fund to the Government of the Republic of Kenya under the provisions of a document described as a Finance Contract, dated 11th April, 1979, made between the Government of the Republic of Kenya and the European Development Fund, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 179 of 1979]

The Cabinet Secretary for Finance hereby provides that the income of the Commonwealth Development Corporation (a company incorporated in England), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of one million, three hundred and forty thousand pounds sterling (equivalent to approximately twenty million, eight hundred and ninety thousand Kenya Shillings) made by the Commonwealth Development Corporation to the Development Finance Company of Kenya Limited (a company incorporated in Kenya) under the provisions of a document described as a Further Loan Agreement dated 15th September, 1978, made between the Development Finance Company of Kenya Limited and the Commonwealth Development Corporation, shall be exempt from tax.

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**THE EXEMPTION NOTICES UNDER SECTION 35(7)**

[Legal Notice 286 of 1979, Legal Notice 115 of 1980, Legal Notice 116 of 1980]

The Cabinet Secretary responsible for Finance directs that persons resident or having a permanent establishment in Kenya and paying interest on loans made by the following banks are exempt from the requirement to deduct tax at the appropriate withholding rate on such interest as required by section 35(3).

**1. Industrial Development Bank Limited**

This shall be deemed to have come into operation on the 1st January, 1979.

**2. Development Finance Company of Kenya Limited**

This shall be deemed to have come into operation on the 4th July, 1977.

**3. Industrial and Commercial Development Corporation Limited**

This shall be deemed to have come into operation on the 4th July, 1977.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 285 of 1979]

The Cabinet Secretary for Finance provides that the income of the Industrial Development Bank of India (a corporation constituted in India), in so far as such income represents interest accrued in or derived from Kenya in respect of a credit of twenty million Indian Rupees (equivalent to approximately eighteen million, five hundred and fifty-four thousand Kenya Shillings) made by the Industrial Development Bank of India to the Industrial Development Bank Limited (a company incorporated in Kenya) under the provisions of a document described as a Credit Agreement dated 11th July, 1978, made between the Industrial Development Bank Limited and the Industrial Development Bank of India, shall be exempt from tax.

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**THE INCOME TAX-THE DOUBLE TAXATION RELIEF  
(FEDERAL REPUBLIC OF GERMANY) NOTICE**

[Legal Notice 20 of 1980]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of the Federal Republic of Germany in articles of agreement signed on the 17th May, 1977 as amended by a protocol signed on the 17th May 1977, with a view to affording relief from double taxation in relation to income tax under the Act and any taxes of a similar character imposed by the laws of the Federal Republic of Germany, shall, notwithstanding anything to the contrary in the Act or in any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Federal Republic of Germany;

Desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income and capital;

Have agreed as follows:

**ARTICLE 1*****Personal Scope***

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 and on capital imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

(3) The existing taxes to which this Agreement shall apply, are—

(a) in the Federal Republic of Germany—

- (i) the income tax (Einkommensteuer) including the surcharge (Erganzungsabgabe) thereon;
- (ii) the corporation tax (Korperschaftsteuer) including the surcharge (Erganzungsabgabe) thereon;
- (iii) the capital tax (Vermögensteuer); and
- (iv) the trade tax (Gewerbsteuer) (hereinafter referred to as "German Tax").

(b) in Kenya—

the income tax (hereinafter referred to as "Kenyan tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of those referred to in paragraph (3). The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

(5) The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

**ARTICLE 3*****General Definitions***

(1) In this Agreement, unless the context otherwise requires:—

- (a) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or the Republic of Kenya as the context requires, and, when used in a geographical sense, the territory in which the tax law of the State concerned is in force;
- (b) the term "tax" means German tax or Kenyan tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (c) the term "person" means an individual and a company;
- (d) the term "company" means any body corporate or any body of persons which is treated as an entity for tax purposes;
- (e) 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;
- (f) the term "nationals" means:
  - (i) in respect of the Federal Republic of Germany—
    - all Germans in the meaning of paragraph 1 of Article 116 of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic of Germany;
  - (ii) in respect of Kenya— all individuals possessing the nationality of Kenya and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya;
- (g) the term "competent authority" means—
  - (i) in the case of the Federal Republic of Germany the Federal Minister of Finance;
  - (ii) in the case of Kenya the Minister for Finance or his authorized representative;
- (h) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State except where the voyage is confined solely to places within the other Contracting State and it includes traffic between places in one country in the course of a voyage which extends over more than one country.

(2) In the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Agreement.

**ARTICLE 4*****Fiscal Domicile***

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) any person who, under the laws of that Contracting State, is liable to taxation therein by reason of his domicile, residence, 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 case shall be determined in accordance with the following rules—

- (a) he shall be deemed to be a resident 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 Contracting State in which its place of effective management is situated.

## **ARTICLE 5**

### ***Permanent Establishment***

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

(2) The term "permanent establishment" shall include especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project which exists for more than six months.

(3) The term "permanent establishment" shall not be deemed 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 for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if he has and habitually exercises in that State an authority—

*Income Tax*

[Subsidiary]

- (a) to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- (b) to fulfil orders on behalf of the enterprise from a stock of goods or merchandise which he habitually maintains in that State and which belongs to the enterprise.

(5) An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph (6).

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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.

(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 for either company a permanent establishment of the other.

**ARTICLE 6*****Income from Immovable Property***

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with 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, 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 used for the performance of professional 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) 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 at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose 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 according to the law, 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 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 be in accordance with the principles of this Article.

(5) No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

(6) For the purpose 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**

##### ***Shipping and Air Transport***

(1) Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that State.

(2) The provisions of paragraph (1) shall likewise apply in respect of participations in pooled services, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

#### **ARTICLE 9**

##### ***Associated Enterprises***

Where—

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

(b) the same persons participate directly or indirectly in the management or control of 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.

#### **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, unless the dividends are excluded from the basis upon which German tax is imposed according to paragraph (2) (a) of Article 23.

(2) However, such dividends may 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 the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of Kenya by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the voting shares of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 25 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on

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[Subsidiary]

undistributed profits and the difference between those two rates is 15 percentage points or more.

(4) 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 assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident, distributions on certificates of an investment trust and also, in the Federal Republic of Germany, income derived by a sleeping partner from his participation as such.

(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in the other State.

### **ARTICLE 13**

#### ***Capital Gains***

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6 may be taxed in the Contracting State in which such property is situated.

(2) Gains from the alienation of any property other than immovable 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 any property other than immovable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

(3) Notwithstanding the provisions of paragraph (2), gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and any property other than immovable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

(4) Gains from the alienation of shares of a company which is a resident of a Contracting State may be taxed in that State.

(5) Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2), (3) and (4) shall be taxable only in that State.

### **ARTICLE 14**

#### ***Independent Personal Services***

Income derived by a resident of a Contracting State in respect of independent scientific, literary, artistic, educational or teaching activities shall be taxable only in that State unless—

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

**(b)** he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned,

in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

**ARTICLE 15*****Dependent Personal Services***

(1) Subject to the provisions of Articles 16, 17, 18, 19, and 20, 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 the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the provisions of paragraphs (1) and (2), remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

**ARTICLE 16*****Directors' Fees***

Directors' fees and 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*****Artistes and Athletes***

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Notwithstanding anything contained in this Agreement, where the services of a public entertainer or an athlete mentioned in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.

(3) The provisions of paragraphs (1) and (2) shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

**ARTICLE 18*****Public Funds***

(1) Remuneration paid by, or out of funds created by a Contracting State, a political subdivision or a local authority thereof, to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by an individual who is neither a national of the first-mentioned State nor resident in the other State solely for the purpose of rendering those services, the remuneration shall be taxable only in other State.

(2) The provisions of this Article shall not apply to remuneration in respect of an employment in connexion with any business carried on by a Contracting State, a political subdivision or a local authority thereof for the purpose of profits, or to remuneration the cost of which is reimbursed to the Contracting State first-mentioned in paragraph (1) out of funds earned or provided in the other Contracting State.

[Subsidiary]

**ARTICLE 19*****Pensions and Annuities***

(1) Any pension (other than a pension of the kind referred to in paragraph (3)) or any annuity paid to a resident of a Contracting State may be taxed in that State.

(2) However, such pension or annuity, derived by an individual who is a resident of a Contracting State from sources within the other Contracting State may be taxed in that other State, but the tax so charged shall not exceed 5 per cent of the gross amount of the payment.

(3) Any pension paid by, or of funds created by, a Contracting State, a political subdivision or a local authority thereof, to any individual shall be taxable only in that State.

(4) The term "pension" means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received.

(5) The term "annuity" means a stated sum payable periodically at stated times, during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

**ARTICLE 20*****Teachers and Students***

(1) A professor or teacher 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 for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other education institute, shall be exempt from tax in the first-mentioned State in respect of any remuneration which he received for such work, provided that such remuneration is derived by him from outside that State.

(2) 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 shall be exempt from tax in the first mentioned State on -

- (a) payments made to him by persons residing outside the first-mentioned State for the purposes of his maintenance, education or training; and
- (b) remuneration not exceeding 6,000 DM or the equivalent in Kenya currency for a calendar year from personal services undertaken in that first-mentioned State to supplement resources available to him for his maintenance and education.

The benefits of this paragraph shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this paragraph for more than three consecutive years.

(3) An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of study, research or training as recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in the first-mentioned State in connexion with that visit, be exempt from tax in that State—

- (a) on the amount of such grant, allowance or award; and
- (b) on all remittances from abroad for the purposes of his maintenance, education or training.

(4) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

**ARTICLE 21*****Income Not Expressly Mentioned***

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

**ARTICLE 22*****Taxes on Capital***

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by property other than immovable property forming part of the business property of a permanent establishment of an enterprise, or by such property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic by an enterprise of a Contracting State and property other than immovable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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

**ARTICLE 23*****Elimination of Double Taxation***

(1) Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- (a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income derived from Kenya and any item of capital situated within Kenya, which, according to this Agreement, may be taxed in Kenya. In the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany will, however, take into account the item of income and capital so excluded. The foregoing provisions shall likewise apply to dividends paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Kenya if at least 25 per cent of the voting shares of the Kenyan company is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.
- (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German, income and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from Kenya, the Kenyan tax paid under the laws of Kenya and in accordance with this Agreement on—
  - (i) dividends to which subparagraph (a) does not apply;
  - (ii) interest to which paragraph (2) of Article 11 applies;
  - (iii) royalties and management fees to which paragraph (2) of Article 12 applies;
  - (iv) capital gains to which paragraph (4) of Article 13 applies;
  - (v) remuneration to which Article 16 applies;
  - (vi) income to which Article 17 applies;
  - (vii) pensions and annuities, to which paragraph (2) of Article 19 applies.

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such items of income.

- (c) For the purposes of credit referred to in subparagraph (b)—

*Income Tax*

[Subsidiary]

- (i) where Kenyan tax on dividends, interest or management fees is wholly relieved or reduced below the rates of tax provided for in Articles 10, 11 or 12 by special incentive measures under Kenyan law designed to promote economic development in Kenya, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, on such dividends, interest or management fees an amount corresponding to the rate of tax provided for in the respective Article;
- (ii) Kenyan tax on royalties shall be deemed to be 20 per cent of the gross amount of the royalties.

The credit allowed under the foregoing provisions shall, however, not exceed the amount of Kenyan tax, which would have been payable under Kenyan law but for special incentive measures as mentioned before.

(2) Tax shall be determined in the case of a resident of Kenya as follows—

- (a) where income is derived from sources within the Federal Republic of Germany which, in accordance with the provisions of this Agreement, is exempt from Kenyan tax but may be taxed in the Federal Republic of Germany, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within the Federal Republic of Germany had not been so exempted;
- (b) where income is derived from sources within the Federal Republic of Germany which may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Federal Republic of Germany. Such deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from the Federal Republic of Germany.

**ARTICLE 24*****Non-Discrimination***

(1) The 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 are or may be subjected.

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

(3) 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 State, shall not be subjected in the first-mentioned Contracting 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 that first-mentioned State are or may be subjected.

(4) In this Article the term "taxation" means taxes of every kind and description.

(5) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

**ARTICLE 25*****Mutual Agreement Procedure***

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may notwithstanding the remedies provided by the national laws of those Contracting States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.

(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 an appropriate 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 not in accordance with this Agreement.

(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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purposes of applying the provisions of this Agreement. 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 26*****Exchange of Information***

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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.

(3) In order to prevent fraud or fiscal evasion concerning the taxes covered by Article 2 the competent authorities of the Contracting States may by mutual agreement exchange any relevant information. In such a case the provisions of paragraphs (1) and (2) shall likewise apply.

**ARTICLE 27*****Diplomatic and Consular Privileges***

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

[Subsidiary]

**ARTICLE 28*****Land Berlin***

The Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Kenya within three months from the date of entry into force of this Agreement.

**ARTICLE 29*****Entry into Force***

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) This Agreement shall enter into force on the day after the date of exchange of the instruments of ratification and have effect—

- (a) in the Federal Republic of Germany, in respect of income and capital taxable for the assessment period in which this Agreement enters into force and subsequent assessment periods;
- (b) in Kenya, in respect of income arising for the year of income in which this Agreement enters into force and subsequent years.

**ARTICLE 30*****Termination***

This Agreement shall continue in effect indefinitely but either of the Contracting States may, 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, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to be effective—

(a) in the Federal Republic of Germany, in respect of income and capital taxable for the assessment period next following that in which the notice of termination is given and subsequent assessment periods;

(b) in Kenya, in respect of income arising for the year of income next following that in which the notice of termination is given and subsequent years.

**PROTOCOL****1. *With Reference to Article 5,***

- (a) an enterprise shall be deemed to have a permanent establishment in a Contracting State if it carries on supervisory activities in that State for more than six months in connexion with a building site or construction or assembly project, as defined in paragraph (2) (h), which is being undertaken in that State;
- (b) the term "construction or assembly project" shall be deemed for the purposes of paragraph (2) (h) to include an installation of machinery or plant but shall not include the mere provision of auxiliary services in connexion with the sale of such machinery or plant.

**2. *With Reference to Articles 6 to 21,***

where any income, other than interest to which paragraph (3) of Article 11 applies, derived from outside of a Contracting State by a resident of that State is not subject to tax in the State by reason of its foreign origin, the provisions of these Articles shall not apply in the other Contracting State in respect of such income.

**3. *With Reference to Article 7,***

- (a) if an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders



services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment;

- (b) paragraph (3) shall not be construed as obliging a Contracting State to allow the deduction of expenses which under its domestic legislation would not be deduction by an independent enterprise of that State.

**4. With Reference to Article 11,**

the provisions of paragraph (3) shall also apply to interest arising in Kenya and paid to the Kreditanstalt für Wiederaufbau or to the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft).

**5. With Reference to Article 18,**

the provisions of the first sentence of paragraph (1) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, or of a political subdivision or local Authority thereof, out of funds exclusively supplied by that State, or by a political subdivision or local authority thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

**6. With Reference to Article 23,**

notwithstanding the provisions of paragraph (2) (a), the provisions of paragraph (2) (b) but not of paragraph (2) (c) shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraph (2) of Article 13 of the Agreement, provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively—

- (a) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Kenya; or
- (b) from dividends paid by one or more companies, being residents of Kenya, more than 25 per cent of the voting shares of which is owned by the first mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Kenya.

**7. With Reference to Article 24,**

- (a) in the application of paragraph (1), nationals of a Contracting State who are taxable in the other Contracting State shall, if they are residents of that other Contracting State, receive any personal allowances, reliefs and reductions for taxation purposes on account of civil status which that other Contracting State grants to its residents;
- (b) paragraph (2) shall not be construed as disallowing Kenya to impose a tax not exceeding 9 per cent of the profits of a permanent establishment which a German company has in Kenya in addition to tax at the rate levied on profits of similar enterprises of Kenya.



**THE INCOME TAX-EXEMPTION REVOKED BY L.N 73/1998**

[Legal Notice 167 of 1980]

***Revoked by Legal Notice 73 of 1998 on 11th June, 1998***



**THE INCOME TAX-EXEMPTION**

[Legal Notice 168 of 1980]

The Cabinet Secretary for Finance provides that the income of the Institute of Certified Public Accountants of Kenya shall be exempt from tax.

This notice shall be deemed to have come into force on 1st January, 1980.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 169 of 1980]

The Cabinet Secretary for Finance provide that the incomes of the Kenya Medical Association and the East African Medical Journal shall be exempt from tax.

This notice shall be deemed to have come into force on the 1st January, 1978.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 168 of 1982]

The Cabinet Secretary responsible for Finance provides that the income of the Institute of Certified Public Accountants of Kenya shall be exempt from tax.

This notice shall be deemed to have come into force on 1st January, 1980.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 169 of 1982]

The Cabinet Secretary responsible for Finance provides that the incomes of the Kenya Medical Association and the East African Medical Journal shall be exempt from tax.

This notice shall be deemed to have come into force on the 1st January, 1978.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 10 of 1981]

The Cabinet Secretary for Finance provides that the income of Guinness Mohan & Company Limited (a company incorporated in the United Kingdom of Great Britain and Northern Ireland), in so far as that income represents interest accrued in or derived from Kenya in respect of a loan of approximately one million seven hundred and thirty one thousand three hundred and ninety nine pounds sterling, made by Guineas Mohan & Company Limited to the Kenya Furfural Company Limited (a company incorporated in Kenya), as an additional loan to the original loan of four million six hundred and fifty thousand pounds sterling, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 52 of 1981]

The Cabinet Secretary for Finance provides that the income of the Rift Valley Development Trust together with the income of its subsidiary Deloraine Estate Limited shall be exempt from tax.

This notice shall be deemed to have come into force on the 13th July, 1973.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 155 of 1981]

The Vice-President and Cabinet Secretary for Finance provides that all payments to be made under the agreement referred to in the Schedule hereto shall be exempt from withholding tax.

**SCHEDULE**

A loan agreement dated 16th October, 1981 between the Republic of Kenya as borrower, the Bank of Tokyo Limited, Citicorp International Bank Limited, National Westminster Bank Limited and Societe Generale as lead managers, Bankers Trust International Limited, Barclays Bank International Limited, Caisse National de Credit Agricole, Chemical Bank International Limited, State Bank of India and the Sumitomo Bank Limited as managers, The Bank of Nova Scotia, CIBC Limited, European Arab Bank (Middle East) E.C. and Lloyds Bank International Limited as co-managers, Citicorp International Bank Limited as agent and the other financial institutions named in the First Schedule to that agreement.

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**UNTITLED**

[Legal Notice 116 of 1980]

[This is a stub. Please see the publication document for the original content.]



**THE INCOME TAX ACT-EXEMPTION**

ARRANGEMENT OF SECTIONS

*SCHEDULE*

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 240 of 1983]

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Minister for Finance and Planning exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

**SCHEDULE**

A Loan Agreement dated March 25th, 1983 between the Republic of Kenya as Borrower, and Export Development Corporation as Lender.

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**THE INCOME TAX ACT-EXEMPTION**

ARRANGEMENT OF SECTIONS

*SCHEDULE*

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 72 of 1984]

The Cabinet Secretary for Finance and Planning exempts all payments to be made under the agreement referred to in the Schedule from tax.

**SCHEDULE**

A Credit Agreement dated the 12th April, 1984 between the Republic of Kenya as Borrower and Skandinaviska Enskilda Banken as Lender.

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**THE INCOME TAX- DECLARATIONS OF CROPS**

[Legal Notice 19 of 1985]

The Cabinet Secretary for Finance and Planning declares *jojoba* plant and bananas to be permanent or semipermanent crops for the purposes of this Act with effect from 1st January, 1985.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 240 of 1985]

The Cabinet Secretary for Finance provides that income of the President derived from the use of agricultural land owned by him shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 3 of 1986]

The Cabinet Secretary responsible for Finance provides that the credit of US \$7,000,000 from the Standard Chartered Bank of 38 Bishopsgate, London, EC2N 4DE, England, to the Kenya Airways Limited of Post Office Box 19002, Nairobi, shall be exempted from income tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 59 of 1986]

The Cabinet Secretary responsible for Finance provides that the income of the Agricultural Development Corporation established by the Agricultural Development Corporation Act accrued in and derived from Kenya shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 144 of 1986]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

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SCHEDULE

A Loan Agreement dated 25th April, 1986 between the Republic of Kenya as Borrower, and Export Development Corporation of Canada and the Barclays Bank of Canada as Lenders.

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**UNTITLED**

[Legal Notice 122 of 1986]

[This is a stub. Please see the publication document for the original content.]





**THE INCOME TAX - EXEMPTION**

[Legal Notice 205 of 1986]

The Cabinet Secretary responsible for Finance certifies that it is in the public interest that as required by the terms of the agreements concerning the Mwangaza IV Telecommunications and Switching Equipment Project specified in the Schedule, the interest on the loans, credits, the commitment fees, the management fees, and agency fees payable by the Government as principal borrower under these agreements shall be exempt from tax.

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**SCHEDULE**

1. The agreement described as "Loan Agreement" executed on the 14th July, 1986 by the Government of the Republic of Kenya as borrower and the following syndicate of lenders:

- (1) Banque Indosuez of 96, Boulevard Haussman, 75008 Paris, France.
- (2) Banque Paribas of 3 Rue d'Antin, 75002, Paris, France.
- (3) Societe Generale of 29, Boulevard Haussmann, 75009 Paris, France.
- (4) Banque Nationale De Paris of 16, Boulevard des italiens, 75002 Paris, France.
- (5) Credit Lyonnais of 19, Boulevard des Italiens, 75002 Paris, France.
- (6) Banque De L'Union Europeenne of 4, Rue Gaillon, 75002 Paris, France.
- (7) Barclays Bank S.A. of 33 Rue du Quatre Septembre, 75002 Paris, France.
- (8) Electrobanque of 14, Rue Cambaceres, 75008 Paris, France.
- (9) Banque Internationale Four L'Afrique Occidental of 9, Avenue de Messine, 75008 Paris, France.

2. The Mwangaza IV Telecommunications and Switching Equipment Credit Agreement dated the 14th July, 1986 made between the Government of the Republic of Kenya as the borrower and the following syndicate of lenders:

- (i) Banque Indosuez of 96 Boulevard Haussman, 75008 Paris, France.
  - (ii) Banque Paribas of 3 Rue d'Antin 75002 Paris, France.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 270 of 1986]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule from tax.

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SCHEDULE

A credit agreement dated 1st August, 1986 between the Government of the Republic of Kenya as the Borrower and Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008, Paris, France; Credit Industrie] et Commerciale De Paris, whose registered office is 66 Rue de la Victoire, 75009, Paris, France and Banque Francaise Du Commerce Exterieur whose registered office is 21 Boulevard Haussmann, 75009, Paris, France, as lenders.

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**THE INCOME TAX- DECLARATIONS OF CROPS**

[Legal Notice 269 of 1986]

The Cabinet Secretary for Finance declares roses to be permanent or semi-permanent crops for the purposes of the Act with effect from the 1st of January, 1986.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 61 of 1987]

The Cabinet Secretary responsible for Finance provides that the income of the Union Bank of Switzerland (a company incorporated in Switzerland) in so far as such income represents the repayments being made pursuant to the provisions of a document described as a Loan Agreement dated 24th December, 1984 between the Government of the Republic of Kenya and the Union Bank of Switzerland shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 72 of 1987]

The Cabinet Secretary responsible for Finance exempts with effect from the year of income commencing on the 1st January, 1987-

- (a) the gains and profits accruing to a member of the armed forces which consist of the value of premises provided for his occupation as residential premises, by virtue of his employment in the armed forces;
  - (b) any house allowances paid to a member of the armed forces, in lieu of his being so provided with premises for his occupation.
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**THE DOUBLE TAXATION RELIEF (CANADA) NOTICE**

[Legal Notice 111 of 1987]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of Canada in articles of agreement signed on the 27th April, 1983, as amended by a protocol signed on the 27th April, 1983, with a view to affording relief from double taxation in relation to income tax under the Act and any taxes of similar character imposed by the laws of Canada shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

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**SCHEDULE**

The Government of Kenya and the Government of Canada:

DESIRING to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED AS FOLLOWS:

**ARTICLE I*****Personal Scope***

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

**ARTICLE II*****Taxes Covered***

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are, in particular—
  - (a) in the case of Canada the income taxes imposed by the Government of Canada, (hereinafter referred to as "Canadian tax").
  - (b) in the case of Kenya the income taxes imposed by the Government of Kenya, (hereinafter referred to as "Kenyan tax").
3. This Agreement shall apply also to any identical or substantially similar taxes on income and to taxes on capital which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

**ARTICLE III*****General Definitions***

1. In this Agreement, unless the context otherwise requires—
  - (a) (i) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources;

*Income Tax*

[Subsidiary]

- (ii) the term "Kenya" used in a geographical sense, means the territory of the Republic of Kenya, including any area beyond the territorial waters of Kenya which, under the laws of Kenya, is an area within which Kenya may exercise rights with respect to the sea-bed and sub-soil and their natural resources;
- (b) the terms "a Contracting State" and "the other Contracting State" means, as the context requires, Canada or Kenya;
- (c) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "societe" also means a "corporation" within the meaning of Canadian law;
- (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" means 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;
- (f) the term "competent authority" means—
  - (i) in the case of Canada, the Minister for National Revenue or his authorized representative;
  - (ii) in the case of Kenya, the Cabinet Secretary for Finance or his authorized representative.
- (g) the term "tax" means Canadian tax or Kenyan tax, as the context requires but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (h) the term "national" means-
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State.

2. In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning Which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

**ARTICLE IV*****Fiscal Domicile***

1. For the purposes of this Agreement, the term "resident of a Contracting State" is liable to taxation therein by reason of his domicile, residence, 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 this case shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his "centre of vital interests");
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 company is a resident of both Contracting States, then its case shall be determined in accordance with the following rules:

- (a) it shall be deemed to be a resident of the Contracting State of which it is a national;
- (b) if it is a national of neither of the Contracting States, the competent authorities of the Contracting States shall, by mutual agreement, endeavour to settle the question and to determine the mode of application of the Agreement to such company.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

## **ARTICLE V**

### ***Permanent Establishment***

1. For the purposes of the Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a mine, quarry, oil well or other place of extraction of natural resources;
- (h) a building site or construction or assembly project which exists for more than six months;
- (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project;
- (j) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprises;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

*Income Tax*

[Subsidiary]

4. A person—other than an agent of an independent status to whom paragraph 5 applies—acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) he has, and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in that State a stock of goods or merchandise from which he regularly fulfils orders on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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 where the activities of such an agent are devoted wholly or mainly to that enterprise he shall not be considered an agent of an independent status within the meaning of this paragraph.

6. 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.

7. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums or insures risks in that other State through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 5.

**ARTICLE VI*****Income from Immovable Property***

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The terms 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, 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 and to profits from the alienation of such 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 professional services.

**ARTICLE VII*****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 or has carried 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. If an enterprise of a Contracting State which has a permanent establishment in the other Contracting State sells goods or merchandise of the same or similar kind as those sold by the

permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such sales or services may be attributed to the permanent establishment unless they are unrelated to the activities of the permanent establishment.

3. Subject to the provisions of paragraph 4, 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.

4. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

5. Insofar as it has been customary in a Contracting State according to its law, 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 3 shall preclude that 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 of this Article.

6. 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.

7. For the purpose 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.

8. 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 VIII

### *Shipping and Air Transport*

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State:

Provided that where such an enterprise derives profits from such operation in the other Contracting State, for the purposes of taxation in that other State—

- (a) such profits shall be deemed to be an amount not exceeding six per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
- (b) the tax chargeable in that other State shall not exceed fifty per cent of the profits as calculated under the provisions of subparagraph (a).

3. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

[Subsidiary]

**ARTICLE IX*****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 States,

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 profits on which an enterprise of a Contracting State has been charged to tax in the State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement in relation to the nature of the income.

**3.** A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

**ARTICLE X*****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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed—

- (a) 15 per cent of the gross amount of the dividends if the recipient is a company which owns at least 10 per cent of the voting shares of the the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
- (b) 25 per cent of the gross amount of the dividends in all other cases.

**3.** 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 assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

**4.** The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XV, as the case may be, shall apply.



5. Where a company is resident of a Contracting State, the other Contracting 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision of this Agreement—

- (a) a company which is a resident of Kenya and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15 per cent;
- (b) a company which is a resident of Canada and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenyan law, but such additional rate shall not exceed 7.5 per cent.

## ARTICLE XI

### *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 be taxed in the Contracting State in which it arises, and according to the law of that State; but the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the government of the other Contracting State, political subdivision or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that government, political subdivision or local authority which is exempt from tax in that other State shall be exempt from tax in the first-mentioned Contracting State. The competent authorities of the Contracting States may be determined by mutual agreement any other governmental institution or organization to which this paragraph applies.

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, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article X.

5. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated there-in, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XV, 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 that interest is borne by that 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.

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[Subsidiary]

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE XII**

### ***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 be taxed in the Contracting State in which they arise, and according to the law of the State but the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed 15 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, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or tapes for use in connection with radio or television.

4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article VII or Article XV, 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 those royalties are borne by the 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE XIII**

### ***Gains from the Alienation of Property***

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

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 professional

services, including such gains from the alienation of such a permanent establishment (along or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of Article XXIII.

**3. Gains from the alienation of—**

- (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
- (b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,

may be taxed in that State. For the purposes of this paragraph the term "immovable property" includes the share of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).

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

**5.** The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property.

#### **ARTICLE XIV**

##### ***Management and Professional Fees***

**1.** Management or professional fees 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 management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the management or professional fees.

**3.** The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of managerial, technical, professional or consultancy nature.

**4.** The provisions of paragraph 2 shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the management or professional fees are effectively connected; in such a case the provisions of Article VII shall apply.

**5.** Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of that State, or not has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

**6.** Where, owing to a special relationship between the payer and the beneficial owner of the management or professional fees or between both of them and some other person, the amount of the management or professional fees paid, having regard to the services 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 that case the excess part of the payments

*Income Tax*

[Subsidiary]

shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

**ARTICLE XV*****Independent Personal Services***

1. Subject to the provisions of Article XIV, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless —

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other state as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

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

**ARTICLE XVI*****Dependent Personal Services***

1. Subject to the provisions of Articles XVII, XVIII, XIX and XX, 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, 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 the calendar 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

**ARTICLE XVII*****Directors' Fees***

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member which is a resident of the other Contracting State, may be taxed in that other State.

**ARTICLE XVIII*****Artistes and Athletes***

1. Notwithstanding the provisions of Articles VII, XV and XVI, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XV and XVI, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply—
  - (a) to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof; or
  - (b) to a non-profit organization no part of the income of which was payable to, or was otherwise available for the personal benefit, of any proprietor, member or shareholder thereof.

#### **ARTICLE XIX**

##### ***Pensions and Annuities***

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.
3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the payment. However, this limitation does not apply to lump-sum payment arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.
4. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### **ARTICLE XX**

##### ***Government Service***

- (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.
  - (b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of the State solely for the purpose of performing the services.
2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

#### **ARTICLE XXI**

##### ***Students***

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting 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 first-mentioned State, provided that such payments are made to him from sources outside that State.

[Subsidiary]

**ARTICLE XXII*****Income not Expressly Mentioned***

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

**ARTICLE XXIII*****Taxes on Capital***

1. Capital represented by immovable property may be taxed in the Contracting State in which such property is situated.
2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.
3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

**ARTICLE XXIV*****Elimination of Double Taxation***

1. In the case of Canada, double taxation shall be avoided as follows:
  - (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions—which shall not affect the general principle hereof—and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Kenya on profits, income or gains arising in Kenya shall be deducted from any Canadian tax payable in respect of such profits, income or gains,
  - (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions which shall not affect the general principle hereof—for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Kenya.
2. In the case of Kenya, double taxation shall be avoided as follows:

Subject to the provisions of the law of Kenya regarding the allowances as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable under the laws of Canada, whether directly or by deduction, in respect of profits, income or gains, from sources within Canada shall be allowed as a credit against any Kenyan tax payable in respect of such profits, income or gains, provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Canada.
3. For the purposes of paragraph 1 (a), tax payable in Kenya by a resident of Canada—
  - (a) in respect of profits attributable to a trade or business carried on by it in Kenya;

shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under—

- (b) any of the following provisions, that is to say—
  - (i) paragraph 24 of the Second Schedule to the Income Tax Act, 1973;
  - (ii) paragraph 2(b) of the Third Schedule to the Income Tax Act, 1973;

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions has the effect of exempting or relieving a source of income for a period in excess of ten years;

- (c) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Where a resident of Kenya is exempt from tax in Kenya in respect of income derived from Canada, then Kenya may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax had not been so exempted.

5. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

#### **ARTICLE XXV**

##### ***Non-Discrimination***

1. The 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 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.

3. Nothing in this Article shall 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.

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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this article, the term "taxation" means taxes which are the subject of this Agreement.

#### **ARTICLE XXVI**

##### ***Mutual Agreement Procedure***

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident

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[Subsidiary]

an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Agreement.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. 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 Agreement. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree—

- (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
- (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article IX.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement.

#### **ARTICLE XXVII**

##### ***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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 XXVIII**

##### ***Diplomatic and Consular Officials***

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

2. This Agreement shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.



**ARTICLE XXIX*****Miscellaneous Rules***

1. Nothing in this Agreement shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act.
2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

**ARTICLE XXX*****Entry into Force***

Each of the Contracting States shall take all measures necessary to give this Agreement the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Agreement shall enter into force on the date on which the later notification is made and shall thereupon have effect—

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the Agreement enters into force; and
- (b) in respect of other tax for any year of income or any taxation year beginning on or after the first day of January in the calendar year in which the Agreement enters into force.

**ARTICLE XXXI*****Termination***

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before 30th June in any calendar year beginning after the expiration of five years from the date of its entry into force, give notice of termination to the other Contracting State and in such event this Agreement shall cease to have effect—

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) in respect of other tax for any year of income or any taxation year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

***Protocol***

At the moment of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, this day concluded between Canada and the Republic of Kenya, the following provisions shall form an integral part of the Agreement:

1. With reference to paragraph 4 of Article VII, it is understood that no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Like-wise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
2. With reference to paragraph 2 of Article X of this Agreement, it is understood that:

[Subsidiary]

- (a) If a Convention or an Agreement for the Avoidance of Double Taxation comes into force after the date of signature of this Agreement, between Kenya and one of the countries specified in subparagraph (b), wherein provisions are made for a higher rate of Kenyan tax on dividends from substantial holdings than that provided for in subparagraph 2 (a) of Article X, then the provisions of subparagraphs (c) and (d) shall apply instead of the provisions of paragraph 2 of Article X of this Agreement.
  - (b) For the purposes of subparagraph (a) the countries specified are Belgium, the Federal Republic of Germany, France, Italy, Japan, the United Kingdom and the United States.
  - (c) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may also be taxed in the Contracting State of which the company paying the dividends is a resident; and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed the lesser of (i) 20 per cent of the gross amount of the dividends, and (ii) the rate specified in subparagraph (d).
  - (d) For the purposes of subparagraph (c) the rate specified is the highest rate of Kenyan tax applicable to dividends from substantial holdings under the provisions of any Convention or Agreement referred to in subparagraph (a).
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 121 of 1987]

The Cabinet Secretary responsible for Finance directs that the investment income of the Kenya Society for Protection and Care of Animals shall be exempt from tax.

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**EXEMPTIONS UNDER SECTION 14(2)**

[Legal Notice 192 of 1987, Legal Notice 148 of 1977, Legal Notice 216 of 1987, Legal Notice 269 of 1987, Legal Notice 270 of 1987, Legal Notice 268 of 1987, Legal Notice 289 of 1987, Legal Notice 21 of 1988, Legal Notice 186 of 1988, Legal Notice 274 of 1988, Legal Notice 3 of 1989, Legal Notice 115 of 1989, Legal Notice 160 of 1989, Legal Notice 223 of 1989, Legal Notice 225 of 1989, Legal Notice 224 of 1989, Legal Notice 226 of 1989, Legal Notice 249 of 1989, Legal Notice 273 of 1989, Legal Notice 6 of 1990, Legal Notice 85 of 1990, Legal Notice 219 of 1995]

[L.N. 148/1977]

The Cabinet Secretary responsible for Finance and Planning hereby provides that the income of the Federal Home Loan Bank of New York, (a Corporation incorporated in the United States of America), in so far as such income represents interest accrued in or derived from Kenya in respect of a loan of ten million United States dollars made by the Federal Home Loan Bank of New York to the City Council of Nairobi (a municipal corporate entity established under the laws of Kenya), under the provisions of a document described as a Loan Agreement dated 3rd June, 1975, made between the City Council of Nairobi and the Federal Home Loan Bank of New York shall be exempt from tax.

[L.N 192/1987]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreement referred to in the Schedule hereto from withholding tax.

Legal Notice Nos. 240 of 1983 and 29 of 1987 are revoked.

**SCHEDULE**

A Loan Agreement dated the 4th December, 1989, for French Francs forty million six hundred ninety-eight thousand six hundred and eighty-six (FRF 40,698,686) between the Government of the Republic of Kenya as borrower and the following French banks as lenders-

1. Banque Francaise du Commerce Extérieur whose registered office is 75009, Paris. office is 21 Boulevard Haussman, 75009, Paris.
2. Credit National whose registered office is 45 Rue Saint Dominique, 75007, Paris.

[L.N 85/1990]

The Cabinet Secretary responsible for Finance provides that the credit of Swedish Kroner 8,600,000 from Skandinaviska Enskilda Banken of 5-406 40 Stockholm, Sweden to the Government of the Republic of Kenya, shall be exempted from tax.

[L.N 219/1995]

The Cabinet Secretary responsible for Finance provides that all payments made to the European Investment Bank under the Finance Contracts contained in the Schedule shall be exempt from the provisions of the Act.

**SCHEDULE**

1. A Finance Contract in respect of a conditional loan on risk capital resources, in an amount equivalent to twenty million (20,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.
2. A Finance Contract in respect of a subsidised global loan on the Bank's own resources, in an amount equivalent to fifteen million (15,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.

*Income Tax*

[Subsidiary]

## FIRST SCHEDULE

A credit agreement dated 7th March, 1989, for French Francs two hundred and eighty-four million and two thousand (FRF 284,002,000) between the Government of the Republic of Kenya as the borrower and a consortium of French banks as the lenders led by the following:

Banque Paribas, acting as lead manager whose registered office is at rue d'Antin, Paris 2e, France.

Societe Generale, acting as co-lead manager whose registered office is at 29 Boulevard Haussmann, 75454 Paris, Cedex 09, France.

## SECOND SCHEDULE

A loan agreement dated 7th March, 1989, for French Francs sixty-nine million, one hundred nineteen thousand and fifty-one (FRF 69,119,051), between the Government of the Republic of Kenya as the borrower and a syndicate of the following banks as lenders:

Banque Paribas, as lead manager of the lenders whose registered office is in 75002 Paris France, 3 rue d'Antin,

Societe Generale, as co-lead manager of the lenders whose registered office is 75009 France, 29 Boulevard Haussmann,

Credit Lyonnais, whose registered office is 75002 Paris, France, 19 Boulevard des Italiens,

Banque Francaise du Commerce Extérieur, whose registered office is in 75009 Paris, France, 21 Boulevard Haussmann,

Banque Worms, whose registered office is in 75009 Paris, France, 45 Boulevard Haussmann,

Banque Indosuez, whose registered office is in 75008 Paris, France, 96 Boulevard Haussmann,

Credit Industriel et Commercial de Paris, whose registered office is in 75009 Paris, France, 66 rue de la Victoire,

Banque Nationale de Paris, whose registered office is in 75009 Paris, France, 16 Boulevard des Italiens,

Banque Vernes et Commerciale de Paris, whose registered office is in 75008 Paris, France, 52 avenue Hoche.

[L.N 160/1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Finance Contract specified in the Schedule hereto shall be exempt from tax.

## THIRD SCHEDULE

The credit agreement dated 1st September, 1987, for 18,257,155.80 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders-

- (i) Societe Generale  
29 Boulevard Haussmann  
75009 Paris, France
- (ii) Banque Paribas

*Income Tax*

[Subsidiary]

3 Rue d'Antin  
75002 Paris, France  
(iii) Banque Francaise du Commerce Exterieur  
21 Boulevard Haussmann  
75009 Paris, France

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## FOURTH SCHEDULE

The credit agreement dated 9th October, 1987, for 49,970,560 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders-

(i) Banque Indo-Suez  
96 Boulevard Haussmann  
75008 Paris, France  
(ii) Credit Industriel et Commercial de Paris  
66 Rue de la Victoire  
75009 Paris: France  
(iii) Banque Francaise du Commerce Exterieur  
21 Boulevard Haussmann  
75009 Paris, France

[L.N 186/1988]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreements referred to in the Schedule from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 193 of 1987]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreements, guarantees and the promissory notes specified in the Schedule hereto from deduction of withholding tax.

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**SCHEDULE**

1. The loan agreement dated the 1st May, 1987 entered into between the Kenya Railways Corporation established under the Kenya Railways Corporation Act as borrower and the Banque Indosuez acting through its New York Branch of 1230 Avenue of the Americas, New York, New York 10020 as lender.
  2. The promissory notes made by the Kenya Railways Corporation and guaranteed by the Government of Kenya in favour of the Banque Indosuez, New York Brank, in respect of the loan agreement dated 1st May, 1987 entered into between the Kenya Railways Corporation and the Banque Indosuez, New York Branch and exhibited to that loan agreement.
  3. The guarantee made by the Government of Kenya in favour of the Banque Indosuez, New York Branch in respect of the loan agreement dated 1st May, 1987 entered into between the Kenya Railways Corporation and the Banque Indosuez, New York Branch and exhibited to that loan agreement.
  4. The credit agreement dated the 29th May, 1987 entered into between the Kenya Railways Corporation established under the Kenya Railways Corporation Act as borrower and the Export Import Bank of the United States of 811 Vermont Avenue, N.W. Washington D.C.20571, U.S.A., as lender.
  5. The promissory notes made by the Kenya Railways Corporation and guaranteed by the Government of Kenya in favour of the Export Import Bank of the United States, in respect of the credit agreement dated 29th May, 1987 entered into between the Kenya Railways Corporation and the Export Import Bank of the United States, and exhibited to that credit agreement.
  6. The guarantee made by the Government of Kenya in favour of the Export Import Bank of the United States in respect of the loan agreement dated 29th May, 1987 entered into between the Kenya Railways Corporation and the Export Import Bank of the United States, and exhibited to that credit agreement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 216 of 1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest to be made under the agreement specified in the Schedule hereto shall be exempt from tax.

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SCHEDULE

The Loan Agreement dated 24th June, 1987, for one million three hundred and four thousand, two hundred and ninety-four pounds sterling and pence sixty, between the Government of the Republic of Kenya as the borrower and Grindlays Bank Plc of Minerva House, P.O. Box 7, Montague Close, London SE1 9DH as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 268 of 1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the credit agreement specified in the Schedule hereto shall be exempt from tax.

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SCHEDULE

The credit agreement dated 4th September, 1987, for forty-seven million seven hundred and sixty-eight thousand and four hundred and sixteen French Francs (FRF 47,768,416) between the Government of Kenya as the 'borrower and Banque Indosuez of 96 Boulevard Haussmann, 75008 Paris, France as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 269 of 1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

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SCHEDULE

The loan agreement dated 4th June, 1987, for twelve million six hundred twenty-two thousand and five hundred pounds sterling (£12,622,500), between the Government of Kenya as borrower and Barclays Bank PLC of 54 Lombard Street, London EC3P 3AH as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 270 of 1987]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

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**SCHEDULE**

The loan agreement dated 4th September, 1987, for eleven million five hundred and thirty-eight thousand one hundred and four French Francs (FRF 11,538,104) between the Government of Kenya as the borrower and 'the following syndicate of lenders:

1. Banque Indosuez, whose registered office is 96, Boulevard Haussmann 75008 Paris (France).
  2. Banque Paribas. whose registered office is 3, Rue d'Antin 750(12 Paris (France).
  3. Banque Nationale De Paris, whose registered office is 16, Boule yard des haliens 75002 Paris (France).
  4. Societe Generate, whose registered office is 29, Boulevard Hausmann 75009 Paris (France).
  5. Credit Lyonnais, whose central office is 19, Boulevard des Italiens 75002 Paris (France).
  6. Banque Internationale Pour rAfrique Occidentale, whose registered office is 9, Avenue de Messine 75008 Paris (France).
-



**THE INCOME TAX-EXEMPTION**

[Legal Notice 5 of 1988]

The Cabinet Secretary responsible for Finance provides that the income of Bureau Veritas, a corporate body incorporated with limited liability in Paris, France, of 17 Bis, place des relets, Paris-La Defense 2, 92400 Courbevole, France, which is accrued in Kenya under the terms of the agreement between Bureau Veritas and the Central Bank of Kenya, dated 8th January, 1988, shall be exempted from tax.

This exemption shall be deemed to have come into effect on the 18th January, 1988.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 6 of 1988]

The Cabinet Secretary responsible for Finance provides that the income of Cotecna Inspection S.A., a corporate body incorporated with limited liability in Geneva, Switzerland, of 58, Rue de la Terrassiere, Case Postale 213, 1211, Geneva 6, Switzerland, which is accrued in Kenya, under the terms of the agreement between the Cotecna Inspection S.A., and the Central Bank of Kenya, dated 8th January, 1988, shall be exempted from tax.

This exemption shall be deemed to have come into effect on the 18th January, 1988.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 21 of 1988]

The Cabinet Secretary responsible for Finance provides that all payments made under the credit agreements specified in the First, Second, Third and Fourth Schedules shall be exempt from tax.

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**FIRST SCHEDULE**

The credit agreement dated 28th May, 1987, for 44,900,817.60 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Societe Generale  
29 Boulevard Haussmann  
75009 Paris, France
- (ii) Banque Francaise du Commerce Exterior  
21 Boulevard Haussmann  
75009 Paris, France

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**SECOND SCHEDULE**

The credit agreement dated 9th May, 1987, for 7,064,499.77 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Societe Generale  
29 Boulevard Haussmann  
75009 Paris, France
- (ii) Credit Lyonnais  
19 Boulevard des Italiens  
75002 Paris, France
- (iii) Banque Francaise du Commerce Exterior  
21 Boulevard Haussmann  
75009 Paris, France

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**THIRD SCHEDULE**

The credit agreement dated 1st September, 1987, for 18,257,155.80 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Societe Generale  
29 Boulevard Haussmann  
75009 Paris, France
- (ii) Banque Paribas  
3 Rue d'Antin  
75002 Paris, France
- (iii) Banque Francaise du Commerce Exterior  
21 Boulevard Haussmann

*Income Tax*

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[Subsidiary]

75009 Paris, France

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## FOURTH SCHEDULE

The credit agreement dated 9th October, 1987, for 49,970,560 French francs, between the Government of Kenya as borrower and the following syndicate of French banks as lenders—

- (i) Banque Indo-Suez  
96 Boulevard Haussmann  
75008 Paris, France
  - (ii) Credit Industriel et Commercial de Paris  
66 Rue de la Victoire  
75009 Paris: France
  - (iii) Banque Francaise du Commerce Exterieur  
21 Boulevard Haussmann  
75009 Paris, France
-



**THE INCOME TAX-EXEMPTION**

[Legal Notice 114 of 1988]

The Cabinet Secretary responsible for Finance provides that the income of the Maendeleo ya Wanawake Organization for the years of income 1980 to 1984, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 167 of 1988]

The Cabinet Secretary responsible for Finance provides that the income of Messrs. James Cubitt and Partners of the United Kingdom and Educational Consultants India Limited of India, in so far as such income represents the payments made to the consortium working on Moi University Masterplan, shall be exempted from the provisions of the Act.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 186 of 1988]

The Cabinet Secretary responsible for Finance exempts all payments to be made under the agreements referred to in the Schedule from tax.

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SCHEDULE

A loan agreement dated 29th May, 1986, between the Government of the Republic of Kenya, as the borrower and S.G. Warburg Soditic (Jersey) Limited of 18-20 Dumaresq Street, St. Helier, Jersey, Channel Islands as agent for the banks and financial institutions referred to therein, and a novation agreement dated 11 th April, 1988, between the Government of the Republic of Kenya, as borrower, and S.G. Warburg Soditic (Jersey) Limited as agent aforesaid, and Banco di Napoli International S.A. of 8 Avenue de La Liberte, 1930 Luxembourg, Society Generale of Rue de La Paix 75002, Paris, France, and the Italian International Bank Plc, of 122 Leadenhall Street, London EC3V 4PT, England, as lenders.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 274 of 1988]

The Cabinet Secretary responsible for Finance provides that all payments made under the financing agreement specified in the Schedule hereto shall be exempted from tax.

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SCHEDULE

The Finance Agreement dated 24th February, 1988, for twentyfive million two hundred and eighty-four thousand and forty-nine U.S. dollars (US\$ 25,584,049) between the Kenya Airways Limited as the borrower and Credit Lyonnais Bank Nederland N.V. as the lender.

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**THE INCOME TAX—EXEMPTION**

[Legal Notice 273 of 1988]

The Cabinet Secretary responsible for Finance provides, that all payments made under the, credit agreement between Nzoia Sugar Company Limited as the borrower and the Import- Export Bank of the United States, 811 Vermont Avenue, N.W. Washington D.C. 20511, USA., as the lender, shall be exempted from the provisions of the Act.

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**THE INCOME TAX—EXEMPTION**

[Legal Notice 302 of 1988]

The Cabinet Secretary responsible for Finance exempts, with effect from the year of income commencing on the 1st January, 1987, the gains or profits accruing to the holder of any of the offices specified in the Schedule which consists of the value of the premises provided for his occupation as residential premises by virtue of his employment.

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SCHEDULE

Chief Justice.  
Judge of Appeal.  
Puisne Judge.

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**THE INCOME TAX—EXEMPTION**

[Legal Notice 310 of 1988, Legal Notice 435 of 1988]

***Revoked by Legal Notice 443 of 1988 on 28th October, 1988***



**THE INCOME TAX-EXEMPTION**

[Legal Notice 327 of 1988]

The Cabinet Secretary responsible for Finance provides that all the payments made under a loan agreement dated 6th June, 1988, entered into between the Nzoia Sugar Company Ltd., of P.O. Box 285, Bungoma, Kenya, as the borrower and the East African Development Bank, of P.O. Box 7128, Kampala, Uganda, as the lender shall be exempted from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 434 of 1988]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Reinsurance Corporation shall be exempt from tax.

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**THE INCOME TAX- REVOCATION**

[Legal Notice 443 of 1988]

The Cabinet Secretary for Finance revokes Legal Notice No. 310 of 1988.

This notice shall be deemed to have come into effect on the 28th October, 1988.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 3 of 1989]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement specified in the Schedule shall be exempt from tax.

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SCHEDULE

A credit agreement dated the 21st October, 1988, for French francs two million nine hundred and twenty thousand eight hundred and twenty four (FRF2,920,824), between the Government of the Republic of Kenya as the borrower and a syndicate of the following French banks as the lenders:

Credit Industriel et Commercial De Paris

whose registered office is

66 rue de la victoire

75009 Paris (France)

Banque Indosuez

whose registered office is

96 Boulevard Haussmann

75008 Paris (France)

Banque Francaise du Commerce Exterieur

whose registered office is

21. Boulevard Haussmann

5009 Paris (France)

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 4 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made in respect of promissory notes issued in pursuance of the Purchase Agreement dated 21st January, 1988, between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, and Fokker Aircraft B.V., of P.O. Box 12222, 1100 AE Amsterdam—Zuidoost, the Netherlands, shall be exempted from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 5 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Aircraft Lease Agreement and Technical Services Agreement, both dated 22nd September, 1988, and entered into between Air Tara Limited as lessor and Kenya Airways as lessee, shall be exempt from tax.

This exemption shall also apply to all payments to be made to the aircraft maintenance engineers and pilots engaged by Air Tara Limited for the performance of its obligations under the two agreements.

Legal Notice No. 468 of 1988 is revoked.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 51 of 1989]

The Cabinet Secretary responsible for Finance provides that the income of the Armed Forces Canteen Organization (MVO) shall be exempted from Tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 52 of 1989]

The Cabinet Secretary responsible for Finance provides that the income of Messrs. Jisaidie Cottage Industries, of Post Office Box Number 67329, Nairobi, shall be exempt from tax.

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**THE INCOME TAX-THE DOUBLE TAXATION RELIEF (INDIA) NOTICE**

[Legal Notice 61 of 1989]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of India in the articles of an agreement signed on the 12th April, 1985, with a view to affording relief from double taxation in relation to income tax and any, taxes of similar character imposed by the laws of India, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of India desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

**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 each Contracting State, 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 and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular—
  - (a) in the case of India—
 

the income tax including any surcharge thereon imposed under the Income Tax Act, 1961 (43 of 1961); and the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) hereinafter referred to as "Indian Tax";
  - (b) in the case of Kenya-
 

the income taxes imposed under the Income Tax Act (Cap. 470), hereinafter referred to as "Kenyan Tax".
4. This convention shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes.

The contracting states shall notify each other of significant changes which have been made in their respective taxation laws.

**ARTICLE 3*****General Definitions***

1. In this Convention unless the context otherwise requires—
  - (a) the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law,

[Subsidiary]

has been or may be designated, under the laws of Kenya concerning the Continental Shelf, as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;

- (b) the term "India" means the territory of India and includes the territorial sea and airspace above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India;
- (c) the terms "a Contracting States" and "the other Contracting State" mean Kenya or India as the context requires;
- (d) the term "tax" means Kenyan tax or Indian tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term "person" means an individual, a company and any other body of persons treated as an entity for tax purposes;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "Kenyan enterprise" and "Indian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Kenya and an industrial or commercial enterprise or undertaking carried on by a resident of India and the term "enterprise of a Contracting State" means a Kenya enterprise or an India enterprise, as the context requires;
- (h) the term "national" means an individual possessing the nationality of Kenya or India as the case may be and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya or India as the case may be;
- (i) the term "competent authority" means—
  - (a) in the case of Kenya, the Cabinet Secretary of Finance or his authorized representative;
  - (b) in the case of India the Cabinet Secretary of Finance (Department of Revenue);
- (j) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the voyage is confined solely to places within the other Contracting State.

2. In the application of the provisions of this Convention by a Contracting State any terms not otherwise defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of the present Convention.

#### **Article 4**

##### ***Fiscal Domicile***

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 taxation therein by reason of his domicile, residence, 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 residential status shall be determined in accordance with the following rules—

- (a) he shall be deemed to be a resident 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his "centre of vital interests");



- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in either of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 company is a resident of both Contracting States, then this case shall be determined in accordance with the following rules

- (a) it shall be deemed to be a resident of the Contracting State of which it is a national;
- (b) if it is a national of neither of the Contracting States, then it shall be deemed to be a resident of the Contracting States in which its place of effective management is situated.

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

## **ARTICLE 5**

### ***Permanent Establishment***

1. For the purpose of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project which exists for more than six months;
- (f) the provision of supervisory activities for more than six months on a building site or construction or assembly project.

3. The term "permanent establishment" shall not be deemed 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 or display;
- (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 for collection of information for the enterprise;

*Income Tax*

[Subsidiary]

- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have preparatory or auxiliary character for the enterprise.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom the provisions of paragraph 6 apply, shall be deemed to be a permanent establishment in the first mentioned State if-

- (a) he has, and habitually exercises in that State, an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or Merchandise for the enterprise; or
- (b) he maintains in that first mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of that enterprise.

5. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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, where the Activities of such an agent are devoted wholly or almost wholly on behalf, of that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph.

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 from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Convention, the term "immovable property" shall be defined in accordance within 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, 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 and to profits from the alienation of such 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 professional 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 or has carried on business as aforesaid, the profits of the enterprise may be traced in the other State but only so much of them as is attributable to (a) that permanent establishment (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. 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 the permanent establishment the profit 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 its permanent establishment.

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. In so far as it has been customary in a Contracting State, according to its law, 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 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 laid down in this Article.

5. No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State for the enterprise.

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

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

### **Article 8**

#### **Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

### **Article 9**

#### **Shipping**

1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State:

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[Subsidiary]

Provided that where such an enterprise derives profits from such operation in the other Contracting State—

- (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
- (b) the tax chargeable in that other State shall be reduced by an amount equal to 50 per cent thereof.

#### **ARTICLE 10**

##### ***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 profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this convention in relation to the nature of the income.

#### **Article 11**

##### ***Dividends***

1. Dividends paid by a company which is 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 law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount.

3. 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 assimilated to income from shares or any other item which is deemed to be a dividend of distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the recipient 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 professional services from a fixed base situated there, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 16, as the case maybe, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to resident of that other state or in so far 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 12**

### ***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 be taxed in the Contracting State which it arises, and according to the law of that State, but the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority, shall be exempt from tax of the first mentioned Contracting State. The competent authorities of the Contracting State may determine on mutual agreement any other governmental institution to which this paragraph shall apply:

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures; whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraph 2 shall not apply if the recipient 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 professional 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 a case, the provisions of Article 7, or Article 16, 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 that interest is borne by that 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount, in that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 13**

### ***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.

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[Subsidiary]

2. However, such, royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax, so charged in the Contracting State in which the royalties arise shall not exceed 20 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 or 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 or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 2 shall not apply if the recipient 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 professional services from a fixed base situated therein, and the right or property in respect of which the royalties are is effectively connected, with, such permanent establishment or fixed base: In such a case, the provisions of Article 7 or Article 16, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### **Article 14**

##### ***Capital Gains***

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6 may be taxed in the Contracting State in which such property is situated.
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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Notwithstanding the provisions of paragraph 2 gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.
4. Gains from the alienation of—
  - (a) shares of a company the property of which consists principally of immovable property situated in a Contracting State; and
  - (b) interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. For the purpose of this paragraph the term "immovable property"

includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).

5. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in that State.

#### **Article 15**

##### ***Management and Professional Fees***

1. Management or professional fees 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 management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 17% per cent of the gross amount of the management or professional fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical, professional or consultancy nature.

4. The provisions of paragraph 2 shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the services giving rise to the management or professional fees are effectively connected. In such a case the provisions of Article 7 shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner of the management or professional fees or between both of them and some other person, the amount of the management or professional fees paid, having regard to the service for which they are paid, exceeds the amount which would have been in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### **ARTICLE 16**

##### ***Independent Personal Services***

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

- (a) he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned in the case of Kenya or the previous year concerned in the case of India, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

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

[Subsidiary]

**Article 17*****Dependent Personal Services***

1. Subject to the provisions of Articles 18, 19, 20, 21, 22 and 23, 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 the 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 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 in respect of an employment exercised aboard a ship, or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is

**ARTICLE 18*****Director Fees***

Directors' fees and 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 19*****Artistes and Athletes***

1. Notwithstanding the provisions of Articles 7, 16 and 17, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised
2. Notwithstanding anything contained in this Convention, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.
3. The provisions of paragraphs 1 and 2 shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public of the other Contracting State.

**Article 20*****Government Service***

- (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.



2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

#### **Article 21**

##### ***Pensions***

1. Any pension (other than a pension of the kind referred to in paragraph (2) of this Article) and any annuity from sources within a Contracting State by an individual who is a resident of the other Contracting State by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State but if the individual is subject to tax in the other Contracting State in respect of the pension or annuity the tax so charged in the first-mentioned Contracting State shall not exceed the lower of—

- (a) 5 per cent of the pension or annuity; or
- (b) the amount of tax chargeable on the pension or annuity in the other Contracting State.

2. Pensions paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions may be taxed only in that Contracting State.

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### **ARTICLE 22**

##### ***Students and Apprentices***

1. 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 Contracting State solely for the purpose of his education or training shall be exempt from tax in the first-mentioned Contracting State on payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

#### **ARTICLE 23**

##### ***Professors and Teachers***

1. A professor or teacher who visits a Contracting State for a period not exceeding one year for the purpose of teaching or conducting research at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State. However, any remuneration for such work received from sources outside the State shall not be deductible in the first-mentioned State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

#### **ARTICLE 24**

##### ***Income not expressly mentioned***

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention in respect of which he is subject to tax in that State shall be taxable only in that State.

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[Subsidiary]

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

#### ARTICLE 25

##### *Method of Elimination of Double Taxation*

1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting states except where provisions to the contrary are made in this Convention.

- (a) The amount of Kenyan tax payable, under the laws of Kenya and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Kenya which has been subjected to tax both in India and in Kenya, shall be allowed as a credit against the Indian tax payable in respect of such income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within Kenya; so, however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income tax payable by the company in India, and as to the balance, if any, against surtax payable by it in India;
- (b) For the purposes of the credit referred to in subparagraph (a) above, the term "Kenyan tax payable" shall be deemed to include any amount which would have been payable as Kenyan tax any year but for (i) any investment deduction granted under paragraph 24 of the Second Schedule to the Income Tax Act, Cap. 470; (ii) the lower Corporation rate of income tax provided by paragraph 2 (b) of the Third Schedule to the Income Tax Act, Cap. 470; (iii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.
- (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Kenya, in respect of income from sources within India which has been subjected to tax both in India and Kenya, shall be allowed as a credit against Kenyan tax payable in respect of such income provided that such credit shall not exceed the Kenyan tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within India;
- (b) For the purposes of the credit referred to in subparagraph (a) above, the term "Indian tax payable" shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income Tax Act, 1961—
  - (a) sections 10 (4), 10 (4A), 10 (6) (viiia), 10 (15) (iv), 10A, 32A, 33A, 35B, 35CC, 80HH, 80I, 80K, 80L; and
  - (b) any other provisions which may subsequently be enacted granting a deduction from taxable income or exemption from or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development

4. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

**ARTICLE 26*****Non-Discrimination***

1. The 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 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.
3. Nothing in this Article shall 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.
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 that first-mentioned State are or may be subjected.
5. In this Article the term "taxation" means taxes which are the subject of this Convention.
6. Notwithstanding the provisions of the foregoing paragraphs, a company which is a resident of India and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenyan law, but such additional rate shall not exceed 7.5 per cent. However, such a company will not be subjected 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 that first-mentioned State are or may be subjected.

**Article 27*****Mutual Agreement Procedure***

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding remedies provided by the national laws of those States, present his case to the competent authority of the State of Which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.
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 an appropriate 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 not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws 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 this Convention. They may also consult together for the elimination of double taxation, in cases not provided for in this Convention.
4. The competent authorities of the Contracting States may communicate directly with each other for the purposes of applying the provisions of this Convention. When it seems advisable in order to reach agreement to have an oral exchange of opinion, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

[Subsidiary]

**Article 28*****Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or for preventing fraud or fiscal evasion concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligations—

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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.

**Article 29*****Diplomatic and Consular Officials***

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

**Article 30*****Entry into Force***

1. This Convention shall come into force on the date when the last of all such things shall have been done in India and Kenya as are necessary to give the Convention the force of law in India and Kenya respectively.

2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this Article. The exchange of diplomatic notes certifying that this requirement has been completed shall take place at Nairobi.

3. Upon the exchange of such diplomatic notes, this Convention shall have effect:

- (a) In Kenya-
  - (i) in respect of taxes withheld at the source on amounts paid or credited to non-residents on or after 1st January, in the calendar year following the year in which all the required formalities are completed;
  - (ii) in respect of other taxes on income arising for the year of income commencing on or after the 1st January, in the calendar year in which all the required formalities are completed.
- (b) In India, in respect of income assessable for any assessment year commencing on or after 1st day of April, in the year in which all the required formalities are completed.

**ARTICLE 31*****Termination***

This Convention shall continue in effect indefinitely but either of the Contracting States may, 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, give the other Contracting State, through diplomatic channels, written notice of termination and in such event, this Convention shall cease to have effect :

**(a)** In Kenya-

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st day of January, in the calendar year next following that in which the notice is given;
- (ii) in respect of other tax on income arising for the year of income next following that in which the notice of termination is given, and subsequent years.

**(b)** In India, in respect of income assessable for the assessment year commencing on the 1st day of April, in the second calendar year next following the calendar year in which the notice is given, and subsequent years.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 115 of 1989]

The Cabinet Secretary for Finance provides that all payments made under the credit agreement specified in the First Schedule and under the loan agreement specified in the Second Schedule shall be exempt from tax.

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**FIRST SCHEDULE**

A credit agreement dated 7th March, 1989, for French Francs two hundred and eighty-four million and two thousand (FRF 284,002,000) between the Government of the Republic of Kenya as the borrower and a consortium of French banks as the lenders led by the following:

Banque Paribas, acting as lead manager whose registered office is at rue d'Antin, Paris 2e, France.

Societe Generale, acting as co-lead manager whose registered office is at 29 Boulevard Haussmann, 75454 Paris, Cedex 09, France.

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**SECOND SCHEDULE**

A loan agreement dated 7th March, 1989, for French Francs sixty-nine million, one hundred nineteen thousand and fifty-one (FRF 69,119,051), between the Government of the Republic of Kenya as the borrower and a syndicate of the following banks as lenders:

Banque Paribas, as lead manager of the lenders whose registered office is in 75002 Paris France, 3 rue d'Antin,

Societe Generale, as co-lead manager of the lenders whose registered office is 75009 France, 29 Boulevard Haussmann,

Credit Lyonnais, whose registered office is 75002 Paris, France, 19 Boulevard des Italiens,

Banque Francaise du Commerce Exterieur, whose registered office is in 75009 Paris, France, 21 Boulevard Haussmann,

Banque Worms, whose registered office is in 75009 Paris, France, 45 Boulevard Haussmann,

Banque Indosuez, whose registered office is in 75008 Paris, France, 96 Boulevard Haussmann,

Credit Industriel et Commercial de Paris, whose registered office is in 75009 Paris, France, 66 rue de la Victoire,

Banque Nationale de Paris, whose registered office is in 75009 Paris, France, 16 Boulevard des Italiens,

Banque Vernes et Commerciale de Paris, whose registered office is in 75008 Paris, France, 52 avenue Hoche.





**THE INCOME TAX - DECLARATION**

[Legal Notice 157 of 1989]

The Cabinet Secretary responsible for Finance declares flouspar to be a specified mineral for the purposes of the Act with effect from the 1st January, 1989.

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**THE INCOME TAX- DECLARATIONS OF CROPS**

[Legal Notice 158 of 1989]

IN EXERCISE of the powers conferred by section 2 (1) of the Income Tax Act, the Cabinet Secretary of Finance declares Grape Vines to be permanent or semi-permanent crops for the purposes of the Act with effect from the 1st January, 1989.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 161 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made pursuant to an agreement dated the 2nd November, 1988 between the Government of the Republic of Kenya and Fabrique Nationale Herstal S.A., a corporation organized and existing under Belgium Law and having its registered office at 33 Voie-de-Li'ege, 4400. Herstal (Belgium) shall be exempted from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 160 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Finance Contract specified in the Schedule hereto shall be exempt from tax.

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SCHEDULE

A Finance Contract dated the 1st February, 1989, for one hundred and fifty thousand ECUs (150,000 ECUs) between the Government of the Republic of Kenya as borrower and the European Investment Bank as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 167 of 1989]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of—

- (a) Total Exploratie en Productie Mij. E.V. incorporated under the laws of the Netherlands and having established a place of business at Chai House, Koinange Street, Nairobi;
- (b) Amoco Kenya Petroleum Company, incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business in Nairobi, Kenya;
- (c) Marathon Petroleum Kenya Ltd., incorporated under the laws of the State of Delaware, U.S.A., and having established a place of business at I.C.E.A. Building, Kenyatta Avenue, Nairobi;
- (d) Mobil Exploration Kenya Ltd., incorporated under the laws of Bermuda and having established a place of business in Nairobi, Kenya; and
- (e) Fina Exploration Kenya S.A. Ltd., incorporated under the laws of Belgium and having established a place of business in Nairobi, Kenya;

and their sub-contractors, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 223 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Finance Contract specified in the Schedule hereto shall be exempt from the provisions of the Act.

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SCHEDULE

A finance contract dated 25th May, 1989, for seventeen million ECUS (17,000,000 ECUS) between the Government of the Republic of Kenya as borrower and the European Investment Bank as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 224 of 1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

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SCHEDULE

The credit agreement dated 18th July, 1989 for the value of French Francs 37,533,909 (thirty-seven million five hundred and thirtythree thousand nine 'hundred and nine French Francs) between the Government of Kenya as the borrower and the following lenders:

1. Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008 Paris, France.
  2. Banque Francaise du Commerce Exterieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 225 of 1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

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**SCHEDULE**

The loan agreement dated 18th July, 1989, for French Francs 6,300,000 (six million three hundred thousand French Francs) between the Government of Kenya as the borrower and the following syndicate of lenders:

1. Banque Indosuez, whose registered office is 96 Boulevard Haussmann, 75008 Paris, France.
  2. Banque Nationale de Paris, whose registered office is 16 Boulevard des Italiens, 75009 Paris, France.
  3. Credit Lyonnais, whose registered office is 19 Boulevard des Italiens, 75002 Paris, France.
  4. Credit Commercial de France, whose registered office is 103 Avenue des Champs Elysees, 75008 Paris, France.
  5. Banque de L'Union Europeenne, Whose registered office is 4 Rue Gaillon, 75002 Paris, France.
  6. Banque Francaise du Commerce Exterieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 226 of 1989]

The Cabinet Secretary responsible for Finance directs that all payments of interest payable on the loan under the loan agreement specified in the Schedule hereto shall be exempt from tax.

The loan agreement dated 18th July, 1989 for the value of French Francs 120,000,000 (one hundred and twenty million French Francs) between the Government of Kenya as the borrower and the following lenders:

1. Banque Francaise du Commerce Exterieur, whose registered office is 21 Boulevard Haussmann, 75009 Paris, France.
  2. Credit National, whose registered office is 45 Rue St. Dominique, 75007 Paris, France.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 248 of 1989]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Women Finance Trust Limited shall be exempt from tax but the exemption shall not extend to tax on interest of deposits or withholding tax paid on deposit interests.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 249 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement specified in the Schedule hereto shall be exempt from the provisions of the Act.

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SCHEDULE

A Loan Agreement dated 11th March, 1989, for five million, three hundred thousand pounds sterling (fS 5,300,000) between the Kenya Tea Development Authority as borrower and the Commonwealth Development Corporation as lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 273 of 1989]

The Vice-President and Minister for Finance directs that all payments made under the credit agreement specified in the Schedule hereto shall be exempt from the provisions of the Act.

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Schedule

A credit agreement dated 10th August, 1989, for two hundred and eighty-eight million nine hundred and eighty-one thousand convertible Belgian Francs (DEC 288,981,000), between the Government of the Republic of Kenya as borrower and Indosuez Bank Belgic N.V. a Belgian company with its registered office in Antwerp, Grote Markt 9, Belgium, as lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 394 of 1989]

The Cabinet Secretary responsible for Finance provides that all payments arising out of the lease agreement dated the 8th September, 1989, between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, and ANSETT WorldWide Aviation Limited, of Bond Street, East Tower, 40th Floor, 89 Queensway, Hong Kong, shall be exempted from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 6 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the agreement specified in the Schedule shall be exempt from the provisions of the Act.

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SCHEDULE

A Loan Agreement dated the 4th December, 1989, for French Francs forty million six hundred ninety-eight thousand six hundred and eighty-six (FRF 40,698,686) between the Government of the Republic of Kenya as borrower and the following French banks as lenders-

1. Banque Francaise du Commerce Exterieur whose registered office is 75009, Paris. office is 21 Boulevard Haussman, 75009, Paris.
  2. Credit National whose registered office is 45 Rue Saint Dominique, 75007, Paris.
-



**THE INCOME TAX - EXEMPTION**

[Legal Notice 7 of 1990]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of—

- (a) Total Exploratie en Produktie Mij. BV incorporated under the laws of the Netherlands and having established a place of business at Finance House, Loita Street, Nairobi;
- (b) Amoco Kenya Petroleum Company, incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business at Shell BP House, Harambee Avenue, Nairobi;
- (c) Marathon Petroleum Kenya Ltd., incorporated under the laws of the State of Delaware, U.S.A. and having established a place of business at I.C.E.A. Building, Kenyatta Avenue, Nairobi; and
- (d) Texaco Exploration Kenya Inc. incorporated under the laws of Liberia and having established a place of business at Caltex House, Koinange Street, Nairobi,

and their sub-contractors shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 48 of 1990]

The Cabinet Secretary responsible for Finance provides that all payments made under the finance agreement, the purchase agreement and the promissory notes specified in the Schedule shall be exempted from tax.

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Schedule

1. The finance agreement dated 1st November, 1989 for sixteen million, five hundred and fourteen thousand, three hundred and twentynine U.S. dollars (US\$16,514,329) between the Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya, as the borrower and Credit Lyonnais Bank, Nederland N.V. as the lender.

2. The purchase agreement dated 1st November, 1989 between the Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya and the Fokker Aircraft B.V., of P.O. 1 Box 12222, 1100 AE Amsterdam, Zuidoost, the Netherlands and the promissory notes to be issued pursuant to the purchase agreement.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 49 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan agreement specified in the Schedule hereunder shall be exempt from the provisions of the Act.

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SCHEDULE

A loan agreement dated 29th May, 1989 for Netherlands guilders seven million two hundred eighty-seven thousand (NLG 7,287,000) between the Kenya Ports Authority as the borrower and De Nederlandse Investeringsbank Voor Ontwikkelingslanden N.V. whose office is at 5 Carnegieplain, the Hague, Netherlands, as the lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 58 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan agreement dated 30th January, 1989, for Deutsche marks twenty-seven million five hundred thousand (DM 27,500,000), between the Republic of Kenya as borrower and the Kreditanstalt Fur Wiederaufbau, Frankfurt am Main, of Germany as lender, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 85 of 1990]

The Cabinet Secretary responsible for Finance provides that the credit of Swedish Kroner 8,600,000 from Skandinaviska Enskilda Banken of 5-406 40 Stockholm, Sweden to the Government of the Republic of Kenya, shall be exempted from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 225 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement dated 31st October, 1989 for Belgian Francs one hundred million (BEC 100,000,000), between the Kenya Power and Lighting Company Limited as borrower and Indosuez Bank Belgie N.V. of Grote Markt 9, Antwerp, Belgium as lender, shall be exempt from the provisions of the Act.

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Schedule

A loan agreement dated the 25th April, 1990, for Canadian dollars forty-nine million and seventy-four thousand (CDN \$49,074,000), between the Kenya Pipeline Company Limited as borrower and the Export Development Corporation of Canada as lender.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 226 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the credit agreement dated 31st October, 1989 for Belgian Francs one hundred million (BEC 100,000,000), between the Kenya Power and Lighting Company Limited as borrower and Indosuez Bank Belgie N.V. of Grote Markt 9, Antwerp, Belgium as lender, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 356 of 1990]

The Cabinet Secretary responsible for Finance provides that the sum of five million Deutsche Marks (DM 5,000,000) invested by the German Finance Company for Investments in Developing Countries in Small Enterprises Finance Company of Kenya in form of equity and income notes shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 446 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the agreement specified in the Schedule shall be exempt from the provisions of the Act.

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SCHEDULE

1. An agreement dated the 11th January, 1990, and any amending agreements thereto between Kenya Pipeline Company Limited, Lavalin International Inc., Sogea and NKK Corporation trading under the partnership name of Propipe, for the construction and extension of an oil pipeline to Western Kenya.
  2. Salaries and emoluments of expatriate personnel of Lavalin International Inc., Sogea, NKK Corporation and Propipe paid in connection with the performance of their obligations under the agreement dated 11th January, 1990.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 478 of 1990]

The Cabinet Secretary responsible for Finance provides that all payments made under the Credit Agreement dated 10th September, 1990 for French Francs 130,765,399 (one hundred thirty million, seven hundred and sixty-five thousand, three hundred and ninety-nine) between the Kenya Pipeline Company Limited as borrower and the Syndicate of French bank specified in the Schedule hereto shall be exempt from the provisions of the Act.

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**SCHEDULE**

- 1 Banque de L'Union Europeenne whose registered office is 4, Rue Gaillon, 75002 Paris (France).
  2. Banque Nationale de Paris whose registered office is 16, Boulevard des Italiens, 75009 Paris (France).
  3. Banque Francaise du Commerce Exterieur whose registered office is 21, Boulevard, Haussmann, 75009 Paris (France).
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 515 of 1990]

The Cabinet Secretary responsible for Finance directs that all payments made under the Lease Hire Purchase Agreement dated the 22nd October, 1990, between Air Kenya Aviation Limited and C.H.S. Aviation Limited, for the hire by Air Kenya Aviation Limited of aircraft Twin Otter DHC 6 Registration 5Y-KEG shall be exempt from payment of withholding tax for a period of two years commencing from the 1st December, 1990.

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**THE INCOME TAX—EXEMPTION**

[Legal Notice 54 of 1991]

The Cabinet Secretary responsible for Finance provides that the contributions made to unregistered provident funds established abroad for the expatriate employees of the Shell Exploration and Production Kenya B.V. incorporated under the laws of the Netherlands and having established a place of business at the Shell BP House, Harambee Avenue, Nairobi, and their subcontractors shall be exempt from the provisions of the Act.

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**THE INCOME TAX ACT - EXEMPTION**

ARRANGEMENT OF SECTIONS

*SCHEDULE*

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 99 of 1991]

The Cabinet Secretary responsible for Finance directs that all payments made under the loan and guarantee agreements specified in the Schedule hereto shall be exempt from the provisions of the Act.

**SCHEDULE**

1. The Loan Agreement No. EDC 880-KEN-4209 dated 12th December, 1990 for US dollars twenty-three million five hundred thousand (US\$ 23,500,000) between the Kenya Posts and Telecommunications Corporation as borrower and Export Development Corporation of Canada as lender.

2. The Guarantee Agreement dated 12th December, 1990 for the EDC loan No. 880-KEN-4209 between Government of the Republic of Kenya as guarantor and Export Development Corporation of Canada.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 267 of 1991]

The Cabinet Secretary responsible for Finance directs that all income of the Nairobi Terminal Care Centre of P.O. Box 74818, Nairobi, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 514 of 1991]

The Cabinet Secretary responsible for Finance exempts all accrued income derived from the investment of convertible currency payable on the redemption of a convertible foreign exchange bearer certificate from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 531 of 1991]

The Cabinet Secretary responsible for Finance provides that all payments arising out of the three Lease Agreements dated the 5th September, 1991 entered into between Kenya Airways Limited, of P.O. Box 19002, Nairobi, Kenya and GPA Group PLC of , GPA House, Shannon, Co. Clare, Ireland shall be exempted from the provision of this Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 30 of 1992]

The Cabinet Secretary responsible for Finance directs that the interest on all deposits of the Registration of Certified Public Secretaries Board, deposited in any bank or financial institution shall be exempt from withholding tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 31 of 1992]

The Cabinet Secretary responsible for Finance provides that all the income of the Kenya Wildlife Service shall be exempt from the provisions of the Act for a period of five years commencing on the 1st January, 1992. This notice shall be deemed to have come into operation on the 1st January, 1992.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 72 of 1992]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement dated 11th July, 1991 for a total of three million five hundred thousand US dollars (US \$3.5m.) between Kwale Cashew Processors Limited as borrower and Messrs. West-deutsche Landesbank (Europa) Financing Services Limited, Ireland and M/s. Chartered WestLB Limited, London as lenders respectively shall be exempt from withholding tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 82 of 1992]

The Cabinet Secretary responsible for Finance provides that the interest on deposits of the Netherlands Development Finance Company (FMO) held in various banks and financial institutions in Kenya shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 83 of 1992]

The Cabinet Secretary responsible for Finance provides that the income of Prefund-Project Rehabilitation Fund Limited shall be exempt from the provisions of the Act.

This notice shall be deemed to have come into operation from the 1st January, 1989.

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**THE INCOME TAX (RETIREMENT BENEFIT) RULES, 1992**

[Legal Notice 136 of 1992]

***Revoked by Legal Notice 70 of 1993 on 2nd April, 1993***



**THE INCOME TAX - DIRECTION**

[Legal Notice 24 of 1993]

The Cabinet Secretary responsible for Finance directs the Commissioner of Income Tax to refrain from assessing and recovering tax from individuals for income chargeable under section 3 of the Act in respect of years of income prior to 1st January, 1992 and not disclosed to the Commissioner in any income tax return made prior to 5th February, 1993:

Provided that-

- (i) the individual shall make a full disclosure of all income chargeable to tax for the year of income 1992 to the Commissioner of Income Tax;
  - (ii) the individual shall provide a statement of total assets and liabilities in his name or in the name of his wife and minor children as at the end of the year of income 1991; and
  - (iii) the disclosure under paragraph (i) and the statement under paragraph (ii) are supplied to the department not later than the 31st July, 1993.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 27 of 1993]

The Cabinet Secretary responsible for Finance provides that all funds deposited in any bank or financial institution by the Missionaries of Charity in Kenya, of Post Office Box 32778, Nairobi, shall be exempt from withholding tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 73 of 1993]

The Cabinet Secretary responsible for Finance directs that the interest on all deposits of the Kangundo Sub-district Hospital Nyayo Wards, deposited in any bank or financial institution shall be exempt from withholding tax for a period of three years with effect from 1st January, 1993.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 164 of 1993]

The Cabinet Secretary responsible for Finance provides that the income of the Institute of Certified Public Secretaries of Kenya, of P.O. Box 46935, Nairobi, shall be exempt from the provisions of the Act as long as the organization remains a non-profit making organization.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 277 of 1993]

1. The Cabinet Secretary responsible for finance, subject to the conditions in paragraphs (2) and (3), exempts from Income tax the lump sum received by employees of Kenya Airways Limited who opt for early retirement prior to 30th September, 1993, under the scheme known as the "Voluntary Severance Scheme" in accordance with written agreement between Kenya Airways Limited and its employees, and as approved by the Government under the Parastatal Reform Programme.
  2. A person who opts for early retirement shall not be eligible for re-employment with Kenya Airways Limited in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three years from the date on which he left service under the Scheme.
  3. Kenya Airways Limited shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the the commissioner, in respect of each retiring employee, the name, the date of, retirement from the service of Kenya Airways Limited, the amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 322 of 1993]

The Cabinet Secretary responsible for Finance, subject to conditions in paragraphs (2) and (3), exempts from income tax the lump sum payments received by employees of the Industrial Development Corporation established by the Industrial and Commercial Development Corporation Act who opt for early retirement within ninety (90) days of the publication of this exemption in the Gazette under the scheme known as the "Voluntary Early Retirement/Leaving Scheme" in accordance with written agreements between the Industrial and Commercial Development Corporation and its employees, and as approved by the Government of Kenya under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with the Industrial and Commercial Development Corporation in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis or otherwise, before the expiry of three years from the date on which he left service under the Voluntary Early Retirement/ Leaving Scheme.

3. The Industrial and Commercial Development Corporation shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the service of the Industrial and Commercial Development Corporation, the amount paid, and copy of the agreement with the employee under Voluntary Early Retirement/Leaving Scheme duly signed by the employee.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 350 of 1993]

The Cabinet Secretary responsible for Finance, subject to conditions in paragraphs (2) and (3), exempts from income tax the lump sum severance payments, other than payments made in accordance with the provisions of the Pensions Act, received by employees of the Government of Kenya who opt for voluntary early retirement prior to 30th June, 1996 under the provisions of the Civil Service Reform Programme as specified in Personnel Circular No. 5 issued by the Office of the President, dated 12th October, 1993.

2. A person who opts for early retirement shall not be eligible for re-employment with the Government of Kenya in any capacity or under any terms whatsoever, whether temporary or permanent, contractual or otherwise, before the expiry of three years from the date on which he left service under the scheme.

3. Ministries, departments, provinces and districts from which employees are retiring early under the provisions of the Civil Service Reform Programme shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, the name, the date of retirement from the service of the Government of Kenya and the amount paid to the employee.

4. This exemption shall be deemed to have come into effect on 1st November, 1993.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 352 of 1993]

The Cabinet Secretary responsible for Finance directs that the credit or any income arising out of the Development Credit Agreement dated 30th March, 1993, in various currencies equivalent to forty-four million eight hundred thousand Special Drawing Rights (SDR44,800,000) between the Republic of Kenya and the International Development Association, for use under the Protected Areas and Wildlife Services (PAWS) Project, shall be exempt from the provisions of the Act.

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**THE INCOME TAX ACT - EXEMPTION**

ARRANGEMENT OF SECTIONS

*SCHEDULE*

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 365 of 1993]

The Cabinet Seretary responsible for Finance directs that all payments made under the agreements specified in the Schedule shall be exempt from the provisions of the Act.

**SCHEDULE**

1. Supplementary Loan Agreement dated the 20th October, 1993, for Japanese Yen one billion one hundred twenty-two million and eight hundred thousand (Yen ,122,800,000), between the Export Import Bank of Japan, the Bank of Tokyo Limited, and the Daiwa Bank Limited of Japan as Lenders and Kenya Pipeline Company Limited as Borrower.

2. A Supplementary Loan Agreement dated the 3rd November, 1993 for Canadian Dollars fifteen million five hundred thousand (CDN \$15,500,000), between the Export Development Corporation of Canada as Lender and Kenya Pipeline Company Limited as Borrower.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 408 of 1993]

The Cabinet Secretary responsible for Finance provides that all payments made under the Loan Agreement dated the 9th November, 1993, for one thousand one hundred million Japanese Yen (Yen 1,100,000,000), between Tomen Corporation of Japan and East African Portland Cement Company Limited, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 32 of 1994]

The Cabinet Secretary responsible for finance provides that all payments made under the Lease Agreement dated the 19th November, 1993, between Transtrade (Proprietary) Limited and Investec Bank Limited of South Africa, respectively, and the Kenya railways Corporation shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 43 of 1994]

The Cabinet Secretary for Finance provides that the income of the African Network for the Prevention and Protection Against Child Abuse and Neglect (A.N.P.P.C.A.N.), a non-governmental organization based in Nairobi and dealing with the promotion of the rights and welfare of African children shall, as long as it remains a non-profit making association, be exempt from provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 143 of 1994]

1. The Cabinet Secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the Industrial Development Bank Limited who opt for voluntary early retirement within ninety days of publication of this notice in the Gazette, under the scheme specified in the Human Resources Plan of the Industrial Development Bank Limited, approved by the Government of Kenya under the Parastatal Reform Programme, and in accordance with written agreements between the Industrial Development Bank and such employees.
  2. A person who opts for early retirement shall not be eligible for re-employment with the Industrial Development Bank Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.
  3. The Industrial Development Bank Limited shall, in addition to complying with any procedures as the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the service of the Industrial Development Bank Limited, the amount paid, and a copy of the agreement with the employee under the Human Resources Plan duly signed by the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 153 of 1994]

The Cabinet Secretary responsible for Finance directs that all the income of the Testimony Faith Homes, of P.O. Box 2134, Eldoret, shall be exempt from the provisions of the Act as long as the society remains a non-profit making organization and continues with maintenance, care, education and training of destitute children.

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**THE INCOME TAX (RETIREMENT BENEFIT) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Existing schemes
  4. Registration of pension funds
  5. Registration of provident funds
  6. Registration of individualretirement funds
  7. Discretionary registration
  8. Registration procedure
  9. Alteration of scheme regulations to be notified
  10. Withdrawal of registration
  11. Revocation. Sub. Leg.
-



## THE INCOME TAX (RETIREMENT BENEFIT) RULES

[Legal Notice 197 of 1994, Legal Notice 211 of 1995, Legal Notice 124 of 1996, Legal Notice 99 of 2001, Legal Notice 106 of 2001, Legal Notice 98 of 2002, Legal Notice 55 of 2004, Legal Notice 52 of 2005, Legal Notice 79 of 2008]

### 1. Citation

These Rules may be cited as the Income Tax (Retirement Benefit) Rules, 1994, and shall come into operation on 17th June,

### 2. Interpretation

(1) In these Rules, unless the context otherwise requires—

"employee" means an employee participating in a registered scheme;

"employer" means a person carrying on a business wholly or partly in Kenya in connection with which a scheme is established;

"pension" includes a pension from employment and a retirement annuity;

"scheme regulations" means the regulations specifically governing the constitution and administration of a particular scheme;

"trustee" includes a person having the management or control of a fund or scheme.

(2) For the purposes of this rule and rules 8 and 9, "scheme" means a pension fund, a pension scheme, an individual retirement fund, a provident fund or trust fund.

### 3. Existing schemes

Subject to these Rules, a pension fund, pension scheme or provident fund which was established in Kenya and approved for the purposes of the Management Act or a trust scheme or annuity contract approved for the purposes of the Management Act, shall be deemed respectively to be a registered pension fund, registered pension scheme, registered provident fund, registered trust scheme and registered annuity contract for the purposes of the Act.

### 4. Registration of pension funds

A pension fund to which rule 3 does not apply shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of the Act if he is satisfied that it—

- (a) is registered with the Retirement Benefits Authority; and
- (b) provides that all moneys payable thereunder shall be paid in Kenya; and
- (c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (d) provides that in the case of a defined contribution pension fund where a surplus is identified by the audit required under subparagraph (j)(i), such surplus shall be allocated to the respective accounts of the members of the fund in lieu of new contributions by the employer in the year and subsequent years until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and
- (e) *deleted by L.N. 79 of 2008*
- (f) provides that the payment of pension shall not commence-
  - (i) until the retirement of the employee from service with the employer on or after the employee attains the age of fifty years; or
  - (ii) except upon earlier retirement on account of infirmity of mind or body; and
- (g) does not provide for the payment of sums on the death of an employee except a lump sum payable to the estate, or a lump sum or an annuity or both whether

[Subsidiary]

directly or indirectly payable to the widow or widower or dependants, of that employee; and

- (h) does not provide for the payment of an annuity, to the widow or widower of an employee, other than annuity for a term certain or during the life of that widow or widower or during the minority of a dependant of that employee; and
- (i) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (j) provides that -
  - (i) in the case of a defined contribution pension fund, an audit shall be carried out once every year during which all assets shall be valued at their current market prices and all surplus funds not allocated to the account of a member of the fund identified;
 

Provided that, where the fund makes provision for a reserve fund, the amount of this reserve fund that does not exceed ten per cent of the market value of the assets may be excluded from the surplus funds not allocated to the account of a member of the fund.
  - (ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by an actuary at least once every three years beginning from 1st January, 1995 during which any actuarial deficiency or surplus in the fund shall be determined;
  - (iii) the audited accounts or the actuarial report as the case may be, shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance and all members of the fund shall be notified of the availability of the audited accounts or actuarial report for scrutiny at the offices of the fund manager not later than thirty days from the date of the completion of the audit, or report; and
  - (iv) any surplus funds identified shall appropriately be allocated to the respective accounts of the members, and upon the fund being wound up, the surplus funds shall be deemed to be the funds of the employer, unless the trust deed of such scheme specifies otherwise, and shall be required to be withdrawn and charged to tax in the hands of the employer.
- (k) provides that, in the case of a defined contribution pension fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[LN 211 of 1995, s. 2., LN 124 of 1996, s. 2, LN 99 of 2001, s. 2, LN 106 of 2001, s. 2., L.N. 98 of 2002, s. 2., L.N. 55 of 2004, s. 2., L.N. 52 of 2005, s. 2.]

## 5. Registration of provident funds

A provident fund to which rule 3 does not apply shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of the Act if he is satisfied that it—

- (a) is registered with the Retirement Benefits Authority;
- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that no benefit or contribution accruing or payable thereunder shall be capable of assignment; and
- (d) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner; and
- (e) provides that in the case of a provident fund where a surplus is identified by the audit required under subparagraph (g)(i) such surplus shall be allocated to the account of members of the fund in lieu of contributions by the employer

in the year and each subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions of the employer.

- (f) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and
- (g) provides that—
  - (i) an audit shall be carried out once every year during which all assets shall be valued at their market prices and all surplus funds not allocated to the account of a member of the fund identified;
  - (ii) the audited accounts shall be sent to the Commissioner of Income Tax, the Commissioner of Insurance, and all members of the fund notified of its availability for scrutiny at the offices of the fund manager, not later than thirty days from the date of completion of the audit.
- (h) provides that, in the case of a provident fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, disability or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.

[LN 211 of 1995, s. 3., LN 124 of 1996, s. 3., L.N. 98 of 2002, s. 3., L.N. 52 of 2005, s. 3.]

## 6. Registration of individual retirement funds

An individual retirement fund shall, upon application being made under rule 8, be registered by the Commissioner for the purposes of this Act if he is satisfied that it—

- (a) is registered with the Retirement Benefits Authority;
- (b) provides that all sums payable thereunder shall be paid in Kenya; and
- (c) provides that the only contributions received shall be—
  - (i) funds transferred from another registered fund or registered individual retirement fund under section 22A(5) of the Act where the Commissioner has been duly informed of the transfer of funds; or
  - (ii) contributions by or on behalf of an individual who qualifies for a deduction under section 22B of the Act; and
- (d) provides that the funds shall be invested in qualifying assets; and
- (e) provides that no loan or other benefit shall be provided out of the fund to the beneficiary or any person not dealing at arm's length with that beneficiary; and
- (f) provides that an individual beneficiary can direct that all funds in his individual retirement fund be transferred to another such account with the same or another qualified institution without unreasonable delay and with notification of the Commissioner; and
- (g) provides that the payment of pension shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or infirmity of body or mind or on leaving the country permanently;
- (h) *deleted by L.N.55 of 2004, s. 4.*
- (i) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and
- (j) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.

[L.N. 98 of 2002, s. 4.]

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[Subsidiary]

## **7. Discretionary registration**

The Commissioner may, subject to such conditions as he thinks fit, register, for the purposes of the Act, another pension fund or provident fund which does not fully comply with every requirement of rule 4, 5 or 6 but which in his opinion substantially so complies.

## **8. Registration procedure**

(1) Application for the registration of a scheme under rule 4, 5, 6 or 7 shall be made by the trustee of the scheme to the Commissioner in writing accompanied by two copies of the trust deed or other documents constituting the scheme and the scheme regulations.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the trustee in writing whether the scheme is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

## **9. Alteration of scheme regulations to be notified**

Where an alteration is made to scheme regulations, the trustee of the scheme shall immediately inform the Commissioner in writing thereof and such alteration shall not be effective unless written approval is received from the Commissioner.

## **10. Withdrawal of registration**

(1) The Commissioner may at any time, by notice in writing to the trustee of a scheme, withdraw the registration of—

- (a) a registered pension fund (whether registered under rule 3 or 4) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 4; or
- (b) a registered provident fund (whether registered under rule 3 or 5) the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 5; or
- (c) a registered individual retirement fund the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer meets the requirements of rule 6; or
- (d) a scheme registered under rule 7 which he is satisfied on reasonable grounds no longer meets the requirements of that rule or which has failed or ceased to fulfil any conditions of registration imposed under that rule; or
- (e) a registered pension scheme or registered trust scheme, the scheme regulations whereof have been so altered or breached that he is satisfied on reasonable grounds that the scheme no longer fulfills the conditions under which it was approved under the Management Act except where those conditions have been varied by these Rules; or
- (f) a scheme the accounts of which fail or cease to be maintained to the satisfaction of the Commissioner.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine.

## **11. Revocation. Sub. Leg.**

The Income Tax (Retirement Benefit) Rules, 1993 are revoked.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 219 of 1994]

The Cabinet Secretary for Finance provides that the District Trade Development Joint Boards financial deposits in various banks shall be exempt from withholding tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 330 of 1994]

The Cabinet Secretary for Finance directs that all financial deposits belonging to the Wildlife Conservation International, of P.O. Box 62844, Nairobi, deposited in banks or financial institutions, shall be exempt from withholding tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 379 of 1994]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments other than normal pension benefits in line with Corporation's Pension Scheme received by employees of Kenya Posts and Telecommunications who opt for voluntary early retirement under the Scheme approved by the Government of Kenya on 1st March, 1994, under the Parastatal Reform Programme.

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Posts and Telecommunications Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Posts and Telecommunications Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect a each retiring employee, with the name, the date of retirement from the service of the Kenya Posts and Telecommunications Corporation, the amount paid and a copy of the agreement with the employee.

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**THE INCOME TAX - EXEMPTION, 1994**

[Legal Notice 484 of 1994, Legal Notice 41 of 1996]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of National Cereals and Produce Board, who opt for voluntary early retirement prior to 30th June, 1996, under the Structural Adjustment Programme approved by the Government of Kenya on 27th October, 1994.

An employee who opts for early retirement shall not be eligible for re-employment with National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service of the Board under the Structural Adjustment Programme.

The National Cereals and Produce Board shall, in addition to complying with any procedures that the commissioner of Income Tax may require, furnish the commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 4 of 1995]

The Cabinet Secretary for Finance provides that the Finance Contract dated 24th November, 1994, for five and a half million ecus (ECUS 5.5 million), between the European Investment Bank as lender and the Republic of Kenya and Kenya Pipeline Company Limited as borrower, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 51 of 1995]

***Revoked by Legal Notice 205 of 1995 on 9th June, 1995***



**THE INCOME TAX - EXEMPTION**

[Legal Notice 136 of 1995]

1. The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by the employees of the Kenya Wine Agency Limited who opted for voluntary early retirement prior to 31st December, 1994, under the Sector Reform Programme approved by the Government, on 2nd November, 1994.
  2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wine Agency Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the programme.
  3. The Kenya Wine Agency Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Wine Agency Limited, the amount paid and a copy of the agreement with the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 137 of 1995]

1. The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by the employees of the Kenya Industrial Estates Limited who opt for voluntary early retirement prior to 31st December, 1995, under the Sector Reform Programme approved by the Government on 2nd November, 1994.
  2. An employee who opts for early retirement shall not be eligible for re-employment with Kenya Industrial Estates Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.
  3. The Kenya Industrial Estates Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Industrial Estates Limited, the amount paid and a copy of the agreement with the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 152 of 1995, Legal Notice 4 of 1996]

1. IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Cabinet Secretary for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Power and Lighting Company Limited who opt for voluntary early retirement prior to 31st December, 1996 under the Sector Reform Programme approved by the Government on 2nd November, 1994.

[LN 4 of 1996]

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Power and Lighting Company Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.

3. The Kenya Power and Lighting Company Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Power and Lighting Company Limited, the amount paid and a copy of the agreement with the employee.





**THE INCOME TAX - EXEMPTION**

[Legal Notice 205 of 1995]

The Cabinet Secretary responsible for Finance directs that the remuneration payable by the Panafrican Paper Mills (E.A.) Limited to Orient Paper Industries Limited of India under agreements dated 23rd September, 1994, for know-how technical services and management, and project implementation, respectively, between Orient Paper Industries Limited and Panafrican Paper Mills (E.A.) Limited, shall be exempt from the provisions of the Act for a period of five (5) years commencing from 1st July, 1994.

Legal Notice No. 51 of 1995, is revoked.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 218 of 1995]

The Cabinet Secretary responsible for Finance directs that all payments made to M/s H.P. Gauff Consulting Engineers and their expatriate staff; under the Agreement' dated 20th March, 1995, between the Government of Kenya and H.P. Gauff Consulting Engineers for the supervision of Amala River -Narok Road, shall be exempt from the provisions of the Act.

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**THE INCOME TAX ACT - EXEMPTION**

ARRANGEMENT OF SECTIONS

*SCHEDULE*

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 219 of 1995]

The Cabinet Secretary responsible for Finance provides that all payments made to the European Investment Bank under the Finance Contracts contained in the Schedule shall be exempt from the provisions of the Act.

**SCHEDULE**

1. A Finance Contract in respect of a conditional loan on risk capital resources, in an amount equivalent to twenty million (20,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.

2. A Finance Contract in respect of a subsidised global loan on the Bank's own resources, in an amount equivalent to fifteen million (15,000,000) Ecus, dated 28th December, 1994 between the Republic of Kenya and the European Investment Bank.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 262 of 1995]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Reinsurance Corporation who opt for voluntary early retirement prior to 11th September, 1995 under the Sector Reform Programme approved by the Government on 2nd November, 1994.
  2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service under the scheme.
  3. The Kenya Reinsurance Corporation shall in addition comply with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation, the amount paid and a copy of the agreement with the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 330 of 1995]

1. The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Railways Corporation who opt for voluntary early retirement prior to 31st December, 1996 under the Sector Reform Programme approved by the Government on 22nd August, 1995.

2. An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left the service under the scheme.

3. The Kenya Railways Corporation shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Railways Corporation, the amount paid and a copy of the agreement with the employee.

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**THE INCOME TAX (HOME OWNERSHIP SAVINGS PLAN) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Application for registration
  4. Requirements for registration
  5. Notification registration
  6. Supply of information to the Commissioner
  7. Alteration of trust deed, rules, etc.
  8. Withdrawal of registration
-



**THE INCOME TAX (HOME OWNERSHIP SAVINGS PLAN) RULES**

[Legal Notice 210 of 1995, Legal Notice 82 of 2007]

**1. Citation and commencement**

These Rules may be cited as the Income Tax (Home Ownership Savings Plan) Rules and shall come into operation on the 1st January, 1996.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"institution" means an approved institution operating a home ownership savings plan registered in accordance with these Rules;

"Plan" means a home ownership savings plan;

"qualifying deposits" means—

- (i) funds transferred from another Plan under section 22C of the Act; or,
- (ii) any deposits which qualify for a deduction under section 22C of the Act.

**3. Application for registration**

(1) An approved institution offering a home ownership savings plan to depositors may apply to the Commissioner for registration of the Plan for the purposes of the Act.

(2) An application under this rule shall—

- (a) be made in writing addressed to the Commissioner;
- (b) be signed by two of the officials of the approved institution;
- (c) be accompanied by two certified copies of either the trust deed, or any rules or other document consisting of the plan;

[LN 82 of 2007, r. 2.]

**4. Requirements for registration**

The Commissioner may, on receipt of an application under rule 3, register a Plan if—

- (a) it is established in Kenya;
- (b) the trust deed, rules or other document constituting the Plan provide that—
  - (i) all sums held on account of a depositor shall be used to purchase or construct a permanent house in Kenya;
  - (ii) no deposit made or benefit accruing or payable to the depositor shall be pledged as security for a loan or shall be capable of assignment unless the depositor dies;
  - (iii) upon the death of the depositor, the balance of the funds in his account shall be transferred to his spouse, any of his children who have attained the age of eighteen years or any relative of the depositor who is a qualifying individual without closing the account;
  - (iv) only qualifying deposits may be made by a depositor under the Plan;
  - (v) *deleted by L.N. 82 of 2007, r. 3(b).*
  - (vi) no loan or other benefit shall be provided out of the account to the depositor or to any person not dealing at arm's length with the depositor;
  - (vii) a depositor may, subject to the approval of the Commissioner, direct that all funds held in his account be transferred to another institution operating a similar Plan without undue delay;

[Subsidiary]

- (viii) the depositor may at any time on or before the ninth year after the qualifying year withdraw all the sums deposited without deduction of tax to purchase or construct a permanent house for his occupation:

Provided that any excess amount of the withdrawal not used for the purchase or construction of the house shall be subject to tax;

- (ix) in every year starting with the qualifying year upto the tenth year the depositor shall make in his account an annual deposit of up to thirty thousand shillings;
- (x) upon the death of the depositor, any funds held in his account shall be transferred as provided in these Rules and any sums not applied towards the purchase or construction of a permanent house shall be subject to tax;
- (xi) in the case of expenditure on an existing house, no distinction shall be made between the value of the existing building and the land on which it stands;
- (xii) in the case of the construction of a house, qualifying expenditure shall consist of construction services and building material supported by such evidence as the Commissioner may require;
- (xiii) all funds in a depositor's account shall be withdrawn a lump sum by the end of the ninth year following the qualifying year.

[LN 82 of 2007, s. 3.]

## 5. Notification registration

The Commissioner shall, as soon as reasonably practicable after considering the application, notify the applicant in writing whether or not the Plan is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is acceptable.

## 6. Supply of information to the Commissioner

An institution shall, in respect of every depositor saving under a Plan, forward to the Commissioner—

- (a) the personal identification number of the depositor;
- (b) a certified copy of an affidavit sworn by the depositor confirming that he does not directly or indirectly own and has not previously directly or indirectly owned any interest in a permanent house;
- (c) the amount of deposits, mode of investment and any withdrawals thereof;
- (d) such other information as the Commissioner may from time to time require.

## 7. Alteration of trust deed, rules, etc.

Where an alteration is made to the trust deed, the rules or other document constituting the Plan, the institution shall forthwith notify the Commissioner in writing and such alteration shall not be effective unless written approval thereof is received from the Commissioner.

## 8. Withdrawal of registration

(1) The Commissioner may, by notice in writing to the institution, withdraw the registration of a Plan if—

- (a) the provisions of the trust deed, the rules or other document constituting the Plan have either been breached or so altered that the Plan no longer meets the requirements of the Act or these Rules; or
- (b) the accounts of the Plan fail or cease to be maintained to the satisfaction of the Commissioner.



*Income Tax*

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[Subsidiary]

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine, and the accumulated funds thereof shall be taxed in the year in which the registration is withdrawn.

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**UNTITLED**

[Legal Notice 4 of 1996]

[This is a stub. Please see the publication document for the original content.]



**THE INCOME TAX-EXEMPTION**

[Legal Notice 262 of 1996]

The Cabinet Secretary responsible for Finance provides that all the income tax which accrued in or derived from Kenya on the income earned by the Sogea S.A. (Kenya Branch) under or as a result of the contract executed by the said firm with the Government of Kenya for construction of Ol-Arabel Water Supply Project of Greater Nakuru Water Supply Project (Ol Arabel Pipeline Extension) is exempted from the provisions of the said Act.

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**THE INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Registration of venture capital companies
  4. Prohibited activities
  5. Registration procedure
  6. Withdrawal of registration
-





## THE INCOME TAX (VENTURE CAPITAL ENTERPRISE) RULES

[Legal Notice 103 of 1997, Legal Notice 31 of 2008, Legal Notice 82 of 2008]

### 1. Citation and commencement

These Rules may be cited as the Income Tax (Venture Capital Enterprise) Rules and shall be deemed to have come into operation on the 1st September, 1996.

[L.N 82 of 2008, r. 3.]

### 2. Interpretation

In these Rules, unless the context otherwise requires—

"eligible activities" means activities other than those listed in rule 4 of these Rules;

"fund manager" means a person licensed by the Capital Markets Act (Cap. 485A) under the provisions of the Capital Markets Act for the purpose of managing a venture capital enterprise;

"venture capital enterprise" means a company incorporated in Kenya for the purpose of investing in new or expanding venture capital enterprise.

[L.N. 31 of 2008, r. 2., L.N. 82 of 2008, r. 4.]

### 3. Registration of venture capital companies

A venture capital enterprise shall, upon application under rule 5, be registered by the Commissioner for the purposes of this Act if the Commissioner is satisfied that -

- (a) it is incorporated in Kenya; and
- (b) it is incorporated for the purpose of investing in new or expanding venture capital enterprises; and
- (c) it is registered by the Capital Markets Authority; and
- (d) it is managed by a fund manager; and
- (e) seventy-five percent or more of its portfolio of investable funds is invested by way of equity or quasi-equity investment in venture capital enterprises; and
- (f) the primary activities of the venture capital enterprise in which it has invested are approved activities.

[L.N. 31 of 2008, r. 3., L.N. 82 of 2008, r. 5.]

### 4. Prohibited activities

The primary activities of a venture capital enterprise shall not include—

- (a) trading in real property;
- (b) banking and financial services; or
- (c) retail and wholesale trading services.

[L.N. 31 of 2008, r. 4., L.N. 82 of 2008, r. 6.]

### 5. Registration procedure

(1) An application for registration of a venture capital enterprise under rule 3 shall be made in writing and shall be accompanied by-

- (a) two copies each of the company's—
  - (i) memorandum and articles of association;
  - (ii) certificate of incorporation;
  - (iii) certificate of registration by the Capital Markets Authority;
  - (iv) Personal Identification Number Card;
- (b) the fund manager's licence under the Capital Markets Act;

[Subsidiary]

(c) any other information as may be required by the Commissioner.

(2) The Commissioner shall, as soon as practicable after considering the application, notify the fund manager in writing whether the venture capital company is acceptable for registration, and the same notification shall specify either—

- (a) the reason therefor, if it is not acceptable; or
- (b) the year of income in respect of which the registration is first to take effect, if it is so acceptable.

[ L.N. 31 of 2008, r. 5., L.N. 82 of 2008, r. 7.]

## **6. Withdrawal of registration**

(1) The Commissioner may at any time, by notice in writing to the fund manager, withdraw the registration of a venture capital company if in the opinion of the Commissioner, that venture capital company no longer qualifies for registration under these rules.

(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later time as the Commissioner may determine.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 288 of 1996]

The Cabinet Secretary responsible for Finance provides that the income of Acacia Fund Limited consisting of dividends and gains arising from trade in the shares of any of its venture companies, earned during the first ten (10) years of first investment in any of those companies, shall be exempt from tax, subject to compliance with any rules or regulations governing venture capital companies as may be made by the Commissioner of Income Tax.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 289 of 1996]

1. The Cabinet Secretary responsible for Finance subject to the conditions in paragraphs 2 and 3 exempts from Income Tax the lump sum payments received by the employees of the Kenya Pipeline Company who opted for early retirement prior to 31st December, 1996, under the scheme known as "Voluntary Severance Scheme" in accordance with - written agreement between Kenya Pipeline Company and its employees, and approved by the Government under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with Kenya Pipeline Company in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three (3) years from the date on which he left service under the scheme.

3. The Kenya Pipeline Company shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the Kenya Pipeline Company, the amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 302 of 1996]

1. The Cabinet Secretary responsible for Finance subject to the conditions in paragraph (2) and (3) exempts from income tax the lump sum payments received by the employees of the Agricultural Development Corporation who opted for early retirement prior to 31st December, 1996, under the scheme known as "Voluntary Severance Scheme" in accordance with the written agreement between the Agricultural Development Corporation and its employees, and approved by the Government under the Parastatal Reform Programme.

2. A person who opts for early retirement shall not be eligible for re-employment with Agricultural Development Corporation in any capacity or under any terms whatsoever, whether on temporary, permanent or contract basis, before the expiration of three years from the date on which he left service under the scheme.

3. The Agricultural Development Corporation shall, in addition to complying with any procedures the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, the name, the date of retirement from the Agricultural Development Corporation, the amount paid, and a copy of the agreement for the Voluntary Severance Scheme duly signed by the employee.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 39 of 1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Central Bank of Kenya, who opt for voluntary early retirement prior to the 31st December, 1997 under the Structural Adjustment Programme approved by the Government on the 27th October, 1994:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Central Bank of Kenya in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service of the Bank under the Structural Adjustment Programme; and

**(b)** the Central Bank of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the Central Bank of Kenya, the amount paid and a copy of the agreement with the employee duly signed by the employee.



**THE INCOME TAX — EXEMPTION**

[Legal Notice 45 of 1997]

The Cabinet Secretary responsible for Finance provides that all the income which accrued in or derived from Kenya on the income earned by the Zenitaka Corporation under or as a result of the contract executed by the said firm with the Government of Kenya for the construction of the Kenya Institute of Surveying and Mapping, is hereby exempted from the provisions of the Act.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 76 of 1997]

The Cabinet Secretary responsible for Finance provides that the interest income accrued in or derived from Kenya under financial arrangements made or guaranteed by the Export-Import Bank of the United States, an agency of the United States of America, shall be exempt from tax.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 82 of 1997]

The Cabinet secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the National Cereals and Produce Board who opt for voluntary early retirement prior to the 31st December, 1998, under the second phase of the Structural Adjustment Programme approved by the Government on the 7th April, 1997:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for employment with the National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three years from the date on which he left service of the National Cereals and Produce Board under the Structural Adjustment Programme; and

**(b)** the National Cereals and Produce Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the service of the National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee duly signed by the employee.

This exemption shall be deemed to have come into force on the 1st July, 1996.





**THE INCOME TAX — EXEMPTION**

[Legal Notice 155 of 1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Power and Lighting Company Limited who opt for voluntary early retirement prior to 28th February, 1998, under the Sector Reform Programme approved by the Government on 27th January, 1995, subject to the following conditions:

**(a)** An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Power and Lighting Company in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme.

**(b)** The Kenya Power and Lighting Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the service of the Kenya Power and Lighting Company, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 156 of 1997]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Wildlife Service who opt for voluntary early retirement prior to 31st December, 1997, under the Sector Reform Programme approved by the Government on 7th July, 1997:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wildlife Service in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme;
  - (b) the Kenya Wildlife Service shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish that Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Wildlife Service, the amount paid and a copy of the agreement with the employee duly signed by the employee.
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**THE INCOME TAX — EXEMPTION**

[Legal Notice 548 of 1997]

The Cabinet Secretary responsible for Finance exempts from Income Tax, all income of the Kenya Wildlife Service from the provisions of the Act for a further period of five years with effect from the 1st January, 1997.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 15 of 1998]

The Cabinet Secretary responsible for Finance provides that all the income of the Societe De Promotion et Economique S.A (PROPARCO) shall be exempt from the provisions of the Act.

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**THE INCOME TAX — REVOCATION OF EXEMPTION**

[Legal Notice 19 of 1998]

The Cabinet Secretary responsible for Finance revokes the exemption from the provisions of the Act, of all income accrued in or derived from Kenya by the Sogea S.A. (Kenya Branch), under or as a result of the contract executed by that firm with the Kenya Government for the construction of Masinga—Kitui Pipeline Water Supply Project, with effect from the 27th February, 1998.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 20 of 1998]

The Cabinet Secretary responsible for Finance provides that all the income of the Friends of Conservation, shall be exempt from the provisions of the Act, for a period of five years with effect from 1st January, 1998.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 61 of 1998]

The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by employees of the Kenya Sugar Authority, who opt for voluntary early retirement prior to the 30th October, 1998, under the Sector Reform Programme, approved by the Government on the 27th July, 1997, subject to the following conditions:

**(a)** An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Sugar Authority in any capacity, or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left service under the scheme.

**(b)** The Kenya Sugar Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from service of Kenya Sugar Authority, the Amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 62 of 1998]

The Cabinet Secretary responsible for Finance exempts from Income Tax, the lump sum payments received by employees of the Kenya Airports Authority, who opt for voluntary early retirement prior to the 30th October, 1998, under the Sector Reform Programme, approved by the Government on the 23rd February, 1998, subject to the following conditions:

**(a)** An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Airports Authority in any capacity, or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left service under the scheme.

**(b)** The Kenya Airports Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from service of Kenya Airports Authority, the Amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX- REVOCATION**

[Legal Notice 73 of 1998]

The Cabinet Secretary responsible for Finance provides that the income of the Kenya Power Company Limited shall cease to be exempt from tax with effect from 1st January, 1999.

Legal Notice No. 167 of 31st October, 1980 is revoked.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 93 of 1998]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Wildlife Service who opt for voluntary early retirement prior to the 31st December, 1998 under the Sector Reform Programme approved by the Government on 7th July, 1997.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Wildlife Service in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement;

**(b)** the Kenya Wildlife Service shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Wildlife Service, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 3 of 1999]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Reinsurance Corporation Limited, who opt for voluntary early retirement prior to the 31st March 1999, under the Sector Reform Programme approved by the Government on the 1st December, 1998:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left service under the scheme;
  - (b) the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation Limited, the personal identification number, the amount paid and a copy of the agreement with the employee, duly signed by the employee.
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**THE INCOME TAX — EXEMPTION**

[Legal Notice 2 of 1999]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of Kenya Airports Authority, who opt for voluntary early retirement prior to 31st October, 1998, under the Voluntary Early Retirement Scheme approved by the Government on 2nd November, 1998, subject to the following conditions:

**(a)** An employee who opts for early retirement shall not be eligible for re-employment with the Kenya Airports Authority in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement.

**(b)** The Kenya Airports Authority shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, date of retirement from the Kenya Airports Authority, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX-THE DOUBLE TAXATION RELIEF (THE UNITED REPUBLIC OF TANZANIA AND THE REPUBLIC OF UGANDA) NOTICE**

[Legal Notice 45 of 1999]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda in articles of agreement signed on 28th April, 1997, with a view to affording relief from double taxation in relation to income tax under the Income Tax Act and any taxes of similar character imposed by the laws of the United Republic of Tanzania and the Republic of Uganda shall notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

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**SCHEDULE**

The Governments of the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

**Article 1****PERSONAL SCOPE**

This agreement shall apply to persons who are residents of one or any of the other Contracting States—

**Article 2****TAXES COVERED**

1. This agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this agreement shall apply are—
  - (a) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap. 470).
  - (b) in Tanzania the tax on income chargeable under the Income Tax Act 1973 (Act 33 of 1973); and
  - (c) in Uganda the tax on income chargeable under the Income Tax Decree of 1974 (Decree 1 of 1974).
4. This agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the Contracting States after the date of signature of this agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article, of this agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of notes.

**Article 3****GENERAL DEFINITIONS**

In this agreement, unless the context otherwise requires:

*Income Tax*

[Subsidiary]

- (a) The term "Company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes.
- (b) The term "competent authority" means—
  - (i) in Kenya, the Cabinet Secretary for the time being responsible for finance or his authorized representative;
  - (ii) in Tanzania, the Minister for the time being responsible for finance or his authorized representative; and
  - (iii) in Uganda, the Minister for the time being responsible for finance or his authorized representative.
- (c) The term "international traffic" means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State.
- (d) The term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State.
- (e) The term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this agreement by a Contracting State, any term not otherwise defined, shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this agreement.

**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 effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the Contracting States, then his status shall be deemed in accordance with the following rules—

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him in two or more States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);
- (b) if the state in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the Contracting States, 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 two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of two or more States or of none 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 of this Article a person other than an individual is a resident of two or more 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 purpose of this agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include—
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a warehouse, in relation to a person providing storage facilities for others;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (h) an installation or structure used for the exploration of natural resources.
3. The term "permanent establishment" likewise encompasses—
  - (a) a building site or a construction, installation or assembly project or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
  - (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12 month period.
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 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 or display;
  - (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 for 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; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if—
  - (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

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[Subsidiary]

- (b) he maintains in the first mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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.

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 any of the other Contracting States, 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, is taxable in the Contracting State in which such property is situated.

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 for 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, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

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

5. Notwithstanding the provisions of paragraph 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if, from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

6. The provisions of paragraphs 1 and 3 of this Article 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 any of the other Contracting States 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 attributed to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States 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—

- (a) 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. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprises or any of its other offices, by way of royalties, fees or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far 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 on the enterprise to its various parts, nothing in paragraph 2 of this Article 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 results 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

##### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of container and related equipment which is incidental to the operation

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[Subsidiary]

of ships or aircraft 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 the 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. The provisions of paragraph 1 of this Article 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 enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions have accrued to one of the enterprises, but, by reason of those conditions, not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State and taxes accordingly—profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income 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 income. In determining such adjustment, due regard shall be had to the other provisions of this agreement and the competent authorities of the Contracting State shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

#### **Article 10**

##### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States 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 to the beneficial owner shall not exceed 15 per cent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares 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 the shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 and 11 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States 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 a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where the company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other state on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far 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, not subject to the company's undistributed profits to a tax on 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 any of the other Contracting States may be taxed in that other Contracting State.

2. However, Subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 20 per cent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by—

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article 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 debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, 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 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

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[Subsidiary]

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 a 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.

#### **Article 12**

##### **ROYALTIES**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 20 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 of the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula, or process, or for the use of, or the right to use 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 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 a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to rise 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, 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 paid, 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 a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this agreement.

#### **Article 13**

##### **MANAGEMENT OR PROFESSIONAL FEES**

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial



owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent of the gross amount of the management or professional fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial, professional or consultancy nature not covered under any other Article of the agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, shall apply.

5. Management or professional fees 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 management or professional fees, 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 obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees 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 management or professional fees paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this agreement.

#### **Article 14**

#### **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 any of the Contracting States may be taxed in that other Contracting 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 Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

[Subsidiary]

**Article 15****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 unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

**Article 16****DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 17, 19, 20 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 any of the other Contracting States. If the employment is exercised, such remuneration as is derived therefrom may be taxed in the State in which the employment is exercised.
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 any of the other Contracting States shall be taxable only in the first-mentioned State if—
  - (a) the recipient is present in the other for a period or periods not exceeding in the aggregate 183 days in the calendar 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 in respect of an employment exercised abroad a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

**ARTICLE 17****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 any of the other Contracting States may be taxed in the State in which the company is resident.

**Article 18****ENTERTAINERS AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7, 15 and 16, 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 a such, may be taxed in the Contracting State in which these activities are exercised.

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, 15 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

#### **Article 19**

#### **PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.
2. However, such pensions and other remuneration may also be taxed in any of the other Contracting States if the payment is made by a resident of any of the other Contracting States, or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

#### **ARTICLE 20**

#### **REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICE**

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and;
  - (a) is a national of that State; or
  - (b) did not become a resident solely for the purpose of rendering the services.
2. Any person paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body in the discharge of governmental functions shall be taxable only in that State.
3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

#### **Article 21**

#### **PROFESSORS AND TEACHERS**

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt

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[Subsidiary]

from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

#### **Article 22**

#### **STUDENT'S AND BUSINESS APPRENTICES**

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

#### **ARTICLE 23**

#### **OTHER INCOME**

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in any of the other Contracting States 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 paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

#### **Article 24**

#### **ELIMINATION OF DOUBLE TAXATION**

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this agreement may be taxed in the other Contracting States the first mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.

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

#### **Article 25**

#### **NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in any other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the activities.

3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, 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 that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the Contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. In this article the term "taxation" means taxes which are the subject of this agreement.

#### **Article 26**

##### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or more of the Contracting States results or will result for him in taxation not in accordance with 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 Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this agreement.

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above mentioned actions and the implementation of the mutual agreement procedure.

#### **Article 27**

##### **EXCHANGE OF INFORMATION**

1. The competent authorities of Contracting States shall exchange such information as is necessary for carrying out the provisions for this agreement or of the domestic law of the Contracting States concerning taxes covered by this agreement so far as the taxation thereunder is not contrary to the agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or 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 this agreement. 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligations—

*Income Tax*

[Subsidiary]

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any other Contracting States;
- (c) to supply information which would disclose any trade, business, industrial, commercial or information, the disclosure of which would be contrary to public policy.

**Article 28****DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

Nothing in this agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

**Article 29****ENTRY INTO THE FORCE**

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into the force of this agreement. The agreement shall enter into force on the date of the last of these notifications.
2. The provisions of this agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this agreement enters into force.

**Article 30****TERMINATION**

1. This agreement shall remain in force indefinitely but any of the Contracting States may terminate the agreement through diplomatic channels, by giving to other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the agreement entered into force.
2. In such event the agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.

**THE INCOME TAX — EXEMPTION**

[Legal Notice 97 of 1999]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum payments received by employees of the National Cereals and produce Board, who opt for voluntary early retirement prior to 30th June, 1999, under the Sector Reform Programme approved by the Government on 12th October, 1998.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the National Cereals and Produce Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from National Cereals and Produce Board, the amount paid and a copy of the agreement with the employee duly signed by the employee.





**THE INCOME TAX — EXEMPTION**

[Legal Notice 178 of 1999]

The Cabinet Secretary responsible for Finance, exempts from the income tax the lump sum payments received by the employees of Mumias Sugar Company Limited, who opt for voluntary early retirement prior to 30th June, 2000, under the Sector Reform Programme approved by the Government on 4th August, 1999:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with Mumias Sugar Company Limited, in any capacity or under any terms whatsoever before the expiry of the three (3) years from the date of such retirement;

**(b)** Mumias Sugar Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Mumias Sugar Company Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 28 of 2000]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of Mumias Sugar Company Limited who opt for voluntary early retirement prior to 30th October, 2000, under the Sector Reform Programme approved by the Government on 4th August, 1999:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with Mumias Sugar Company Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement.

**(b)** Mumias Sugar Company Limited shall in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of Mumias Sugar Company Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.



**THE INCOME TAX — EXEMPTION**

[Legal Notice 135 of 2000]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum payments received by employees of the Industrial Development Bank Limited who opt for voluntary early retirement prior to 30th September, 2000, under the Sector Reform Programme approved by the Government on 26th June, 2000:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Industrial Development Bank Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the Industrial Development Bank Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Industrial Development Bank limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 44 of 2001]

The Cabinet Secretary responsible for Finance, exempts from income tax the lumpsum payments received by employees of the National Bank of Kenya, who opted for voluntary early retirement prior to 31st December, 2000, under the Sector Reform Programme, approved by the Government on 17th December, 2000.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the National Bank of Kenya Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the National Bank of Kenya Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the National Bank of Kenya Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.





**THE INCOME TAX — EXEMPTION**

[Legal Notice 45 of 2001]

The Cabinet Secretary responsible for Finance, exempts from income tax the lumpsum payments received by employees of the Government of the Republic of Kenya, who retire prior to 30th June, 2001, under the on-going Retrenchment Programme approved by the Government.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Government of the Republic of Kenya in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the Government of the Republic of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Government of the Republic of Kenya, and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX (WITHOLDING TAX) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Application of section 128 of the Act
  4. Deduction of withholding Tax
  5. Maintenance of records
  6. Certificate of tax deduction
  7. Dispute in calculation of withholding tax
  8. Payment of withholding tax
  9. Person failing to pay tax or provide required certificate
  10. Recovery of tax
  11. Withholding tax return at end of each year
  12. Inspection of person's records
  13. Death of an individual
  14. Change in circumstances of a person
  - 14A. Penalty for failure to deduct or remit withholding tax
  15. General Penalty
-



## THE INCOME TAX (WITHOLDING TAX) RULES

[Legal Notice 100 of 2001, Legal Notice 96 of 2002, Legal Notice 54 of 2004]

### 1. Citation and commencement

These Rules may be cited as Income Tax (Withholding Tax) Rules.

### 2. Interpretation

In these Rules, unless the context otherwise requires:—

"Commissioner" includes an officer authorised in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

"payee" means a person who receives income from a payer after deduction of withholding tax;

"payer" means a person who deducts withholding tax for the purposes of these Rules;

"withholding tax" means tax subject to deduction as determined in accordance with the provisions of the Act and these Rules;

"withholding tax rate" means the respective rate of tax set out in the Third Schedule as applicable to the specified class of income;

"withholding tax deduction card" means a deduction card, in such form as the Commissioner may provide, or such other document corresponding to a withholding tax deduction card as may be authorised by the Commissioner in any particular case, and on which the information that the Commissioner may direct with respect to tax is recorded.

### 3. Application of section 128 of the Act

Section 128 of the Act shall apply to a notice or other document which is authorised or required to be given, served or issued by the Commissioner under these Rules.

### 4. Deduction of withholding Tax

(1) A person who makes a payment of, or on account of, any income which is subject to withholding tax shall deduct tax therefrom in the amount specified -

- (a) under paragraphs 3 and 5 of Head B of the Third Schedule; and
- (b) where the Government of Kenya has double taxation agreement with the Government of another country, in the terms of that agreement:

Provided that the rates of tax under this paragraph shall not exceed the rates specified under paragraph (a).

(2) A person who fails to comply with the requirement of paragraph (1) commits an offence.

### 5. Maintenance of records

(1) On the occasion of making a payment, a person shall keep a record in respect of, name of payee, Personal Identification Number (PIN), gross amount paid, nature of payment and amount of tax deducted.

(2) A person shall, on the tax deduction card or such other document as may be authorised by the Commissioner, record such particulars as the Commissioner may direct in respect of that payment.

(3) Any person who fails to comply with paragraph (1) or (2) commits an offence.

### 6. Certificate of tax deduction

Upon making a payment and deducting withholding tax in any month, the person making the payment shall furnish the payee with a certificate showing the gross amount paid, the total tax deducted and such other particulars as the Commissioner may require.

[Subsidiary]

**7. Dispute in calculation of withholding tax**

(1) If a person to whom payment is made under paragraph 6 is aggrieved by reason of the nature of a payment and the rate of withholding tax applied and is unable to reach an agreement with the payer -

- (a) the payer may inform the payee of his rights under this rule and shall, at the request of the payee, furnish him with a written statement showing the manner in which the payer calculated the tax deducted;
- (b) the payee may give a notice of objection in writing to the Commissioner, but that notice shall be valid only if -
  - (i) it states precisely the grounds of his objection;
  - (ii) there is enclosed therewith the written statement furnished by the payer; and
  - (iii) it is received by the Commissioner within thirty days of the date on which the statement from the payer under paragraph (a) was received by the payee.

(2) On receipt of a notice of objection under this rule, the Commissioner shall consider the objection and, subject to and in accordance with these rules, may amend the calculation or reject the objection.

(3) The Commissioner shall notify the payer and the payee in writing of his decision on the objection and thereafter, on the occasion of making payment to the payee the calculation of the tax shall be in accordance with that decision.

(4) Notwithstanding that a valid objection has been made, on the occasion of making a payment to the payee from which tax is to be deducted in accordance with these rules, the amount of tax to be deducted shall be in accordance with the calculation made by the payer until the payor is notified by the Commissioner of his decision on the objection.

(5) Any amount of tax in excess of the amount found to be payable upon calculation by the Commissioner under paragraphs (3) and (4) shall be refunded to the payee.

**8. Payment of withholding tax**

(1) On or before the twentieth day of the month following the month in which the deduction is made or before such other day as may be notified to him by the Commissioner, a person shall, subject to subparagraph (3), pay to the Commissioner or to such other person as the Commissioner may direct, all amounts of tax deducted in accordance with the Act and these rules.

(2) The tax remitted shall be accompanied by an appropriate return showing the name of the payee, the gross amount of payment, the amount of tax deducted and such other information as the Commissioner may specify.

(3) Where no withholding tax is deducted, a person shall furnish the Commissioner with a certificate, in such form as the Commissioner may prescribe, showing that no tax was deducted in that month.

(4) A person whom the Commissioner has, under paragraph (1), directed to receive withholding tax on his behalf shall keep a record of payment in such form as the Commissioner may direct and shall enter therein particulars of all tax paid to him.

(5) A person who, having deducted tax under these rules, fails to remit tax within the time prescribed under this rule, account for such tax deducted or who fails to comply with paragraph (2), commits an offence.

**9. Person failing to pay tax or provide required certificate**

(1) If, on the twentieth day following the month in which the deduction is made or before such later day as may have been notified to him by the Commissioner, a person has paid no tax under rule 8(1) for that month and the Commissioner is unaware of the amount, if any, which the person is liable to pay, or the person has failed to provide the certificate mentioned in paragraph (3) of that rule, the Commissioner may give notice to the person requiring him

to render within the time specified in the notice, a return showing the name of every person to whom he made any payment which is subject to withholding tax in the period stated in the notice, together with particulars with regard to each person that notice may require, being particulars of—

- (a) a calculation of tax under rule 4 appropriate to each person's case;
- (b) the payment of amounts subject to withholding tax made to that other person during that period; and
- (c) any other matter affecting the calculation of the tax which the person was liable under these rules to deduct from the payments subject to withholding tax during that period.

(2) The Commissioner shall ascertain and certify to the best of his knowledge and belief the amount of tax which the person would have been liable to pay under rule 8 in respect of that period in question had he complied with the provisions of these rules.

(3) The production of the return made by the person under paragraph (1), and of the certificate of the Commissioner under paragraph (2), shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the person would have been liable to pay under rule 8 in respect of the period in question had he complied with the provisions of these rules and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph(1) extends to two or more consecutive months, these rules shall have effect as if those consecutive months were one month.

(5) If the Commissioner is not satisfied that the amount of tax paid in respect of a period is the full amount which the person would have been liable to pay under rule 8 had he complied with these rules, he may notwithstanding that an amount of tax has been paid by the person under that rule in respect of that period give a notice under paragraph (1) of this rule and thereupon this rule shall have effect in the subsequent periods.

## **10. Recovery of tax**

For the purpose of the recovery of tax which a person would have been liable to pay under rule 8 had he complied with the provisions of these rules, that person shall be deemed to have been appointed an agent of his payee under section 96 of the Act.

## **11. Withholding tax return at end of each year**

(1) Not later than two months after the end of each year, a person shall render to the Commissioner a statement and declaration in the form that the Commissioner may provide or authorise in respect of each person to whom payment is made at any time during the year, showing such particulars as the Commissioner may require.

(2) Where a person ceases to carry on business before the end of any year of income, he shall carry out the requirements of this rule within one month of cessation.

(3) Any person who fails to render a return to the Commissioner within two months after the end of a year as required under paragraph (1), commits an offence.

## **12. Inspection of person's records**

(1) A person liable to pay withholding tax shall, when called upon to do so by the Commissioner, shall produce for inspection, at his premises or at any place the Commissioner may require—

- (a) all accounts, books of accounts, documents and other records relating to the calculation of, and on account of payments which are subject to withholding tax in respect of the period which may be specified by the Commissioner; and
- (b) any other books, documents and records which may be specified by the Commissioner, which shall be written in English or such other language which the Commissioner may allow.

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[Subsidiary]

(2) The Commissioner may, on the occasion of an inspection under this rule, prepare a certificate, based on the information obtained from the inspection, showing—

- (a) the tax which it appears from the documents and records produced that the person would have been liable to pay under rule 8 for the period covered by the inspection had he complied with the provisions of these rules;
- (b) the tax which, to the best of his knowledge and belief, has not been paid as the Commissioner had directed.

(3) The production of the certificate referred to in paragraph (2) shall be sufficient evidence that the person is liable to pay, in respect of the period mentioned in the certificate, the amount shown therein pursuant to paragraph (2)(b), and a document purporting to be such certificate shall be deemed to be such certificate until the contrary is proved.

[L.N. 96 of 2002, s. 2.]

### **13. Death of an individual**

If an individual dies, anything which he would have been liable to do under these rules shall be done by his personal representatives, or, in the case of an individual who made payments on behalf of another person, by the person succeeding him, or if no person succeeds him, by the person on whose behalf he made those payments.

### **14. Change in circumstances of a person**

Where there has been a change in the payer, the payer after the change shall in relation to a matter arising after such change, be liable to do anything which the payer before the change would have been liable to do under these rules if the change had not taken place.

#### **14A. Penalty for failure to deduct or remit withholding tax**

For the purposes of section 35(6) of the Act, where a person, when under obligation to do so, fails —

- (a) to make a deduction described in section 35(6)(a) of the Act, in accordance with rule 4; or
- (b) to remit an amount of tax deducted, as described in section 35(6)(b) of the Act, in accordance with rule 8,

the Commissioner may impose a penalty equal to ten percent of the amount of the tax involved, subject to a maximum penalty of one million shillings.

### **15. General Penalty**

A person convicted of an offence under these rules shall, be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 117 of 2001]

The Cabinet Secretary responsible for Finance exempts from income tax payments received by employees of the Kenya Power and Lighting, Company Limited who retire from the 30th June, 2001 to the 30th June, 2003 under the Institutional Reorganization Programme approved by the Government;-

Provided that—

- (a) an employee who retires under the programme shall not be eligible for re-employment with the Kenya Power and Lighting Company Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
- (b) the Kenya Power and Lighting Company Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from Kenya Power and Lighting Company Limited and the amount paid to the employee;
- (c) this exemption shall not apply to monthly pension payments made to any of the retiring employees who are eligible for pension.

Legal Notice No. 113 of 2001 is revoked.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 167 of 2001]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Tea Development Agency Limited who opted for voluntary early retirement prior to 30th September, 1999, under the Sector Reform Programme approved by the Government on 29th June, 2001:

Provided that—

**(a)** an employee who opted for early retirement shall not be eligible for re-employment with the Kenya Tea Development Agency Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the Kenya Tea Development Agency Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Kenya Development Agency Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.



**THE INCOME TAX — EXEMPTION**

[Legal Notice 182 of 2001]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Reinsurance Corporation Limited who opt for voluntary early retirement prior to the 28th February, 2002 under the Sector Reform Programme approved by the Government on the 29th November, 2001:

Provided that —

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he or she left service under the scheme;

**(b)** the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Reinsurance Corporation Limited, the personal identification number, the amount paid and a Copy of the agreement with the employee duly signed by the employee.



**THE INCOME TAX — EXEMPTION**

[Legal Notice 34 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the National Irrigation Board who opted for voluntary early retirement prior to 1st February, 2002, under the Sector Reform Programme approved by the Government on 5th December, 2001.

Provided that—

**(a)** an employee who opted for early retirement shall not be eligible for re-employment with the National Irrigation Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the National Irrigation Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the National Irrigation Board, the personal identification number, the amount paid and a copy of the agreement with the employee duly signed by the employee.





**THE INCOME TAX (LEASING) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Income chargeable to tax
  4. Deduction
  5. Capitalization of assets
  6. Register
  7. *Deleted by LN 81 of 2008, s. 3.*
  8. Where lease is terminated
  9. *Deleted by LN 81 of 2008, s. 4.*
  10. Cross border lease
-



## THE INCOME TAX (LEASING) RULES

[Legal Notice 52 of 2002, Legal Notice 69 of 2006, Legal Notice 83 of 2007, Legal Notice 81 of 2008, Legal Notice 91 of 2009, Legal Notice 108 of 2015]

### 1. Citation

These Rules may be referred to as the Income Tax (Leasing) Rules.

### 2. Interpretation

In these Rules, unless the context otherwise requires—

"asset" includes equipment, but excludes land and buildings;

"Commissioner" includes an officer authorized in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules;

"cross-border lease" means a leasing contract entered into between a person resident in Kenya and another person resident in a different tax jurisdiction;

"finance lease" means a contract which the lessor agrees to lease assets to the lessee for a specified period of time where the risks and rewards associated with ownership of the assets are substantially transferred from the lessor to the lessee, but with the title to the assets always remaining with the lessor;

"hire purchase" means a contract under which the lessor agrees to lease the assets to the lessee for a specified period of time, with the intention of transferring ownership on the expiry of the lease;

"lease" means a contract by which a person owning assets grants to a lessee the right to possess, use and enjoy such assets for a specified period of time in exchange for periodic payments:

Provided that any contract whose term is less than six months or a hire purchase shall not be deemed to be a lease.

"lessee" means a person who leases from the owner or lessor of the assets and in return for use of such assets pays periodic payments to the lessor;

"lessor" means a person who leases an asset to a lessee;

"operating lease" means a contract under which the lessor agrees to lease the assets to the lessee for specified periodical payments where the title to the assets and the risks and rewards associated with ownership substantially remain with the lessor.

[L.N. 83 of 2007, s. 2., L.N.81 of 2008, s. 2., LN 105 of 2015, s. 2.]

### 3. Income chargeable to tax

(1) All income accruing to a lessor from payments made in respect of an operating or finance lease shall be chargeable to tax in accordance with the provisions of the Act.

(2) All income accruing under paragraph (1) shall be subject to withholding tax at the rates applicable to resident or non-resident persons under the Act.

[L.N. 62 of 2006, s. 2.]

### 4. Deduction

Notwithstanding paragraph 3—

- (a) a lessor shall be entitled to claim a deduction-
  - (i) for the wear and tear of the leased assets in accordance with paragraph 9 of the Second Schedule to the Act; and
  - (ii) in respect of all other expenditure incurred wholly exclusively in the production of the income in accordance with section 15 of the Act.

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[Subsidiary]

- (b) a lessee shall take as a deduction the full amount of the payments made to the lessor:

Provided that a deduction under these Rules shall be granted where the Commissioner is satisfied—

- (i) in the case of a lessor, that the expenditure in respect of which the deduction is sought is incurred by the lessor wholly and exclusively in the production of income chargeable to tax; and
- (ii) in the case of a lessee, that the sole consideration for the payment in respect of which the deduction is sought is the use of, or the right to use, an asset.

### **5. Capitalization of assets**

(1) For the purposes of these Rules assets to which these Rules relate shall be capitalized in the books of the lessor, and where the same are sold off upon the expiration of the lease, the difference between the sale price and the book value shall be deemed to be a gain or loss to the lessor, as the case may be, for purposes of assessment.

(2) Assets leased under these Rules shall not be capitalized in the books of the lessee.

[L.N. 62 of 2006, s. 3.]

### **6. Register**

The lessor shall maintain a separate register for all leased assets.

### **7. Deleted by LN 81 of 2008, s. 3.**

### **8. Where lease is terminated**

(1) Where, upon termination of a lease in respect of which the lessee is entitled to any tax deduction, and with the express or implied consent or acquiescence of the lessor the lessee is allowed to use, enjoy or deal with the asset as the lessee may deem fit—

- (a) without the payment of any consideration; or
- (b) subject to the payment of any consideration which is nominal in relation to the fair market value of the asset; or
- (c) if the asset is transferred to the lessee passes for an amount less than the market value,

the lessee shall be deemed to have acquired the asset and the Commissioner shall recover the deductions previously enjoyed by the lessee in respect of such assets with effect from the date of the commencement of the lease and appropriate adjustments made for each year of income when the lease payments were claimed.

(2) Where an acquisition is deemed under paragraph (1) the lessee shall be allowed to depreciate the amount recovered based on the wear and tear deduction applicable to the class of asset which shall be computed on the total lease payments recovered under paragraph (1), with effect from the year of income in which the lease commenced.

(3) Where a lessee is allowed wear and tear as computed under paragraph (2), similar adjustments shall be made in the tax computation of the lessor to bring to charge the wear and tear previously claimed by the lessor.

[LN 81 of 2008](/akn/ke/act/ln/2008/81), s. 3.]

### **9. Deleted by LN 81 of 2008, s. 4.**

### **10. Cross border lease**

(1) Where a lessor in Kenya enters a cross-border lease, the gross lease payments made to the lessor shall be deemed to be income chargeable to tax.

(2) Where a lessee in Kenya enters into a cross-border lease, the gross lease payments made by such lessee shall be deemed to be income derived from Kenya and shall be subject to withholding tax in accordance with the Act.

**THE INCOME TAX - EXEMPTION**

[Legal Notice 58 of 2002]

The Cabinet Secretary for Finance exempts from income tax, the lump sum payments received by employees of the National Cereals and Produce Board, who opted for voluntary early retirement prior to 30th June, 2002, under the Sector Reform Programme approved by the Government on 5th December, 2001.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the National Cereals and Produce Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the National Cereals and Produce Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of each retiring employee, with the name, the date of retirement from the service of the National Cereals and Produce Board, the personal identification number, the amount paid and a copy of the agreement with the employee duly signed by the employee.



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**THE INCOME TAX (NATIONAL SOCIAL  
SECURITY FUND) (EXEMPTION) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation.
  3. Conditions for exemption
  4. Commissioner to report to Minister
  5. Penalty
-





## THE INCOME TAX (NATIONAL SOCIAL SECURITY FUND) (EXEMPTION) RULES

[Legal Notice 97 of 2002]

### 1. Citation and commencement

These Rules may be cited as the Income Tax (National Social Security Fund) (Exemption) Rules and shall come into operation on the 1st July, 2002.

### 2. Interpretation.

In these Rules, unless the context otherwise requires:-

"Board of Trustees" means the National Social Security Fund Board of Trustees constituted under section 4 of the National Social Security Fund Act, (Cap 258);

"accounting period" has the meaning assigned to it in section 2 of the Act;

"Commissioner" means the Commissioner Income Tax;

"National Social Security Fund" means the National Social Security Fund established under section 3 of the National Social Security Fund Act and "Fund" shall be construed accordingly.

### 3. Conditions for exemption

The income of the National Social Security Fund shall be exempt from income tax subject to the following conditions being complied with by the National Social Security Fund Board of Trustees —

- (a) the Board of Trustees shall cause the accounts
  - (i) the determination of the market value of the assets of the Fund;
  - (ii) the determination of the surplus amount of the market value, not allocated to the account of a member of the Fund, excluding the reserve fund that does not exceed ten percent of the market value of the Fund in the year of audit;
- (b) the Board of Trustees shall allocate the surplus amount to the respective accounts of individual members in proportion to the value of the amounts allocated to the accounts of all members of the Fund from time to time;
- (c) the Board of Trustees shall cause the audit report to be published, in the *Gazette* and in at least two newspapers of national circulation within nine months of the end of the accounting period of the Fund and shall include a full listing of the assets of the Fund at book and market values;
- (d) the Board of Trustees shall submit the annual audit report to the Commissioner within nine months of the end of the accounting period to which the audit report relates.

### 4. Commissioner to report to Minister

The Commissioner shall, within twelve months of the receipt of the audit report under rule 3(e), send a report in writing to the Minister on the level of compliance with the conditions laid down in regulation 3 by the Board of Trustees.

### 5. Penalty

Failure by the Board of Trustees to comply with the conditions of rule 3 shall cause the Board of Trustees to be liable to a penalty not exceeding ten thousand shilling for every such failure.



**THE INCOME TAX — EXEMPTION**

[Legal Notice 131 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Railways Corporation who opt for voluntary early retirement prior to the 30th June, 2003, under the Sector Reform Programme approved by the Government on the 10th February, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he/she left the service under the scheme; and
  - (b) the Kenya Railways Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Railways Corporation, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 155 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received from Pioneer Assurance Company, of P.O. Box 20333, Nairobi, by Mr. Andriano L. Ligavo, of P.O. Box 20330, Nairobi.

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**THE INCOME TAX — EXEMPTION**

[Legal Notice 153 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Coffee Research Foundation who opt for voluntary early retirement prior to the 30th June, 2003 under the Sector Reform Programme approved by the Government on the 5th April, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Coffee Research Foundation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and
  - (b) the Coffee Research Foundation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Coffee Research Foundation, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.
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**THE INCOME TAX — EXEMPTION**

[Legal Notice 154 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Kenya Dairy Board who opt for voluntary early retirement prior to the 30th June, 2003 under the Sector Reform Programme approved by the Government on the 19th February, 2002:

Provided that—

- (a) an employee who opts for early retirement shall not be eligible for re-employment with the Kenya Dairy Board in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and
  - (b) the Kenya Dairy Board shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Kenya Dairy Board, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 177 of 2002]

The Cabinet Secretary responsible for Finance exempts from income tax, the lump sum payments received by employees of the Coffee Board of Kenya, who opt for voluntary early retirement prior to the 1st November, 2003, under the Sector Reform Programme approved by the Government on the 16th July, 2002.

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment with the Coffee Board of Kenya in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme; and

**(b)** the Coffee Board of Kenya shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner in respect of each retiring employee, with the name, the date of retirement from the service of the Coffee Board of Kenya, the personal identification number, the amount paid and a copy of the agreement duly signed with the employee.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 377 of 2002]

IN EXERCISE of the powers conferred by section 13 (2) of the Income Tax Act, the Minister for Finance directs that all income of the

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 24 of 2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum payments received by employees of the Kenya Tea Development Agency Limited, who opted for voluntary early retirement prior to the 31st December, 2001, under the Sector Reform Programme approved by the Government on the 29th June, 2001.

Provided that—

**(a)** an employee who opted for early retirement shall not be eligible for re-employment with the Kenya Tea Development Agency Limited in any capacity or under any terms whatsoever before the expiry of three (3) years from the date on which he left the service under the scheme;

**(b)** the Kenya Tea Development Agency Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Kenya Tea Development Agency Limited, the amount paid and a copy of the agreement with the employee duly signed by the employee.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 25 of 2003]

The Cabinet Secretary responsible for Finance directs that the interest payable on the loan granted to Mabati Rolling Mills Limited by the European Investment Bank under the provisions of the Lome IV Convention, shall be exempt from withholding tax.

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**THE INCOME TAX (REGISTERED UNIT TRUST/  
COLLECTIVE INVESTMENT SCHEMES) RULES**

[Legal Notice 40 of 2003]

1. These Rules may be cited as the Income Tax (Registered Unit Trusts/Collective Investment Schemes) Rules, 2003.
2. A unit trust or collective investment scheme shall, upon application being made under rule 3, be registered by the commissioner for the purposes of section 20 of the Act if he is satisfied that—
  - (a) the unit trust or collective investment scheme shall undertake portfolio investment in accordance with the policies and guidelines under the Capital Markets Act, (Cap. 485A);
  - (b) the sole purpose of the unit trust or collective investment scheme is to carry on investments on behalf of the unit holders or shareholders;
  - (c) after six months of commencement of the unit trust or collective investment scheme no unit holder or shareholder shall own or be capable of holding more than twelve and one half per cent (12<sup>1/2</sup> %) of the units or shares in any one unit trust or collective investment scheme; and
  - (d) it will, within six months of its commencement and thereafter, maintain at least twenty-five unit holders or shareholders.
3. (1) Application for the registration of a unit trust or collective investment scheme shall be made by the manager or trustee of the unit trust or collective investment scheme to the Commissioner in writing and shall be accompanied by two copies of the trust deed and a copy of the licence issued under Capital Markets Act,  
(2) The Commissioner shall, as soon as practicable after considering the application, register the unit trust or collective investment scheme and notify the manager or trustee in writing the year income in respect of which the registration is to take effect.
4. Where unit holders or shareholders in any unit trust or collective investment scheme are exempt persons under the First Schedule to the Act, the manager or trustee of the unit trust or collective investment scheme shall maintain separate but identifiable account of the funds of such persons.
5. The Income Tax (Registered Unit Trusts) Rules, 1990, a revoked.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 44 of 2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the pension benefits payable to the former employees of the Kenya National Assurance Company following the winding-up of the Company.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 45 of 2003]

The Cabinet Secretary responsible for Finance directs that all the income of the Kenya Wildlife Service derived from Kenya shall be exempt from the provisions of the Act for a period of five years commencing on the 1st of January, 2002.

This Legal Notice shall be deemed to have come into operation on the 1st of January, 2003.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 70 of 2003]

The Cabinet Secretary responsible for Finance directs that interest earned on contributions paid into the Investor Compensation Fund established under the Capital Markets Act be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 155 of 2003]

The Cabinet Secretary responsible for Finance exempts from income tax, the lumpsum end of service benefits received by SOS Mothers' of SOS Children's Villages of Kenya, who retired in the year 2002.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 164 of 2003]

The Cabinet Secretary responsible for Finance directs that all the income of the Registration of Accountants Board derived from Kenya shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 207 of 2003]

The Cabinet Secretary responsible for Finance exempts Cotecna Inspection S.A. from income tax on the remuneration for services under the contracts between Cotecna Inspection S.A. and the Government of Kenya dated 30th March, 1994, 24th March, 1997, 15th January, 2001 and 30th June, 2003

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 208 of 2003]

The Cabinet Secretary responsible for Finance exempts Bivac International S.A. from income tax on the remuneration for services under the contracts for the provision of pre-shipment inspection services between Bivac International S.A. and the Government of Kenya dated 30th March, 1994, 24th March, 1997, and 30th June, 2003.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 51 of 2005]

The Cabinet Secretary responsible for Finance directs that the interest earned on asset backed securities issued by a company or a trust under section 33C of the Capital Markets Act shall be exempt from tax.

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**THE INCOME TAX- DECLARATIONS OF CROPS**

[Legal Notice 54 of 2005]

The Cabinet Secretary for Finance declares eucalyptus, pine and cypress to be permanent or semi-permanent crops for the purposes of the Act.

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**THE INCOME TAX- PRESCRIBED LIMIT OF MEDICAL BENEFIT**

[Legal Notice 53 of 2005]

The Cabinet Secretary responsible for Finance prescribes the sum of one million shillings to be the maximum limit for the purposes of that paragraph.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 104 of 2005]

The Cabinet Secretary responsible for Finance directs that emoluments payable to employees of the East African Development Bank shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 137 of 2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefits received by employees of the Civil Service who opt to retire early under the Voluntary Early Retirement Scheme, approved by the Government on 27th May, 2004:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible for re-employment in the Civil Service in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;

**(b)** the Permanent Secretary/Director of Personnel Management shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every retiring employee, with the name, date of retirement from the Civil Service, the amount paid and a copy of a letter confirming the retirement of the employee from the parent Ministry.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 138 of 2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefits received by employees or the Kenya National Trading Corporation Limited, under the Retrenchment Scheme, approved by the Government on 16th April, 2004 and 28th June, 2005, respectively:

Provided that—

**(a)** an employee who has been retrenched shall not be eligible for re-employment with the Kenya National Trading Corporation Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;

**(b)** the Kenya National Trading Corporation Limited shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya National Trading Corporation Limited, the amount paid and a copy of the letter to the employee confirming such retrenchment.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 139 of 2005]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum payments received by employees of the National Bank of Kenya Limited, who opted to retire prior to 31st May, 2005, under the Bank's Voluntary Early Retirement Scheme, approved by the Government on 8th September, 2005:

Provided that the Bank shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee who retired on that date, with the name and amount paid.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 5 of 2006]

The Cabinet Secretary responsible for Finance exempts from income tax the lumpsum retirement benefits and the twenty per cent (20%) discount on the outstanding house and car loans received by employees of the Industrial and Commercial Development Corporation who opt to retire under the Voluntary Early Retirement Scheme approved by the Government on 7th October, 2005:

Provided that—

**(a)** an employee who opts for early retirement shall not be eligible, for re-employment with the Industrial and Commercial Development Corporation, in any capacity or under any terms whatsoever, before the expiry of three (3) years from the date of such retirement; and

**(b)** the Industrial and Commercial Development Corporation shall, in addition to complying with any procedures that the Commissioner of Income Tax may require, furnish the Commissioner, in respect of every employee being retired, with the name, date of retirement from the Industrial and Commercial Development Corporation, the amount paid and a copy of a letter confirming the retirement of the employee from the Corporation.



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**THE INCOME TAX (TRANSFER PRICING) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Purpose of Rules
  4. Person to choose method
  5. Scope of guidelines
  6. Transactions subject to Rules
  7. Methods
  8. Application of methods
  9. Power of Commissioner to request for information
  10. Application of arm's length pricing
  11. Certain provisions of Act to apply
  12. Unpaid tax to be deemed additional tax
-



## THE INCOME TAX (TRANSFER PRICING) RULES

[Legal Notice 67 of 2006, Legal Notice 52 of 2011, Legal Notice 54 of 2012]

### 1. Citation and commencement

These Rules may be cited as the Income Tax (Transfer Pricing) Rules, and shall come into operation on the 1st July, 2006.

### 2. Interpretation

In these Rules, unless the context otherwise requires-

"arm's length price" means the price payable in a transaction between independent enterprises;

"comparable transactions" means transactions between which there are no material differences, or in which reasonably accurate adjustments can be made to eliminate material differences;

"controlled transaction" means a transaction which is monitored to ensure payment of an arm's length price for goods or services;

"related enterprises" means one or more enterprises whereby-

- (a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or
- (b) a third person participates directly or indirectly in the management, control or capital of both.

### 3. Purpose of Rules

The purposes of these Rules are-

- (a) to provide guidelines to be applied by related enterprises, in determining the arm's length prices of goods and services in transactions involving them, and
- (b) to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.

### 4. Person to choose method

The taxpayer may choose a method to employ in determining the arm's length price from among the methods set out in rule 7.

### 5. Scope of guidelines

The guidelines referred to in rule 3-

- (a) transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, Kenya, and the other is located outside Kenya;
- (b) transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

[LN 52 of 2011, s. 2.]

### 6. Transactions subject to Rules

The transactions subject to adjustment of prices under these Rules shall include-

- (a) the sale or purchase of goods;
- (b) the sale, purchase or lease of tangible assets;
- (c) the transfer, purchase or use of intangible assets;

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[Subsidiary]

- (d) the provision of services;
- (e) the lending or borrowing of money; and
- (f) any other transactions which may affect the profit or loss of the enterprise involved.

## 7. Methods

The methods referred to in rule 4 are the following-

- (a) the comparable uncontrolled price (CUP) method, in which the transfer price in a controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;
- (b) the resale price method, in which the transfer price of the produce is compared with the resale price at which the product is sold to an independent enterprise:

Provided that in the application of this method the resale price shall be reduced by the resale price margin (the profit margin indicated by the reseller);

- (c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;
- (d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;
- (e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and
- (f) such other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in these guidelines.

## 8. Application of methods

(1) The methods set out in rule 7 shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of section 18(3) of the Act.

(2) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

(3) The Commissioner may issue guidelines specifying conditions and procedures to guide the application of the methods set out in rule 7.

[LN 54 of 2012, s. 2.]

## 9. Power of Commissioner to request for information

(1) The Commissioner may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where the transfer pricing is applied.

(2) The documents referred to in paragraph (1) shall include documents relating to-

- (a) the selection of the transfer pricing method and the reasons for the selection;
- (b) the application of the method, including the calculations made and price adjustment factors considered;
- (c) the global organization structure of the enterprise;

- (d) the details of the transaction under consideration;
- (e) the assumptions, strategies, and policies applied in selecting the method; and
- (f) such other background information as may be necessary regarding the transaction.

(3) The books of accounts and other documents shall be prepared in, or be translated into, the English language, at the time the transfer price is arrived at.

#### **10. Application of arm's length pricing**

Where a person avers the application of arm's length pricing, such person shall-

- (a) develop an appropriate transfer pricing policy;
- (b) determine the arm's length price as prescribed under the guidelines provided under these Rules; and
- (c) avail documentation to evidence their analysis upon request by the Commissioner.

#### **11. Certain provisions of Act to apply**

The provisions of the Act relating to fraud, failure to furnish returns and underpayment of tax shall apply with respect to transfer pricing.

#### **12. Unpaid tax to be deemed additional tax**

Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of sections 94 and 95 of the Act.





**THE INCOME TAX- DECLARATIONS OF CROPS**

[Legal Notice 66 of 2006]

IN EXERCISE of the powers conferred by section 2(1) of the Income Tax Act, the Minister for Finance declares avocados and mangoes to be permanent or semi-permanent crops for the purposes of the Act.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 68 of 2006]

The Cabinet Secretary for Finance directs that the income of the Policyholders' Compensation Fund established under section 179(2) of the Insurance Act (Cap. 487) shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 94 of 2006]

The Cabinet Secretary responsible for Finance directs that all the income of the Kenya Ordinance Factories Corporation accruing and derived from Kenya with effect from the 25th July, 1997, shall be exempt from the provisions of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 95 of 2006]

The Cabinet Secretary responsible for Finance exempts from income tax the lump sum retirement benefit received by employees of Telkom Kenya Limited retrenched under the Restructuring Scheme, approved by the Government on the 27th February, 2006 shall be exempt from the provisions of the Act:

Provided that-

**(a)** an employee who has been retrenched shall not be eligible for re-employment with Telkom Kenya Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment.

**(b)** Telkom Kenya Limited shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of any employee being retrenched with the name, date of retrenchment, amount of retirement benefits paid and a copy of the letter to the employee confirming the retrenchment.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 110 of 2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by 83 employees who retired under the 50 year rule with effect from 1st September, 2005, 38 who voluntarily opted to retire with effect from 1st July, 2005 and 253 who were retrenched with effect from 1st July, 2006 from the Kenya Broadcasting Corporation under the Staff Rationalization Programme, approved by the Government on 4th May, 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who has been retired or retrenched shall not be eligible for re-employment with the Kenya Broadcasting Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement or retrenchment;
  - (c) the Kenya Broadcasting Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retiring or retrenched employee, with the name, date of retirement or retrenchment from the Kenya Broadcasting Corporation, the amount paid and a copy of the letter to the employee confirming such retirement or retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 116 of 2006]

The Cabinet Secretary responsible for Finance directs that the lump, sum retirement benefits received by employees of Kenya Airports Authority retrenched under the Staff Rationalization Programme, approved by the Government on 21st June, 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employee;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya Airports Authority, in, any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
  - (c) the Kenya Airports Authority shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retrenched employee, with the name, date of retrenchment from the Kenya Airports Authority, the amount paid and a copy of the letter to the employee confirming such retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 163 of 2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by employees of Industrial Development Bank Capital Limited under the Voluntary Early Retirement Scheme, approved by the Government on 15th June 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who opts for voluntary early retirement shall not be eligible for re-employment with the Industrial Development Bank Capital Limited, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
  - (c) the Industrial Development Bank Capital Limited shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of every retiring employee, with the name, date of retirement from the Industrial Development Bank Capital Limited, the amount paid and a copy of the letter to the employee confirming such retirement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 164 of 2006]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by employees of Agricultural Finance Corporation retrenched under Staff Rationalization Programme, approved by the Government on 24th July 2006, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Agricultural Finance Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
  - (c) the Agricultural Finance Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner in respect of every retrenched employee, with the name, date of retrenchment from the Agricultural Finance Corporation, the amount paid and a copy of the letter to the employee confirming such retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 21 of 2007]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the employees of Jomo Kenyatta Foundation retrenchment under the restructuring programme approved by the Government on 12th July, 2006, shall be exempt from income tax under the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who has been retrenched and who benefits from this exemption shall not be eligible for re-employment with the Jomo Kenyatta Foundation, in any capacity or under any terms whatsoever before the expiry of three years from the date of such retrenchment;
  - (c) the Jomo Kenyatta Foundation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retrenched employee, with the name, date of retrenchment from the Jomo Kenyatta Foundation, the amount paid and a copy of the letter to the employee confirming such retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 61 of 2007]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the employees of Kenya Railways Corporation retrenched under the restructuring programme approved by the Government on 12th March, 2007, shall be exempt from income tax under the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who has been retrenched and who benefits from this exemption shall not be eligible for re-employment with the Kenya Railways Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retrenchment;
  - (c) the Kenya Railways Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retrenched employee, with the name, date of retrenchment from the Kenya Railways Corporation, the amount paid and a copy of the letter to the employee confirming such retrenchment.
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**THE INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Proof of donation
  4. Donations generally
  5. Contents of receipt of proof
-



**THE INCOME TAX (CHARITABLE DONATIONS) REGULATIONS, 2007**

[Legal Notice 100a of 2007]

**1. Citation**

These Regulations may be cited as the Income Tax (Charitable Donations) Regulations, 2007, and shall be deemed to have come into force on 1st January, 2007.

**2. Interpretation**

In these Regulations, unless the context otherwise requires-

**"approved project"** means a project approved by the Minister;

**"cash donation"** includes a donation given in form of a cheque; and

**"charitable organisation"** means a non-profit making organisation established in Kenya and which-

- (a) is of a public character; and
- (b) has been established for purposes of the relief of poverty or distress of the public, or advancement of education.

**3. Proof of donation**

(1) A person who makes a claim for a donation to be allowed under section 15 (2) (w) of the Act shall provide proof of the donation to the Commissioner.

(2) The proof of the donation required in accordance with paragraph (1) shall be in form of a receipt issued and certified by the recipient of the donation and shall be accompanied by-

- (a) a copy of the exemption certificate issued by the Commissioner to the charitable organisation, or the Minister's approval of the project to which the donation is made;
- (b) a declaration from the donee that the donation shall be used exclusively for the objects of charity.

**4. Donations generally**

For purposes of these Regulations, donations made shall-

- (a) be in cash and shall not be repayable or refundable to the donor under any circumstance;
- (b) not confer any direct or indirect benefit to the donor or any person associated to the donor;
- (c) under no circumstances be revoked once conferred upon a charitable organization, unless there is approval by the Commissioner in which case the tax arising shall be due and payable.

**5. Contents of receipt of proof**

The receipt produced as proof of a donation shall have the following details-

- (a) the full names and address of the donee;
  - (b) the Personal Identification Number (PIN) of the donee;
  - (c) date of donation;
  - (d) purpose for which the donation was made;
  - (e) amount of donation.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 2 of 2008]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by twenty three (23) the employees of the Kenya Broadcasting Corporation who retired with effect from 1st July, 2007 and 1st October, 2007, respectively, under the Voluntary Early Retirement Scheme approved by the Government on 4th May, 2006, shall be exempt from income tax under the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to such employees;
  - (b) an employee who opts for voluntary early retirement shall not be eligible for re-employment with the Kenya Broadcasting Corporation, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of such retirement;
  - (c) the Kenya Broadcasting Corporation shall, in addition to complying with any directions that the Commissioner of Income Tax may give, furnish the Commissioner, in respect of every retiring employee, the name, the date of retirement from the Kenya Broadcasting Corporation, the amount paid and a copy of the letter to the employee confirming such retirement.
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**THE INCOME TAX (TURNOVER TAX) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation and commencement
  2. Interpretation
  3. Persons liable to turnover tax
  4. Election to be excluded from turnover tax
  5. Turnover tax as a final tax
  6. Registration
  7. Change of status
  8. Keeping of records
  9. Submission of returns and payment of Tax
  10. Penalties and interest
  11. Inspection of records
  12. Appointment of Agents
  13. Capital allowances
  14. Dispute resolution
-



**THE INCOME TAX (TURNOVER TAX) RULES**

[Legal Notice 5 of 2008]

**1. Citation and commencement**

These rules may be cited as the Income Tax (Turnover Tax) Rules and shall come into operation on the 1st January, 2008.

**2. Interpretation**

In these Rules, unless the context otherwise requires-

"income from business" includes gross receipts, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C.

"person" includes partnership;

"return of income" means a return of income furnished by a person under rule 9;

"tax period" means every three calendar months commencing 1st January every year;

"turnover tax" means tax payable under section 12C of the Act.

**3. Persons liable to turnover tax**

(1) Any person whose income from business exceeds five hundred thousands shillings and does not exceed five million shillings

in a year of income shall be liable to pay turnover tax.

(2) Paragraph (1) of this rule shall not apply to-

(a) any person whose annual income from business does not exceed five hundred thousand shillings per year;

(b) any person whose income is exempt from tax under the First Schedule to the Act;

(c) any person whose income is subject to withholding tax as a final tax.

**4. Election to be excluded from turnover tax**

(1) A person may elect to be exempt from the provisions of section 12C of this Act.

(2) A person who elects to be exempted shall make an application for exemption in writing to the Commissioner.

(3) Where the Commissioner approves the application for exemption, under paragraph (2), a person who has been exempted shall be subject section 3 of the Act;

(4) The exemption approved by the Commissioner shall take effect in the subsequent year of income.

**5. Turnover tax as a final tax**

Any income from a business that is subject to turnover tax shall not be liable to any other tax under this Act.

**6. Registration**

(1) A person whose income from business does not exceed or is not expected to exceed five million shillings per annum shall be required to apply for turnover tax registration in the prescribed form.

(2) Notwithstanding paragraph (1), a person whose income from business does not exceed five hundred thousand shillings per annum shall not apply for registration.

(3) Where the Commissioner is satisfied that a person is required to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

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[Subsidiary]

(4) A person whose income from business falls below five hundred thousand shillings in any year of income shall apply to the Commissioner for de-registration.

(5) Where the Commissioner is satisfied that the income of an applicant has fallen below five hundred thousand shillings, the Commissioner shall de-register that person.

### **7. Change of status**

(1) Where the income from the business of a person registered under rule 6 exceeds five million shillings during a year of income, that person shall notify the Commissioner of the change of status.

(2) Where the commissioner is satisfied by the notification under paragraph (1), the Commissioner shall grant approval for the change.

(3) The approval granted by the Commissioner under paragraph (2) shall be effected in the subsequent year of income.

### **8. Keeping of records**

(1) A person registered under rule 6 shall be to keep records necessary for the determination and ascertainment of tax, including daily sales summary in a prescribed form and any other document or record that the commissioner may from time to time direct to be maintained having regard to the type and nature of the business being undertaken.

(2) Notwithstanding paragraph (1), where a business is in possession of an Electronic Tax Register records as provided under the Value Added Tax Act (Electronic Tax Register) Regulations (sub. leg), the records shall be sufficient.

### **9. Submission of returns and payment of Tax**

(1) A person subject to turnover shall calculate the tax due, remit the tax due to the commissioner by cash or bank guaranteed cheques or electronic fund transfers and submit a return in the prescribed form, in each tax period, to the commissioner on or before 20th of the month following the end of the tax period.

(2) A person may remit the tax due on monthly basis and offset the tax paid in the tax return.

(3) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

### **10. Penalties and interest**

(1) Any person who fails to submit a tax return under regulation (9) is liable to a default penalty of two thousand shillings.

(2) Any person who submits a return within the required period, but fails to pay the tax due is liable to a default penalty of two thousand shillings.

(3) Any person who fails to pay tax due, or part thereof, under rule 9 is liable to pay interest at the rate of two per centum per month, on the unpaid tax.

(4) The Commissioner-

(a) may remit whole or part of any penalty or late payment interest in accordance with the provisions of section 94 of this Act.

(b) shall have the powers conferred under section 123 of this Act, to refrain from assessing to tax or recovering tax any person liable to turnover tax.

### **11. Inspection of records**

For purposes of obtaining full information in respect of accounting for turnover tax, the commissioner may by notice require any person to-

(a) produce books and records relating to the calculation of turnover tax.

(b) appear at such time and place as may be specified in the notice

**12. Appointment of Agents**

For purposes of collection, recovery and enforcement of tax, the Commissioner may appoint any person under section 96 of the Act to be an agent.

**13. Capital allowances**

No expenditure or capital allowances shall be granted against the turnover tax.

**14. Dispute resolution**

Any dispute arising from the administration of these Rules as regards any assessment to tax shall be dealt with in accordance with the provision of section 84 of the Act.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 13 of 2008]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the thirty five (35) employees of the Kenya Reinsurance Corporation Limited who retired prior to 31st December, 2007, under the Voluntary Early Retirement Scheme approved by the Government on 6th December, 2007 shall be exempt from the Income Tax under the Act;

Provided that-

3. the exemption shall not apply to other pension benefits paid to the said employees;
  4. an employee who opts for early retirement shall not be eligible for re-employment in the Kenya Reinsurance Corporation Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of such retirement;
  5. the Kenya Reinsurance Corporation Limited shall, in addition to complying with any procedure that the Commissioner of -Income Tax may give, furnish the Commissioner in respect of every retiring employee, with the name, date of retirement from the Kenya Reinsurance Corporation Limited, the amount paid and a copy of a letter to the employee confirming such retirement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 63 of 2008, Legal Notice 3 of 2009]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the twenty eight and the six employees of the Kenya National Assurance Company (2001) Limited retrenched with effect from 31st January, 2008 and 31st December, 2008, respectively, shall be exempt from the provisions of the Act—

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya National Assurance Company (2001) Limited, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the Kenya National Assurance Company (2001) Limited shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya National Assurance Company (2001) Limited, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**UNTITLED**

[Legal Notice 83 of 2008]

[This is a stub. Please see the publication document for the original content.]



**UNTITLED**

[Legal Notice 3 of 2009]

[This is a stub. Please see the publication document for the original content.]





**INCOME TAX (INVESTMENT DUTY SET OFF) (REVOCATION) RULES**

[Legal Notice 92 of 2009]

1. These Rules may be referred to as the Income Tax (Investment Duty Set-off) (Revocation) Rules, 2009.
  2. The Income Tax (Investment Duty Set Off) Rules, 1996 (L.N 72/1996) are revoked.
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**THE INCOME TAX ACT-DECLARATION OF SPECIAL  
ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION**

ARRANGEMENT OF ARTICLES

*Article*

*SCHEDULE  
ARTICLE 1  
ARTICLE 2  
ARTICLE 3  
ARTICLE 4  
ARTICLE 5  
ARTICLE 6  
ARTICLE 7  
ARTICLE 8*

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## THE INCOME TAX-DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[Legal Notice 139 of 2009]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the agreement set out in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation with respect to air transport in international traffic, entered into on the 12th January, 1996, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

### SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, desiring to conclude an Agreement for the avoidance of double taxation with respect to air transport in international traffic,

HAVE AGREED AS FOLLOWS:

#### ARTICLE 1

1. For the purpose of this Agreement, unless the context otherwise requires:
  - (a) The term "person" include an individual, a company and any other body of persons;
  - (b) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (c) The term "enterprise of a Contracting State" and means respectively of the other Contracting State" an enterprise carried on by a resident of a contracting State and an enterprise carried on by a resident of the other Contracting State";
  - (d) The term "competent authority" means:
    - (i) in the case of the Republic of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative;
    - (ii) in the case of the French Republic, the Cabinet Secretary in charge of the Budget or his authorized representative.

2. As regards the application of this Agreement 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 Agreement applies.

#### ARTICLE 2

This Agreement shall apply to enterprises operating aircraft in international traffic and to employees of such enterprises, where such enterprises or employees are residents of one or both of the Contracting States.

#### ARTICLE 3

1. This Agreement shall apply to taxes on income imposed on behalf of the Contracting State 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 property, as well as taxes on capital appreciation.

#### ARTICLE 4

1. For the purpose 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 management or any other criterion of a similar nature. But this term

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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 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 of the State with which his personal and economic relations are close (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 of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

#### **ARTICLE 5**

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic, including income from activities which are incidental of such operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph 1, interest on funds directly connected with the operation of aircraft in international traffic shall be as income from the operation of such aircraft.

4. Gains from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

#### **ARTICLE 6**

Remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard an aircraft operated in international traffic shall be taxable only in that State.

#### **ARTICLE 7**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for preventing fiscal fraud or evasion concerning taxes covered by the Agreement in so far as the taxation there under is in accordance with the Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to any persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes which are subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

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

- (b) to supply particulars which are 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.

**ARTICLE 8**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of those notifications has been received and shall have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January following the year in which all formalities have been completed.

2. The Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event the Agreement shall cease to have effect for income (including profits and gains) relating to taxable periods beginning on or after the first day of January in the calendar year next following that in which notice of termination is given.

3. This Agreement may be amended by mutual consent of both parties.

4. Any dispute which might arise in connection with the implementation or interpretation of this Agreement shall be settled through diplomatic channels, or by mutual agreement of the competent authorities who may communicate with each other directly for that purpose.





## THE INCOME TAX-DECLARATION OF SPECIAL ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

[Legal Notice 140 of 2009]

The Cabinet Secretary responsible for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with Respect to Taxes on Income, entered into on the 4th December, 2007, shall, notwithstanding anything to the contrary in the Income Tax Act or in any other written law, have effect in relation to income tax.

### SCHEDULE

The Government of the French Republic and the Government of the Republic of Kenya, 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:

#### ARTICLE 1

##### PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

#### ARTICLE 2

##### TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State 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 paid by enterprises as well as taxes on capital appreciation.

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

(a) in the case of France:

- (i) the income tax ("*l'impôt sur le revenu*");
- (ii) the widespread security contributions (CSG);
- (iii) the reimbursement of the debt of social security contributions (CRDS);
- (iv) the corporation tax ("*l'impôt sur les sociétés*");
- (v) the tax on salaries ("*la taxe sur les salaires*");

including any withholding tax, prepayment (*precompte*) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "*French tax*");

(b) In the case of Kenya, taxes on income chargeable under the Income Tax Act, (Cap. 470)

(hereinafter referred to as "*Kenyan 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

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existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

### ARTICLE 3

#### GENERAL DEFINITIONS

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

- (a) the terms "Contracting State" and "other Contracting State" mean France or Kenya, as the context requires;
- (b) the term "France" means the European and overseas departments ("*departements d'Outre-mer*") of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights;
- (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with 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 which is treated, for tax purposes, as a body corporate;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means—
  - (i) in the case of France, the Cabinet Secretary in charge of the budget or his authorised representative;
  - (ii) in the case of Kenya, the Cabinet Secretary for Finance or his authorised representative;
- (i) the term "national" means —
  - (i) any individual possessing . the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

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

### 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 Contracting 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.

- (a) 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.
- (b) Unless it can be demonstrated that another method is more appropriate, the executive and general administrative expenses shall be determined by applying a ratio of turnover or gross profits of a permanent establishment as related to that of the enterprise as a whole.

4. 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.

5. 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.

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

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

## ARTICLE 8

### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State;

- (a) Such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
- (b) The tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

3. 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 the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.

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.

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5. The provisions of the agreement between the Government of the French Republic and the Government of the Republic of Kenya for the avoidance of double taxation with respect to air transport in international traffic, signed on January, 12th, 1996 shall remain in force but its provisions shall apply only to cases not covered by nor subject to the provisions of this Convention.

#### **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 if that other State considers the adjustment justified. 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.

- (a) Dividends mentioned in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
- (b) This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Kenya who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (precompte) to the extent that it was effectively paid by the company in respect of such dividends. The gross amount of the prepayment (precompte) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2. The provisions of paragraph 2 shall apply to such gross amount.

4. The term "dividend" 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 treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. It is understood that the term "dividend" does not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 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.

7. 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 Contracting State may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if such recipient is the beneficial owner of such interest, and if one of the following conditions is met;

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State.

4. The term "interest" 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 paragraph 1 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in

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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.

8. 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, if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of such 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, or films or tapes used for radio or 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 or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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.

7. 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

- (a) Gains derived from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State where such immovable property is situated.
- (b) Gains from the alienation of shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist for more than 50 per cent of their value of, or derive more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, from immovable property referred to in Article 6 and situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account.

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 from the alienation of property forming part of the business property of an enterprise and consisting of ships or aircraft operated by such enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

### ARTICLE 14

#### INDEPENDENT PERSONAL SERVICES

1. Income derived by 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 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 is attributable to that fixed base may be taxed in that other Contracting 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****DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20 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 period of twelve consecutive months 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

**ARTICLE 16****DIRECTOR'S FEES**

1. Director's fees and other similar payments derived by a resident of a Contracting State in the capacity of 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.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

**ARTICLE 17****ARTISTES AND ATHLETES**

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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting State or not, 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 athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to personal activities exercised by entertainers and athletes if those activities are supported wholly or substantially from public funds of one Contracting State, its local authorities or by one of their statutory bodies; in that case, income derived from such activities by entertainers and athletes shall be taxable only in that State.



**Article 18****PENSIONS**

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

**Article 19****PUBLIC REMUNERATION**

- (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof, or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body 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, and a national of, that State without being also a national of the first-mentioned State.
- (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof or by one of their statutory bodies of either to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof, or by one of their statutory bodies, such purposes. They may disclose the information in public court proceeding or in judicial decisions.

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 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 (order 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 fiduciary capacity or because it relates to ownership interests in a person.

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**Article 26****DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions, of members of consular posts, and of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income and capital as are residents of that State.
3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in one of the independent personal services.
2. In respect of subparagraph (b) of paragraph 1 of Article 3, it is understood that the French overseas departments ("*departements d'Outre-mer*") are: Guadeloupe, Martinique, Guyane and La Reunion.
3. In relation to article 7 (1), it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated that these profits are related to the activities of the permanent establishment.
4. In respect of paragraph 3 of Article 7, it is considered that the amount of expenses to be taken into account as incurred for the purposes of the permanent establishment should be the actual one so incurred and supported by documents. Subject to this, it is agreed that, in the case of general administrative expenses incurred at the head office of the enterprise, it is appropriate to take into account a proportionate part based on the ratio that the permanent establishment's turnover bears to that of the enterprise as a whole.
5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions relating to thin capitalisation in accordance with their domestic laws.
6. Each of the Contracting States shall keep the right of taxing in accordance with its domestic law any income of its residents, the taxation of which is attributed to the other Contracting State, but which is not taken into account in the tax base in that State, in cases where such double exemption results from a divergent qualification of the income concerned.

**THE INCOME TAX - EXEMPTION**

[Legal Notice 158 of 2009]

The Cabinet Secretary responsible for Finance directs, that the allowances paid to census personnel in respect of the 2009 Population and Housing Census shall be exempt from the provisions of the Act, with effect from 1st August, 2009.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 16 of 2011]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to four hundred and three employees of the Postal Corporation of Kenya that opted for voluntary early retirement with effect from 31st December, 2010 shall be exempt from the provisions of the Act.

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
  - (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the Postal Corporation of Kenya, in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of retirement and
  - (c) the postal corporation of Kenya shall, in addition to complying with any conditions that the Commissioner for Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 46 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the forty and the six employees of the Coffee Board of Kenya retrenched with effect from 30th November, 2009, and 31st December, 2009, respectively, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Coffee Board of Kenya in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the Coffee Board of Kenya shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Coffee Board of Kenya, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 47 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the three hundred employees of the Kenya Post Office Savings Bank who retired under the Voluntary Early Retirement Scheme approved by the Government of Kenya on 17th June, 2008, of whom two hundred and ninety-two left the service with effect from 31st January, 2010, four from 5th February, 2010 and another four from 26th February, 2010, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Kenya Post Office Savings Bank in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the Kenya Post Office Savings Bank shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Kenya Post Office Savings Bank, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**UNTITLED**

[Legal Notice 84 of 2010]

[This is a stub. Please see the publication document for the original content.]



**THE INCOME TAX - EXEMPTION**

[Legal Notice 72 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the forty and the six employees of the Jomo Kenyatta Foundation retrenched with effect from 1st June, 2009, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Jomo Kenyatta in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the Jomo Kenyatta Foundation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from the Jomo Kenyatta Foundation, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 73 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits received by the one thousand and thirty-eight employees of Telkom Kenya Limited retrenched on various dates, ranging from 31st December, 2008 to 28th February, 2010, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with Telkom Kenya Limited in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) Telkom Kenya Limited shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee being retrenched, with the name, date of retrenchment from Telkom Kenya Limited, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 82 of 2010]

The Cabinet Secretary responsible for Finance revokes the exemption from income tax of the income of the Retirement Benefits Authority conferred by Legal Notice Number 169 of 2001.

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**THE INCOME TAX ACT - EXEMPTION**

ARRANGEMENT OF SECTIONS

*FUNDS CONTRIBUTED BY MEMBERS OF  
THE ASSOCIATION OF KENYA INSURERS*

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 83 of 2010]

**FUNDS CONTRIBUTED BY MEMBERS OF THE ASSOCIATION OF KENYA INSURERS**

The Cabinet Secretary responsible for Finance directs that the funds contributed directly by the members of the Association of Kenya Insurers in respect of the Integrated Motor Insurance Data Base System (IMIDS) project shall be exempt from income tax:

Provided that —

**(a)** this notice shall apply to —

- (i) the amount of Kenya shillings one million, one hundred and seventeen thousand, six hundred and fortyseven contributed by each member; and
- (ii) the amount of Kenya shillings thirty levied on every insurance certificate;

**(b)** the income to be exempted shall not exceed the cost of the project. This notice shall apply with effect from the 1st March, 2010 to the 28th February, 2011.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 147 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits of the one hundred and fifty-seven employees of the Pyrethrum Board of Kenya retrenched with effect from the 11th August, 2009, shall be exempt from the provision of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the Pyrethrum Board of Kenya, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the Pyrethrum Board of Kenya shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee being retrenched, with the name, date of retrenchment from the Pyrethrum Board of Kenya, the amount paid and a copy of the letter to the employee confirming the retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 164 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits of the seventy-two employees of the National Housing Corporation retrenched with effect from the 1st July, 2010, shall be exempt from the provision of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
  - (b) an employee who has been retrenched shall not be eligible for re-employment with the National Housing Corporation, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the National Housing Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee being retrenched, with the name, date of retrenchment from the National Housing Corporation, the amount paid and a copy of the letter to the employee confirming retrenchment.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 178 of 2010]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to twenty-seven employees of the East African Portland Cement Company who opted for voluntary early retirement with effect from 31st March, 2010 and 30th April, 2010, respectively, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
  - (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the East African Portland Cement Company, in any capacity or under any terms whatsoever before the expiry of three years from the date of retrenchment; and
  - (c) the East African Portland Cement Company shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 32 of 2011]

The Cabinet Secretary responsible for finance directs that the lump sum retirement benefits paid to two thousand, one hundred and sixty five employees of the Kenya Railways Corporation who were retrenched in 1998 shall be exempt from the provision of the Act.

Provided—

- (a) the exemption shall not apply to other pensions benefits paid to the employees;
  - (b) an employee was not re-employed with the Kenya Railways Corporation in any capacity or under any terms whatsoever before the expiry of three (3) years from the date of retrenchment; and
  - (c) the Kenya Railways Corporation shall, in addition to complying with any conditions that the Commissioner for Income Tax may impose, furnish the Commissioner in respect of every employee that was retrenched, with the name, date of retrenchment, the amount paid and a copy of the letter confirming the retrenchment.
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**INCOME TAX - GUIDELINES ON ALLOWABILITY OF BAD DEBTS**

[Legal Notice 37 of 2011]

1. A debt shall be considered to have become bad if it is proved to the satisfaction of the Commissioner to have become uncollectable after all reasonable steps have been taken to collect it.

2. A debt shall be deemed to have become uncollectable under paragraph (1) where -

- (a) the creditor loses the contractual right that comprises the debt through a court order;
- (b) no form of security or collateral is realisable whether partially or in full;
- (c) the securities or collateral have been realized but the proceeds fail to cover the entire debt;
- (d) the debtor is adjudged insolvent or bankrupt by a court of law;
- (e) the costs of recovering the debt exceeds the debt itself; or
- (f) efforts to collect the debt are abandoned for another reasonable cause.

3. A bad debt shall be a deductible expense only if it is wholly and exclusively incurred in the normal course of business.

4. For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 85 of 2011]

The Cabinet Secretary responsible for Finance directs that the interest payable on the loan agreement between Kenya Electricity Generating Company and the institutions listed in the Schedule hereto, for the implementation of the Olkaria II extension project, shall be exempt from the provisions of the Act.

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Schedule

1. European Investment Bank dated the 31st March, 2005; and
  2. Agency Francaise De Development dated the 2nd April, 2009.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 86 of 2011]

The Cabinet Secretary responsible for Finance directs that the lump sum retirement benefits paid to fifty-two employees of the Postal Corporation of Kenya that opted for voluntary early retirement with effect from the 31st May, 2011 shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pensions benefit paid to the employees;
  - (b) an employee who has opted for the voluntary early retirement shall not be eligible for re-employment with the Postal Corporation of Kenya, in any capacity or under any terms whatsoever before the expiry of three years from the date of retirement; and
  - (c) the Postal Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner in respect of every employee opting for retirement, with the name, date of retirement, the amount paid and a copy of the letter confirming the retirement.
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**THE INCOME TAX - EXEMPTION**

[Legal Notice 131 of 2011]

The Cabinet Secretary responsible for Finance directs that the lump-sum retirement benefits paid to thirty-two employees of the Kenya National Trading Corporation who were retired from the Corporation with effect from the 30th May, 2011, shall be exempt from the provisions of the Act—

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to employees;
  - (b) an employee who has retired shall not be re-employed by the Kenya National Trading Corporation in any capacity or under any terms whatsoever before the expiry of three years from the date of retirement; and
  - (c) the Kenya National Trading Corporation shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner, in respect of every employee that is retired, with the name, date of retirement from the Kenya National Trading Corporation, the amount paid and a copy of the letter of the employee confirming the retirement.
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**THE INCOME TAX (ADVANCE TAX)  
(CONDITIONS AND PROCEDURES) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation
  2. Interpretation
  3. Payment of advance tax
  4. Maintenance of records
  5. Filing of returns
  6. Licensing and inspection
  7. Dispute in calculation of advance
  8. Inspection of records
  9. Penalties and interest
-





**THE INCOME TAX (ADVANCE TAX)  
(CONDITIONS AND PROCEDURES) RULES**

[Legal Notice 52 of 2012]

**1. Citation**

The Rules may be cited as Income Tax (Advance Tax)(Conditions and Procedures) Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"advance tax" means tax payable under section 12A of this Act;

"owner of a commercial vehicle" means the registered owner as indicated in the registration certificate issued by the Registrar of motor vehicles.

**3. Payment of advance tax**

(1) Any person who owns a commercial vehicle shall be liable to pay advance tax.

(2) Advance tax shall be payable for each year of income at the rates specified under paragraph 8 of the Third Schedule to the Act.

(3) Advance tax shall be due and payable to the Commissioner on or before the twentieth day of the first month of the year of income, or in cases of transfer of ownership of the commercial vehicle, before the new owner is registered as such.

(4) The Commissioner shall assess the amount of advance tax payable under these Rules in accordance with paragraph 8 of the Third Schedule to the Act.

(5) A person liable to pay advance tax shall submit to the Commissioner the payment accompanied by the prescribed form.

(6) The Commissioner shall issue, to every person who pays advance tax under these Rules, a receipt which shall be the proof of payment of advance tax.

**4. Maintenance of records**

Any person who is liable to pay advance tax shall keep records necessary for the determining and ascertaining advance tax, including registration certificates, vehicle inspection reports, previous advance tax receipts and such other document or record as the Commissioner may from time to time direct.

**5. Filing of returns**

(1) A person who pays advance tax shall submit to the Commissioner a return of income in accordance with section 52B of the Act.

(2) A person who fails to file a return of income in accordance with paragraph (1) shall be liable to pay additional tax as provided under section 72 of the Act.

**6. Licensing and inspection**

A Government agency shall for the purposes of the registration or transfer of ownership, licensing or inspection of a commercial vehicle, require the owner of the commercial vehicle to furnish such agency with evidence of payment of advance tax or income tax exemption certificate, where applicable.

**7. Dispute in calculation of advance**

Any dispute arising from the administration of these Rules relating to the assessment to tax shall be dealt with in accordance with section 84 of the Act.

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**8. Inspection of records**

(1) For purposes of obtaining information necessary for the verification of advance tax paid, the Commissioner may by notice require a person liable to pay advance tax to—

- (a) produce all accounts, books of accounts, documents and other records relating to the payment of advance tax in respect of such period as may be specified by the Commissioner;
- (b) produce the commercial vehicle or a Vehicle Inspection Report prepared by a recognized Government agency or agent; or
- (c) avail themselves for interview at such time and place as may be specified in the notice.

(2) The Commissioner may, upon undertaking an inspection under this rule, demand from the person, based on the information obtained from the inspection—

- (a) the tax which appears from the documents and records produced by that person, would have been payable under rule 3 for the period covered by the inspection had that person complied with these Rules; or
- (b) the outstanding tax and penalties.

**9. Penalties and interest**

(1) Any person who fails to pay the advance tax due shall, in addition to the payment of the unpaid tax, be liable to pay a penalty and interest on the unpaid tax in accordance with section 72D and section 94 of this Act respectively.

(2) The provisions of the Act that relate to collection and recovery of tax shall apply for the purposes of collection and recovery of unpaid advance tax.

**THE INCOME TAX - EXEMPTION**

[Legal Notice 65 of 2012]

The Cabinet Secretary responsible for Finance directs that the corporate income tax on gains or profits derived by Base Titanium Limited from mining operations will be reduced by 50% from the date of commercial production for a period of 10 years.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 62 of 2013]

The Cabinet Secretary for Finance directs that interest payable or accrued on loans owed to Messrs. France Telecom S.A. and its subsidiaries and the Government of Kenya for the year ending 31st December, 2012 shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 55 of 2014]

***Revoked by Legal Notice 62 of 2014 on 30th May, 2014***





**THE INCOME TAX-DOUBLE TAXATION RELIEF (IRAN) NOTICE**

[Legal Notice 60 of 2014]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Islamic Republic of Iran in the articles of an agreement signed on the 29th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Iran, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of Islamic Republic of Iran desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

**ARTICLE 1****Personal Scope**

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 and on capital imposed on behalf of each Contracting State or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on income from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

- (a) in the case of the Islamic Republic of Iran;
  - (i) the income tax;
  - (ii) the property tax.
- (b) in the case of the Republic of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Chapter 470 of the Laws of Kenya.

4. The Agreement shall apply also to any identical or substantially similar taxes, which 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 within a reasonable period of any changes, which have been made in their respective taxation laws.

**ARTICLE 3****General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires, the meanings of the terms are as follows:

- (a) (i) the term "Islamic Republic of Iran" means the territory under the sovereignty and/or jurisdiction of the Islamic Republic of Iran;
- (ii) the term "Kenya" means all territory of Kenya in state boundaries including internal and territorial waters and also special economics, one and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the

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seabed, its subsoil and the superjacent waters, in accordance with international law.

- (b) the term "person" means:
  - (i) an individual;
  - (ii) a company or any other body of persons;
- (c) the term "company" means anybody corporate or any entity, which is treated as a body corporate for tax purposes;
- (d) 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;
- (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between the places in the other Contracting State;
- (f) the term "competent authority" means:
  - (i) in the case of the Islamic Republic of Iran, the Cabinet Secretary of Economic Affairs and Finance or his authorized representative;
  - (ii) in the case of the Republic Kenya, the Cabinet Secretary for Finance or his authorized representative.

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

## 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 residence, domicile, place of effective management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 of this Article 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 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 of the State with which his personal and economic relations are closer (center of vital interests);
- (b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if his status cannot be determined under the provisions of subparagraph (c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1 of this Article, 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 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) workshop;
  - (f) a warehouse, in relation to a person providing storage facilities for others;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (h) an installation or structure used for the exploration or exploitation of natural resources.
3. The term "permanent establishment" also encompasses:
  - (a) a building site, a construction, assembly or installation, project or supervisory activities in connection therewith, constitutes a "permanent establishment" but only where such site, project or activities continue for a period of more than twelve months.
  - (b) the furnishing of services, including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or connected project for a period or periods aggregating more than 183 days within any 12 month period.
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 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 or display;
  - (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.
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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
  - (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed

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place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (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.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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, provided that 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 that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 shall be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question 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 including oil, gas and quarries. Ships, boats, aircraft or road vehicles and railway shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article, 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 of this Article, shall also apply to the income from immovable property of an enterprise and to the 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 Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, 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 including executive and general administrative expenses, insofar as they are incurred for the purposes of the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State.

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 embodied 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. 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 Traffic*

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that 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, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits derived by an enterprise of a Contracting State from the participation in a pool, a joint business or an international operating agency, but only so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

#### 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, 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 Contracting 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

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enterprises, then that other Contracting 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.

3. A Contracting State shall not charge the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the limits provided in its national laws.

#### 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 Contracting 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 resident of the other Contracting State and the beneficial owner of the dividends the tax so charged shall not exceed 5 percent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" in this Article means income from shares, "Jouissance" shares or "Jouissance" rights, 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 contracting State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting 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 Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. 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.

4. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and derived by the Government of the other Contracting State or ministries, local authorities or municipalities thereof, other institutions wholly owned by that Government, the Central Bank of the Islamic Republic of Iran and the Central Bank of Kenya shall be exempt from tax in the first-mentioned State.

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 Contracting State independent personal services from a fixed base situated there in, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases 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 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.

## 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 Contracting 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 10 percent 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 cinematographic films, or films or tapes or discs used for radio and television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience or for the use of, or the right to use, industrial, commercial or scientific equipment.

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 Contracting 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 cases, 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 thereof 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 a fixed base in connection

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with which the right or property giving rise the royalties is effectively connected to, 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 to use 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 a 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, with due regard to the other provisions of this Agreement.

#### 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 Contracting 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 Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterway transport or movable property pertaining to the operation of such ship, aircraft or boat, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights, in a company or any other legal entities, the assets of which directly or indirectly consist mainly of immovable property situated in the other Contracting State may be taxed in that other Contracting 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 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 Contracting 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 commencing or ending in the fiscal year/year of income 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, engineers, technicians, experts, lawyers, architects, dentists and accountants.



## ARTICLE 15

**Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19 and 20 of this Agreement, 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 Contracting State in which the employment is exercised.
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 that other Contracting 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/year of income concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration paid by an enterprise of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed only in that 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 a Contracting State in his capacity as a member of the board of directors or in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

## ARTICLE 17

**Artistes 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 sports person 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 sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to the income derived by an entertainer or a sportsperson from the activities performed within the framework of the cultural agreement concluded between the Contracting States.

## ARTICLE 18

**Pensions**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of a Contracting State in consideration of past employment may be taxed only in that Contracting State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other Contracting State or a permanent establishment situated therein.

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3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under public schemes which are parts of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that Contracting State.

**ARTICLE 19****Government Services**

- (1) (a) Salaries, wages and other similar remuneration paid by a Contracting State, a political subdivision or local authority thereof to an individual in respect of services rendered to that State, a political subdivision or local authority shall be taxable only in that Contracting 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 other State and the individual is a resident of that State who:
  - (i) is a national of that other Contracting State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.

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

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

**ARTICLE 20****Teachers, Students And Researchers**

1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting 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 other Contracting State, provided that such payments arise from sources outside that other State.

2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State for the purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempted from tax in that other Contracting State, provided that such payments arise from sources outside that other State.

3. This paragraph shall not apply to remuneration and income from research if such research is undertaken for persons and enterprises with business purposes.

**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 Agreement shall be taxable only in that Contracting 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 independent personal services from a fixed base situated therein, and the right or property in respect of which the income is derived is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

**ARTICLE 22**

**Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other Contracting State.
3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## ARTICLE 23

**Elimination Of Double Taxation**

1. In the case of the Islamic Republic of Iran, double taxation shall be avoided as follows:
  - (a) Where a resident of the Islamic Republic of Iran derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Republic of Kenya, the Islamic Republic of Iran shall allow:
    - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Republic of Kenya;
    - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Republic of Kenya.

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

- (b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of the Islamic Republic of Iran is exempted from tax in that State, the Islamic Republic of Iran may notwithstanding the exemption, in calculating the amount of tax on the remaining income or capital of such resident take into account the exempted income or capital.
2. In the case of the Republic of Kenya, double taxation shall be avoided as follows:
  - (a) where a resident of Kenya derives income or own capital which, in accordance with the provisions of this Agreement, may be taxed in the Islamic Republic of Iran, Kenya shall allow as a credit against the tax on the income or capital of that resident an amount equal to the tax paid in the Islamic Republic of Iran.

Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, as the case may be, to the income which may be taxed in the Islamic Republic of Iran.

- (b) Where in accordance with any provision of the agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted income.

## ARTICLE 24

**Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or maybe

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subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprise 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.

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

These provisions 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 personal status or family responsibilities which it grants to its own residents.

#### ARTICLE 25

##### ***Mutual Agreement Procedure***

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 State.

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.

3. 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. The competent authorities, through consultations, may develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

#### ARTICLE 26

##### ***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation

thereunder is not contrary to the Agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities including courts and administrative bodies 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 Agreement. 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 against 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. (order public)

#### ARTICLE 27

##### ***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.

#### ARTICLE 28

##### ***Entry Into Force***

1. This Agreement shall be ratified in either of the Contracting State in accordance with their laws and regulations and the instruments of ratification shall be exchanged as soon as possible.

2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- (a) In the Islamic Republic of Iran in respect of taxes on income arising, or capital owned, in any fiscal year beginning on or after the first day of Farvardin (in the Republic of Kenya corresponding to March 21) next following the calendar year in which the Agreement enters into force;
- (b) In the Republic of Kenya in respect of taxes on income arising, or capital owned, in any year of income beginning on or after the first day of January (in the Islamic Republic of Iran corresponding to Dec 11) next following the calendar year in which the Agreement enters into force.

#### ARTICLE 29

##### ***Termination***

This Agreement shall remain in force until it is terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect in respect of any portion of the income and capital that exist or are earned at the beginning of or after the calendar year following the year in which the notice has been given.



**THE INCOME TAX ACT-DOUBLE  
TAXATION RELIEF (MAURITIUS) NOTICE**

ARRANGEMENT OF ARTICLES

Article

*SCHEDULE*  
*Personal Scope*  
*Taxes Covered*  
*General Definitions*  
*Resident*  
*Permanent Establishment*  
*Income From Immovable Property*  
*Business Profits*  
*Shipping and Air Transport*  
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*Dividends*  
*Interest*  
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*Capital Gains*  
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*Directors Fees and Remuneration Of*  
*Top-Level Managerial Officials*  
*Entertainers and Sportspersons*  
*Pensions*  
*Government Service*  
*Professors and Teachers*  
*Students And Business Apprentices*  
*Other Income*  
*Elimination of Double Taxation*  
*Non-Discrimination*  
*Mutual Agreement Procedure*  
*Exchange Of Information*  
*Diplomatic Agents and Consular Officers*  
*Assistance In The Collection Of Taxes*  
*Entry Into Force*  
*Termination*

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**THE INCOME TAX-DOUBLE TAXATION RELIEF (MAURITIUS) NOTICE**

[Legal Notice 59 of 2014]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of Mauritius in the articles of an agreement set out in the Schedule and signed on the 7th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Mauritius, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of Mauritius desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

## ARTICLE 1

***Personal Scope***

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 its political subdivisions, 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.
3. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
  - (b) in Kenya, the income tax charged in accordance with the provisions of the Income Tax Act, Cap 470 (hereinafter referred to as "Kenyan tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

## ARTICLE 3

***General Definitions***

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Mauritius" means the Republic of Mauritius and includes:
    - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
    - (ii) the territorial sea of Mauritius; and
    - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the seabed and sub-soil and their natural resources may be exercised;

*Income Tax*

[Subsidiary]

- (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kenya, as the context requires;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
  - (i) in the case of Mauritius, the Minister responsible for finance or his authorised representative; and
  - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorised representative.
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national" means any individual having the nationality or citizenship of a Contracting State and any legal person, partnership (societe) or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
- (j) the term "tax" means Mauritius tax or Kenyan tax, as the context requires.

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 management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 in accordance with the following rules:

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

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

#### 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" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site or construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than 12 months.
- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 6 months within any 12 month period.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and

*Income Tax*

[Subsidiary]

- (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.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to be a permanent establishment in that State if he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods merchandise for the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in Contracting State merely because it carries on business in that State through 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.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premium in the territory of that other State or insures risks situated therein through person other than an agent of an independent status to whom paragraph applies.

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

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 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use 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.

## ARTICLE 7

*Business Profits*

1. Business Profits The profits of an enterprise of a Contracting State shall be taxable only in the 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 (a) that permanent establishment (b) sales in that other State of goods or merchandise of the same or similar as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far 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*****Shipping and Air Transport***

1. Profits of an enterprise from the operation or rental of ships or aircraft international traffic and the rental of containers and related equipment which incidental to the operation of ships or aircraft 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 then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. 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***

Where:

*Income Tax*

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[Subsidiary]

(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 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.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

**ARTICLE 10*****Dividends***

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

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

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term "dividends" as used in this Article means income from shares 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 Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

4. 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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

**ARTICLE 11*****Interest***

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:
  - (a) the Government, a political subdivision or a local authority of the other Contracting State; or
  - (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.
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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 a 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.

**ARTICLE 12*****Royalties***

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner is a resident of the other

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Contracting State, the tax so charged shall not exceed 10 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, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 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 with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 paid, 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 a 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.

## 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 including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

## ARTICLE 14

***Dependent Personal Services***

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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



- (a) the recipient is present in the other State for a period or periods no exceeding in the aggregate 183 days in any 12-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 resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## ARTICLE 15

***Directors Fees and Remuneration Of******Top-Level Managerial Officials***

1. 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.

2. Salaries, wages and other similar remuneration derived by a resident of Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## ARTICLE 16

***Entertainers and Sportspersons***

1. Notwithstanding the provisions of Articles 7 and 14, 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 his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, 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 activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, political subdivision, a local authority or public institution thereof.

## ARTICLE 17

***Pensions***

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other 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 or a political subdivision or a local authority thereof shall be taxable only in that State.

## ARTICLE 18

***Government Service***

- (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, local authority or statutory

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body thereof to an individual in respect of services rendered to that State or subdivision, authority or body 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.
- (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 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, local authority or statutory body thereof.

## ARTICLE 19

***Professors and Teachers***

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

## 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. Subject to the provisions of paragraph 2 of this Article, 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 immoveable 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

## ARTICLE 22

**Elimination of Double Taxation**

Double taxation shall be eliminated as follows:

**1. In the case of Mauritius:**

- (a) (i) Where a resident of Mauritius derives income from Kenya the amount of tax on that income payable in Kenya in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.
- (ii) Where a company which is a resident of Kenya pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Kenyan tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Kenyan tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this subparagraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Kenya.

- (b) For the purposes of allowance as a credit the tax payable in Kenya shall be deemed to include the tax which is otherwise payable in Kenya but has been reduced or waived by Kenya in order to promote its economic development.

**2. In the case of Kenya:**

- (a) where a resident of Kenya derives income which in accordance with the provisions of this Agreement, may be taxed in the Republic of Mauritius, Kenya shall allow as credit against the tax on the income of that resident an amount equal to the tax paid in the Republic of Mauritius. Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, to the income, which may be taxed in the Republic of Mauritius;
- (b) where, in accordance with the provisions of this Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

**ARTICLE 23****Non-Discrimination**

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. 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 that first-mentioned State are or may be subjected.

4. 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

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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.

5. Nothing in this Article shall 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.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### 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 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 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

#### ARTICLE 25

##### ***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 or local authorities, 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 for 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.

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 26

##### ***Diplomatic Agents and Consular Officers***

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.

#### ARTICLE 27

##### ***Assistance In The Collection Of Taxes***

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State

[Subsidiary]

for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## ARTICLE 28

### *Entry Into Force*

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall apply:

- (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
- (b) in Kenya:
  - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force; and
  - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force.

## ARTICLE 29

### *Termination*

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting

State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

**2.** In such event the Agreement shall cease to have effect:

- (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the calendar year in which such notice is given; and
  - (b) in Kenya:
    - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
    - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.
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**THE INCOME TAX-EXEMPTION**

[Legal Notice 86 of 2014, Legal Notice 45 of 2018]

The Cabinet Secretary for the National Treasury directs that interest payable on any bond issued outside Kenya by the National Government shall be exempt from tax.

Legal Notice No. 56 of 2014, is revoked.

[L.N. 45/2018]

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 87 of 2014]

The Cabinet Secretary for the National Treasury directs that management or professional fees payable to non-resident persons in connection with any National Government security issued outside Kenya by the Republic of Kenya under the Public Finance Management Act shall be exempt from tax.

Legal Notice No. 62 of 2014, is revoked.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 121 of 2014]

The Cabinet Secretary for the National Treasury directs that the lump sum retirement benefits paid to the eight employees of the Kenya Marine and Fisheries Research Institute who opted to retire under the Voluntary Early Retirement Scheme between the 1st October, 2010 and the 1st December, 2012, shall be exempt from the provisions of the Act:

Provided that—

- (a) the exemption shall not apply to other pension benefits paid to the employees; and
- (b) the Kenya Marine and Fisheries Research Institute shall, in addition to complying with any conditions that the Commissioner of Income Tax may impose, furnish the Commissioner of Income Tax in respect of every employee that retired with—
  - (i) the name and date of retirement from the Kenya Marine and Fisheries Research Institute;
  - (ii) the amount of pension benefit paid upon retirement; and
  - (iii) a copy of the letter to the employee confirming the retirement.



**THE INCOME TAX-DOUBLE TAXATION RELIEF (RWANDA,  
UGANDA AND THE UNITED REPUBLIC OF TANZANIA) NOTICE**

[Legal Notice 142 of 2014]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania in the articles of an agreement signed on the 30th November, 2010, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

HAVE agreed as follows:

**Article 1*****Personal Scope***

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

**Article 2*****Taxes Covered***

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
  - (a) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap.470);
  - (b) in Tanzania, the tax on income chargeable under the Income Tax Act, Cap. 332;
  - (c) in Uganda, the tax on income chargeable under the Income Tax Act, Cap. 340;
  - (d) in Rwanda, the tax on income chargeable under the Law No. 16/2005 of 18/08/2005 on direct taxes on income and the tax on rent of immovable property as provided under Law No. 17/2005 establishing the source of revenue for districts and towns and its management; and
  - (e) in Burundi, the tax on income chargeable in accordance with the provisions of the income tax acts of 1963.
4. This Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

[Subsidiary]

**Article 3****General Definitions**

1. In this Agreement, unless the context otherwise requires.
  - (a) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (b) the term "competent authority" means:
    - (i) in Kenya, the Cabinet Secretary for the time being responsible for finance or his authorised representative;
    - (ii) in Tanzania, the Minister for the time being responsible for finance or his authorised representative;
    - (iii) in Uganda, the Minister for the time being responsible for finance or his authorised representative;
    - (iv) in Rwanda, the Minister for the time being responsible for finance or his authorised representative; and
    - (v) in Burundi, the Minister for the time being responsible for finance or his authorised representative;
  - (c) for the time being or his authorised for the time being or his authorised the term "international traffic" means any transport by water, railway or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;
  - (d) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
  - (e) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.
2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

**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 effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the Contracting States, then his status shall be determined in accordance with the following rules:
  - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in two or more States, he shall be deemed to be a resident 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 does not have a permanent home available to him in any of the Contracting States, 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 two or more States or none of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of two or more States or of none 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 of this Article a person other than an individual is a resident of two or more 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 Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment likewise encompasses:

- (a) a building site or a construction, installation [other than the installations referred to in 2 (h)] or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12-month period.

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 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 or display;
- (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 for 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; and
- (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,

*Income Tax*

[Subsidiary]

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that state if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

8. 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 any of the other Contracting States, 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, is taxable in the Contracting State in which such property is situated.

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, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 of this Article 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 any of the other Contracting States 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 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States 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:
- (a) 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. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
  - (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far 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 of this Article 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**

#### ***Shipping, Inland Waterways, Railway And Air Transport***

1. Profits of an enterprise from the operation or rental of ships, trains or aircrafts in international traffic and the rental of containers, wagons, coaches, tankers and related equipment which is incidental to the operation of ships, trains or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the contracting state in which the place of effective management of the enterprise is situated.
3. 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 the 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.
4. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

[Subsidiary]

**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 States, and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income 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 of that enterprise and taxed accordingly.

**2.** Where a Contracting State includes in the income of an enterprise of that State and taxes accordingly profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income 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 that income. 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.

**3.** A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

**4.** The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

**5.** The provisions of paragraph 2 of this Article shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

**Article 10*****Dividends***

**1.** Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States 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 to the beneficial owner shall be fixed at 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

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

**3.** The term "dividends" as used in this Article means income from shares 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 the shares by the laws of the Contracting State of which the company making the distribution is a resident.

**4.** The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any

of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated there and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far 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 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 any of the other Contracting States may be taxed in that other Contracting State.

2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall be fixed at 10 percent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article 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 a case, the provisions of Article 7 or Article 15, 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

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[Subsidiary]

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 a 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.

## **Article 12**

### ***Royalties***

1. Royalties arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent 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, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the 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 a case, the provisions of Article 7 or Article 15, 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 sub-division, 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, 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 paid, 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 a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### ***Management or Professional Fees***

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other Contracting State.
2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent of the gross amount of the management or professional fees.
3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in

consideration for any services of a technical, managerial, professional or consultancy nature not covered under any other Article of this Agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 shall apply.

5. Management or professional fees 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 management or professional fees, 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 obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees 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 management or professional fees paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **Article 14**

##### ***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 any of the Contracting States may be taxed in that other Contracting 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 permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

#### **Article 15**

##### ***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 unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in

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any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

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

**Article 16*****Dependent Personal Services***

1. Subject to the provisions of Articles 17, 19, 20 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 any of the other Contracting States. If the employment is so exercised, such remuneration as is derived there from may be taxed in the State in which the employment is exercised.

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 any of the other Contracting States 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 the calendar 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

**Article 17*****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 any of the other Contracting States may be taxed in the State in which the company is resident.

**Article 18*****Artistes And Sportspersons***

1. Notwithstanding the provisions of Articles 7, 15 and 16, 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 his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.



4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

#### **Article 19**

##### ***Pensions, Annuities and Social Security Payments***

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other Contracting States if the payment is made by a resident of any of the other Contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

#### **Article 20**

##### ***Remuneration And Pension In Respect Of Government Service***

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political subdivision, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 11 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

#### **Article 21**

##### ***Professors and Teachers***

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

**Article 22*****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 or who is, or immediately before being so present was, a resident of any of the other Contracting States shall be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

**Article 23*****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 in respect of which he is subject to tax in that State, shall be taxable only in that State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in any of the other Contracting States 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 paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

**Article 24*****Elimination of Double Taxation***

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this Agreement may be taxed in the other Contracting States, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.
2. Where in accordance with any provision of this Agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

**Article 25*****Non-Discrimination***

1. The nationals of a Contracting State shall not be subjected in any of the other Contracting States to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other States in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the same activities.
3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, 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 that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the other Contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

#### **Article 26**

##### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or more of the Contracting States result or will result for him in taxation not in accordance with 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 two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

#### **Article 27**

##### **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 Agreement or of the domestic law of the Contracting States concerning taxes covered by this Agreement in so far as the taxation there under is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or 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 this Agreement. 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;

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- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any of the other Contracting States;
- (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.

**Article 28*****Assistance in the Collection of Taxes***

1. The Contracting States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Agreement shall apply and of any administrative penalties, interests and costs pertaining to the said taxes.

2. At the request of the applicant Contracting State, the requested Contracting State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State shall not be obliged to take any executory measures, which are not provided for in the laws of the applicant State.

3. When a tax claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That tax claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the tax claim were a tax claim of that other State.

4. When a tax claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that tax claim in accordance with the provisions of its Income Tax law as if the tax claim were a tax claim of that other State even if, at the time when such measures are applied, the tax claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Where, at any time after a request has been made by a Contracting State under paragraphs 3 and 4 and before the other Contracting State has collected and remitted the relevant tax claim to the first-mentioned State, the relevant tax claim shall cease to be—

- (a) in the case of a request under paragraph 3, a tax claim of the first-mentioned State that is enforceable under the law of that State and is owed by a person who, at the time, cannot, under the law of that State, prevent its collection; or
- (b) in the case of a request under paragraph 4, a tax claim of the first-mentioned State in respect of which that State may, under its law, take measures of conservancy with a view to ensuring its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

6. The requested State shall not be obliged to accede to the request:

- (a) if the applicant State has not notified the requested State that it has pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty ;
- (b) if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.

7. The Contracting State in which tax is recovered in accordance with the provisions of this Article shall forthwith remit to the Contracting State on behalf of which the tax was collected the amount so recovered.

8. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery, which have been found unjustified in respect of the reality of the tax claim concerned.

9. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

10. In this Article the term "tax claim" means an amount owed in respect of taxes covered by this Agreement together with interest, administrative penalties and costs of collection or conservancy related to such amount.

#### **Article 29**

##### ***Diplomatic Agents and Consular Officers***

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

#### **Article 30**

##### ***Entry into Force***

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this Agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.

#### **Article 31**

##### ***Termination***

1. This Agreement shall remain in force indefinitely but any of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.



**THE INCOME TAX-DOUBLE TAXATION  
RELIEF (SOUTH AFRICA) NOTICE**

[Legal Notice 141 of 2014]

The Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Government of the Republic of Kenya and the Government of the Republic of South Africa in the articles of an agreement signed on the 26th November, 2010, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Republic of South Africa desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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 its political subdivision or 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, as well as taxes on the total amounts of wages and salaries paid by enterprises.

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

- (a) in Kenya: the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap.470, of the laws of Kenya; (hereinafter referred to as "Kenyan tax"); and
- (b) in South Africa:
  - (i) the normal tax;
  - (ii) the secondary tax on companies;
  - (iii) the withholding tax on royalties; and
  - (iv) the tax on foreign entertainers and sportspersons;

(hereinafter referred to as "South African 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 respective taxation laws.

**Article 3****General Definitions**

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

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- (a) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law; and
- (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the term "a Contracting State" and "the other Contracting State" mean Kenya or South Africa, as the context requires;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
  - (i) in Kenya, the Cabinet Secretary responsible for Finance or an authorized representative of the Cabinet Secretary; and
  - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorized representative of the Commissioner;
- (f) the term "enterprise" applies to the carrying on of any business;
- (g) 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;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "national", in relation to a Contracting State, means:
  - (i) any individual possessing the nationality of that Contracting State; and
  - (ii) any legal person or association deriving its status as such from the Laws in force in that Contracting State; and
- (j) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. As regards the application of the provisions 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 that person's domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.

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



- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the state with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode:
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national:
- (d) if the individual is a national of both States or of neither of them, the component 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 only of the State in which its place of effective management is situated.

#### **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 or exploitation of natural resources.

3. The term "permanent establishment" likewise encompasses:

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

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

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- (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; and
- (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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such a 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; or
- (b) has no such authority, but habitually maintains in the first-mentioned State stock of goods or merchandise from which such person regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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, provided that 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 that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, such agent will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 or the other.

**Article 6*****Income from Immovable Property***

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as

consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircrafts 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 paragraph 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;

sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

However, the profits derived from the sales or activities described in subparagraphs (b) and (c) shall not be taxable in the other Contracting State if the enterprise demonstrates that such sales or activities have been carried out for reasons other than obtaining a benefit under this Agreement.

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 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. However, no such deductions shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in 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

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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**

##### ***Shipping and Air Transport***

1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in that State.

However, such profits derived from sources within the other Contracting State may also be taxed in that other State provided that the tax so charged in that other State shall be reduced by 50 per cent.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircrafts used in international traffic, if such profits are incidental to the profits to which the provisions of paragraphs 1 and 2 apply.

4. The provisions of paragraphs 1 and 2 shall apply to profits from the use or rental of containers (including trailers, barges and related equipment of the transport of containers) used for the transport in international traffic of goods or merchandise.

5. The provisions of paragraphs 1 and 2 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 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 State shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

#### **Article 10**

##### **Dividends**

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

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

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

#### **Article 11**

##### **Interest**

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

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

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. 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

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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.

4. 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.

5. 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 the person 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.

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 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.

## **ARTICLE 12**

### ***Royalties***

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

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

The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

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, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 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 that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid

is effectively connected, 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 Agreement.

### **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 of an enterprise of a Contracting State from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in that State.
4. 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.
5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

### **Article 14**

#### **Independent Personal Services**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - (a) if the individual has a fixed base regularly available in the other Contracting State for the purpose of performing the individual's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
  - (b) if the individual's 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 the 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, engineers, lawyers, dentists, architects and accountants.

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**ARTICLE 15*****Dependent Personal Services***

1. Subject to the provisions of Article 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
  - (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international naffic 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 that person's 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*****Artistes and Sportspersons***

1. Notwithstanding the provisions of Articles 7, 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person'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 in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercise.

**Article 18*****Pensions and Annuities***

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may bc iaxed in the first-mentioned State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. 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 or a political subdivision or a local authority thereof shall be taxable only in that State.



**Article 19****Government Service**

- (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such 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 Article 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 or a local authority thereof.

**Article 20****Professors, Teachers and Researchers**

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution which is recognized by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research, provided that such remuneration is derived from outside the first-mentioned Contracting State.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

**Article 21****Students**

Payments which a student, business trainee or 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 the student, business trainee or apprentice's education or training receives for the purpose of the student, business trainee or apprentice's maintenance, education or training shall not be taxed in that State. provided that such payments arise 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 paragraphs 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,

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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 the 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. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

### **Article 23**

#### ***Elimination of Double Taxation***

Double taxation shall be eliminated as follows:

(a) in Kenya, where a resident of Kenya receives income which, in accordance with the provisions of this Agreement, may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in South Africa. Such a deduction, however, shall not exceed that part of the Kenyan tax, as computed before the deduction is given, which is attributable to the income derived from South Africa;

(b) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Kenyan tax paid by residents of South Africa in respect of income taxable in Kenya, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

### **Article 24**

#### ***Non-discrimination***

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise or 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. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Kenya, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **Article 25**

##### ***Mutual Agreement Procedure***

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person 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 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 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 endeavour 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 State may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

#### **Article 26**

##### ***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as may be necessary 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 in so far as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. 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.

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The competent authorities shall through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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 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 the 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 institutions, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 27**

##### ***Assistance in the Collection of Taxes***

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting State may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

#### **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.

#### **Article 29**

##### ***Entry into Force***

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Agreement shall apply:

- (a) in Kenya
  - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force;
  - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force;

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- (b) in South Africa:
  - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force; and
  - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

**Article 30****Termination**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to apply:

- (a) in Kenya
  - (i) to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
  - (ii) to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given;
- (b) in South Africa
  - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
  - (ii) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

**THE INCOME TAX-THE DOUBLE TAXATION RELIEF (KUWAIT) NOTICE**

[Legal Notice 149 of 2014]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the State of Kuwait in the articles of an agreement set out in the Schedule and signed on the 12th of November, 2013, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the State of Kuwait desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

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 and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) in the case of Kuwait:

- (i) the corporate income tax;
- (ii) the contribution from the net profits of the Kuwaiti shareholding companies' payable to the Kuwait Foundation for Advancement of Science (KFAS);
- (iii) the Zakat;
- (iv) the tax subjected according to the supporting of national employee law: (hereinafter referred to as "Kuwaiti tax");

(b) in Kenya the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap.470; (hereinafter referred to as "Kenyan Tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this 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:

*Income Tax*

[Subsidiary]

- (a) the term "person" includes an individual, a company, and any other body of persons which is treated as an entity for tax purposes.
- (b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (c) 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;
- (d) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (e) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction.
- (f) The term "Kenya" means land territory, internal water and territorial sea of the Republic of Kenya and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Kenya exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas;
- (g) the term "national", means:
  - (i) any individual possessing the nationality or citizenship of that Contracting State; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (h) the term "tax" means Kuwaiti tax or Kenyan tax, as the context requires;
- (i) the term "competent authority" means:
  - (i) in the case of Kuwait the Cabinet Secretary of Finance or an authorized representative of the Cabinet Secretary of Finance;
  - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorized representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State in relation to the taxes to which this Agreement applies. Provided that any meaning applicable under the tax laws of that Contracting State shall prevail 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:
  - (a) In the case of Kuwait: an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in Kuwait;
  - (b) In the case of Kenya: any person who, under the laws of Kenya, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.
2. For the purposes of paragraph 1, a resident of a Contracting State shall include all of the following:



- (a) the Government of that Contracting State and any political subdivision or local authority thereof;
- (b) any governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity;
- (c) any entity established in that State, all the capital of which has been provided by that State or any political subdivision or local authority thereof or any governmental institution as defined in subparagraph b), together with other states.

3. 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 a 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 his status cannot be determined under the provision of subparagraph a) to c), the competent authorities of the two Contracting States agree.

4. Where by reason of the provisions of paragraphs 1 and 2 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.

#### **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 warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, oil or gas well, a quarry or any other place relating to the exploration, exploitation or extraction of natural resources.

3. A building site, a construction, assembly, erection or installation project or a supervisory activities in connection therewith carried out in a Contracting State, constitutes a permanent establishment only if such site, project or activities continue for a period of more than 9 months.

4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for a period or periods aggregating more than 6 months within any twelve-month period.

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**5.** An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other State if technical, mechanical or scientific equipment or machinery is used for more than 9 months within any twelve-month period, or installed, in that other State by, for or under contract with the enterprise.

**6.** 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.

**7.** Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 8 applies-is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if:

- (a) he has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of such enterprise. unless the activities of such person are limited to those mentioned in paragraph 6 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;
- (b) he has no such authority, but habitually maintains in the first mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which he regularly delivers goods or merchandise on behalf of such enterprise;

**8.** Notwithstanding the preceding provision of this article, an insurance enterprise of a Contracting State, shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other state or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

**9.** An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.

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

**Article 6*****Income From Immovable Property***

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

**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:
  - (a) that permanent establishment;
  - (b) sales in that other state of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
  - (c) other business activities carried on in that other state of the same or similar kind as those effected through 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, taking into consideration any applicable taxation law or regulations of that state.
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.

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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**

##### ***Shipping and Air Transport***

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include all of the following:

- (a) Profits from the rental on a bareboat basis of ships or aircraft;
- (b) Profits from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits derived 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 Contracting 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 Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 5% (five per cent) of the gross amount of the dividends.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the dividends is:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

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

4. The provisions of paragraph 1 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far 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 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

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of such interest may be taxable in that other Contracting State.

2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 1% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the interest is:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

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, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other

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Contracting State in which the interest arises through a permanent establishment, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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.

**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 Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed IOVo of the gross amount of such 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, tapes or discs for radio or television broadcasting any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

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

5. 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 Agreement.

**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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships, aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

#### **Article 14**

##### ***Income from Employment***

1. Subject to the provisions of Articles 15, 17 and 18, 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 there from 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. Ground staff appointed from head office of national air carrier of a Contracting State to the other Contracting State shall be exempted from taxes levied on their remunerations in that other Contracting State.

#### **Article 15**

##### ***Directors' Fees***

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

#### **Article 16**

##### ***Artistes and sportspersons***

1. Notwithstanding the provisions of Articles 7 and 14, 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 his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

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3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other State is substantially supported from the public funds of the first-mentioned State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

#### **Article 17**

##### ***Pensions***

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

#### **Article 18**

##### ***Government Service***

- (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such 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 14, 15, and 17 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 or a local authority thereof.

#### **Article 19**

##### ***Teachers and Researchers***

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution in that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons



**Article 20*****Students und Trainees***

1. Payments which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State.
2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training derives from temporary services rendered in the first-mentioned State shall not be taxed in that State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

**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 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

**Article 22*****Capital***

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

**Article 23*****Elimination of Double Taxation***

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.
2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:
  - (a) in the case of Kuwait:

Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in both Kuwait and Kenya, Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income

[Subsidiary]

tax paid in Kenya and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Kenya;

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

(b) in the case of Kenya:

- (i) where a resident of Kenya receives income derived from sources within Kuwait, which, in accordance with the provisions of this agreement, shall be taxable only in Kuwait and is exempt from Kenyan tax. then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within Kuwait had been not exempted:
- (ii) where a resident of Kenya receives income derived from sources within Kuwait, which, in accordance with the provisions of this agreement may be taxed in both Contracting State, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Kuwait. Such deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from Kuwait.

3. For the purposes of allowance as a credit in a Contracting State, the tax paid in the other Contracting State shall include the tax which is otherwise payable in that other Contracting State, but has been waived or reduced in accordance with the special investment incentive law or measures designed to promote economic development in that other Contracting State.

#### **Article 24**

##### ***Non-Discrimination***

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which individuals possessing the nationality of that other State in the same circumstances 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 favorably levied in that other State than the taxation levied on enterprises of third states, carrying on the same activities, in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other 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. 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 the capital of which is wholly or partly owned or controlled directly or indirectly by one or more residents of any third states are or may be subjected.

4. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such the first mentioned State may be a party.

5. In this Article, the term "taxation" means taxes, which are the subject of this Agreement.

#### Article 25

##### Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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 24 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 endeavour 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an Agreement in the sense of the preceding paragraphs.

#### Article 26

##### Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting 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 this Agreement. 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.
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 (*order public*).

[Subsidiary]

**Article 27****Miscellaneous Rules**

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that State;
- (b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

**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.

**Article 29****Entry into Force**

1. Each of the Contracting States shall notify the other of the completion of its constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and its provisions shall thereupon have effect:

- (a) in Kuwait: for taxable periods beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;
- (b) in Kenya: to income for any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force;

**Article 30****Duration and Termination**

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States:

(a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given;

(b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.

**THE INCOME TAX-THE DOUBLE  
TAXATION RELIEF (SEYCHELLES) NOTICE**

[Legal Notice 9 of 2015]

The Cabinet Secretary for Finance declares that the arrangements made between the Republic of Kenya and the Government of the Republic of Seychelles in the articles of an agreement set out in the Schedule and signed on the 17th March, 2014, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Republic of Seychelles desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

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 its county governments, political subdivisions or 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, as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Agreement shall apply are:

- (a) In Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap. 470) of the Laws of Kenya;

(hereinafter referred to as "Kenya" tax)

- (b) In Seychelles:

- (i) the business tax;  
(ii) the income and non-monetary benefits tax; and  
(iii) the petroleum income tax.

(hereinafter referred to as "Seychelles" tax)

4. This Agreement shall also apply to any identical or substantially similar taxes that are imposed by the Contracting States after the date of signature of this 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 which have been made in their respective taxation laws by means of an Exchange of Notes.

**Article 3****GENERAL DEFINITIONS**

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

*Income Tax*

[Subsidiary]

- (a) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (b) the term "competent authority" means:
  - (i) in Kenya, the Cabinet Secretary responsible for finance or his authorized representative;
  - (ii) in Seychelles, the Cabinet Secretary responsible for finance or his authorized representative;
- (c) the term "international traffic" means any transport by ship or aircraft, operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (d) the term "national", means:
  - (i) any individual possessing the nationality or citizenship of a Contracting State; and
  - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (e) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.
- (f) (i) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploring and exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law,
  - (ii) the term "Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
- (g) the terms "a Contracting State" and "the other Contracting State" means Kenya or Seychelles, as the context requires;
- (h) the term "business" includes the performance of professional services and of other activities of an independent character;
- (i) the term "enterprise" applies to the carrying on of any business;
- (j) 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;
- (k) the term "tax" means Kenya tax or Seychelles tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of this 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 laws 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 management, place of incorporation or registration or any other criterion of a similar nature. 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 a permanent home is available to him. If a permanent home is 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 does not have 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 only of the State of which he is a national;
  - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, 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 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" shall include:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a warehouse, in relation to a person providing storage facilities for others; and
  - (g) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation of natural resources including any installation or structure used for the exploration, extraction or exploitation of natural resources.
3. The term "permanent establishment" likewise encompasses:
  - (a) a building site, a construction, installation or assembly project, or supervisory activities in connection therewith, but only if such site, project or activities last for more than 6 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 where activities of that nature continue for the same or a connected project within the Contracting State for a period or periods exceeding in the aggregate 6 months in any twelve month period commencing or ending in the tax year concerned.

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[Subsidiary]

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

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

8. 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, is taxable in the Contracting State in which such property is situated.

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, 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 and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

#### 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 (a) that permanent establishment; (b) sales in that other state of goods or merchandise of the same or similar kind as those sold through that permanent establishment; (c) other business activities carried on in that other state of the same or similar kind as those effected through 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:

- (a) 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. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far 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.

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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**

##### **SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of ships or aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular:

- (a) profits derived from the rental or lease by the enterprise on a bare boat charter basis of ships or aircraft used in international traffic where such rental or lease is ancillary to the transportation of passengers or cargo;
- (b) profits derived from the use, maintenance, rental or lease of containers by the enterprise where such use, maintenance, rental or lease is ancillary to the transportation of cargo.

3. 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 the 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.

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 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 where the competent authorities of the Contracting State agree, upon consultation, that all or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 shall not apply in the case of fraud, evasion, wilful default or neglect.

**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 and is a resident of the other Contracting State, the tax so charged to the beneficial owner shall not exceed 5 percent of the gross amounts of the dividends.

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

3. The term "dividends" as used in this Article means income from shares 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 the shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far 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 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 Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:
  - (a) the Government, its county governments, political subdivisions or local authorities of the other Contracting State; or
  - (b) any institution, body or board which is wholly owned by the Government, its county governments, political subdivisions or local authorities of the other Contracting State.
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.

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[Subsidiary]

5. The provisions of paragraphs 1, 2 and 3 of this Article 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7, 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, its county governments, political subdivisions or local authorities 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 of interest. In such a 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.

#### **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 law 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 10 percent 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:

- (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark, or other like property or right;
- (b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including computer software, cinematograph films or films or video tapes or discs for use in connection with radio or television broadcasting;
- (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (d) the supply of any technical, industrial, commercial, or scientific knowledge, experience, or skill;
- (e) the use of or right to use any industrial, commercial, or scientific equipment; or
- (f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property or right referred to in paragraphs (a) through (e).

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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, its county governments, political subdivisions or local authorities 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 13**

#### **MANAGEMENT, PROFESSIONAL OR TECHNICAL FEES**

1. Management, professional or technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

2. However, such management, professional or technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State, but where the beneficial owner of such management, professional or technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the management, professional or technical fees.

3. The term "management, professional or technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial, professional or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management, professional or technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management, professional or technical fees arise through a permanent establishment situated therein, and the management, professional or technical fees are effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Management, professional or technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, its county governments, political subdivisions or local authorities or a resident of that State. Where, however, the person paying the management, professional or technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the management, professional or technical fees was incurred, and such management, professional or technical fees are borne by that permanent establishment, then such management, professional or technical fees shall be deemed to arise in the State in which the permanent establishment 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 management, professional or technical fees 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 law of each Contracting State, due regard being had to the other provisions of this Agreement.

[Subsidiary]

**Article 14****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 Contracting 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 including such gains from the alienation of such permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

**ARTICLE 15****INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 16, 18 and 19 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the tax year; 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 which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.
4. The term "tax year" means a year of income.

**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 SPORTSMEN**

1. Notwithstanding the provisions of Articles 7 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 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State or takes place under a cultural agreement or arrangement between the Governments of the Contracting States, their county governments, political subdivisions or local authorities.

#### Article 18

##### PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. However, such pensions and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State, or a permanent establishment situated therein.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

4. Notwithstanding the provisions of paragraphs 1 and 2 pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, its county governments, political subdivisions or local authorities, shall be taxable only in that State.

#### Article 19

##### REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid by, or out of funds created by a Contracting State, its county governments, political subdivisions or local authorities in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in the other Contracting State creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.
- (a) Any pension paid by, or out of funds created by, a Contracting State, its county governments, political subdivisions or local authorities to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, its county governments, political subdivisions or local authorities.

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**Article 20****PROFESSORS, TEACHERS AND RESEARCHERS**

1. Notwithstanding the provisions of Article 15, a professor, teacher or researcher who makes a temporary visit to the other Contracting State for a period not exceeding three years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

**Article 21****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 or 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 purpose of his maintenance, education and training.

**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, 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, and the right or property in respect of which the income paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

**Article 23****ELIMINATION OF DOUBLE TAXATION**

1. Where a resident of a Contracting State derives income which in accordance with the provisions of this Agreement may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.
2. The tax payable in a Contracting State mentioned in paragraph 1 shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of that Contracting State and which are designed to promote economic development.

Provided that the income tax that would have been payable but for the tax incentives granted under the laws of a Contracting State shall not be allowed for deduction in the other Contracting State.



**Article 24****NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. 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 that first-mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 5 of Article 14 apply, interest, royalties, technical fees 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.
5. The term "taxation" means taxes which are the subject of this Agreement.

**Article 25****MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this 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 the preceding paragraphs.
5. If it seems desirable to amend any Article of the Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of diplomatic notes.

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**Article 26****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 law concerning taxes covered by this Agreement in so far as the taxation there under is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1.
2. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or 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 this Agreement. 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.
3. 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 or the 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.
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 27****DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

**Article 28****ENTRY INTO FORCE**

1. The Contracting States shall notify each other, by means of exchange of diplomatic notes, of the completion of the procedures required by their laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the latter of these notifications.
2. The provisions of the Agreement shall apply as follows:
  - (a) In the case of Kenya, to income in respect of any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.

- (b) In the case of Seychelles, with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and with regard to other taxes, in respect of years of assessment beginning on or after the date upon which this Agreement enters into force.

### **Article 29**

#### **TERMINATION**

1. This Agreement shall remain in force indefinitely but any of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.
2. In such event the Agreement shall cease to have effect as follows:
  - (a) In the case of Kenya, to income in respect of any year of income beginning on or after the first day of January next following the date upon which such notice is given.
  - (b) In the case of Seychelles,
    - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which such notice is given; and
    - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the date upon which such notice is given.

#### **PROTOCOL**

At the signing of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the said Agreement.

##### **1. With reference to Article 6**

For the purpose of this Article, both parties have agreed that the term "agriculture" includes fish farming, breeding and processing and raising aquatic species including specifically prawns, crayfish, oysters and shell fish.

##### **2. With reference to paragraph 3 of Article 13**

For the purpose of this Article, both parties have agreed that the term "management, professional or technical fees" shall also include payments in consideration for any agency or contractual services.

##### **3. With reference to Article 26**

For the purpose of this Article, both parties have agreed to the wording for a "Mode of Application" that prescribes the process to be followed for the exchange of information between each Contracting States.

The Mode of Application for the exchange of information is reproduced hereunder.

#### **MODE OF APPLICATION FOR THE EXCHANGE OF INFORMATION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES REGARDING ARTICLE 26 OF THE AGREEMENT**

The Government of the Republic of Kenya and the Government of the Republic of Seychelles on signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have added the following provisions with respect to the application of Article 26 of the Agreement.

1. It is agreed that the competent authority of the Contracting State from which information is sought (hereinafter referred to as the "Requested State") shall provide on request of the

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competent authority of the Contracting State requesting the information (hereinafter referred to as the "Requesting State") for purposes referred to in Article 26 of the Agreement.

2. The competent authority of the Requesting State shall provide in support of its written request to the competent authority of the Requested State, relevant evidence and include the following information when presenting a request for information under the Agreement, to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation and, if banking records are sought by the Requesting State, the identity of the specific bank from which information is sought; and in every case a statement of all supporting evidence and other circumstantial proof which the request is based upon;
- (b) the precise period on which information is requested;
- (c) the indications on the information sought, notably its nature and the form in which the Requesting State wishes to receive information from the Requested State;
- (d) the tax purpose for which the information is requested;
- (e) a statement of whether or not the person under examination or investigation has committed or is suspected of having committed an offence under the laws of the Requesting State; and, if so, specify what offence or suspected offence, with reference to the applicable statute or other law of the Requesting State;
- (f) reasons which allow the Requesting State to conclude that the information requested is held in the Requested State or is in the possession or under the control of a person within the jurisdiction of the Requested State;
- (g) the name and, to the extent known, address of any person which the Requesting State believes to be in possession of the requested information;
- (h) a written declaration that the request is in conformity with the law, regulations and the recognised administrative practices of the Requesting State, that if the requested information was within the jurisdiction of the Requesting State, then the competent authority of the Requesting State would be able to obtain the information under the laws of the Requesting State or in the normal course of administrative practices and that it is in conformity with this Agreement;
- (i) a statement that the Requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

3. The competent authority of the Requested State may decline to provide the requested information if the request is not made in conformity with the Agreement or in accordance with this Mode of Application for the Exchange of Information.

4. The competent authorities have mutually agreed that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the Requested State. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers.

The competent authorities have also mutually agreed that each of them shall reimburse the other for all direct/extraordinary costs incurred in providing information pursuant to this Agreement.

If a direct/extraordinary cost pertaining to a specific request is expected to exceed five hundred United States dollars, the Requested State will contact the competent authority of the Requesting State to determine whether the Requesting State wishes to pursue the request and to bear the cost.

Examples of direct/extraordinary costs include, but are not limited to, the following:

- (i) legal fees for non Government counsel appointed or retained with approval of the competent authority of the Requesting State, for litigations in the courts

or pre-litigations processes of Requested State related to a specific request for information;

- (ii) reasonable costs for stenographic reports of interviews, depositions or testimony;
- (iii) reasonable costs of locating, reproducing and transporting documents or records to the competent authority of the Requesting State;
- (iv) fees and expenses, determined in accordance with amounts allowed under applicable law or common practices, of a person who voluntarily appears in the Requested State for interview, deposition or testimony relating to a particular information request; and
- (v) reasonable remuneration for persons, if any, hired by the Government of the Requested State, specifically and exclusively to administer requests received under the Agreement.

**5.** The competent authorities may jointly decide, in writing, to amend this Mode of Application for the Exchange of Information at any time, including in the case of introducing a form of request.

Any amendment will take effect from the date of the jointly signed letter confirming the amendment.

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**THE INCOME TAX-THE DOUBLE TAXATION RELIEF (QATAR) NOTICE**

[Legal Notice 59 of 2015]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the State of Qatar in the articles of an agreement set out in the Schedule and signed on the 23rd of April, 2014, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the State of Qatar desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

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 or 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, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in the case of Qatar, taxes on income or profits (hereinafter referred to as "Qatari tax"); and
  - (b) in the case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act (Cap 470) (hereinafter referred to as "Kenyan 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 respective tax laws.

**Article 3****GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "Qatar" means the State of Qatar, and when used in a geographical sense, it means Qatar's lands, internal waters, territorial sea including its bed and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which the State of Qatar exercises sovereign rights and jurisdiction in accordance with the provisions of international law and Qatar's national laws and regulations;
  - (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also exclusive economic zone and

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continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;

- (c) the term "a Contracting State" and "the other Contracting State" means Qatar or Kenya as the context requires;
- (d) the term "person" includes an individual, a partnership, 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 or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means—
  - (i) in the case of Qatar, the Cabinet Secretary for Finance, or his authorized representative, and
  - (ii) in the case of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative:
- (i) the term "national", in relation to a Contracting State, means—
  - (i) any individual possessing the citizenship or nationality of that Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

2. When implementing the provisions of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning 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:
  - (a) in the case of Qatar, any individual who has a permanent home, his centre of vital interest, or habitual abode in Qatar, and a company incorporated or having its place of effective management in Qatar. The term also includes the State of Qatar and any political subdivision, local authority or statutory body thereof;
  - (b) in the case of Kenya, any person who, under the laws of Kenya, is liable to tax therein by reason of his domicile, place of incorporation, residence, place of management or any other criterion of a similar nature, and also includes Kenya and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Kenya in respect only of income from sources in Kenya.
2. Where by reason of the provisions of paragraph 1 of this Article 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available



to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State in 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 Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if the residence status of an individual cannot be determined in accordance with the provisions of subparagraphs (a), (b) and (c) above, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article 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.

### **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:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) premises used as sales outlet;
- (g) a farm or plantation; and
- (h) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation, of natural resources.

3. The term "permanent establishment" also encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period or periods aggregating more than six months within any twelve month period; and
- (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 the activities of that nature continue (for the same or a connected project) within a Contracting State for period or periods aggregating more than six months within any twelve month period.

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

*Income Tax*

[Subsidiary]

- (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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 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. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums on the territory of that other Contracting State or insures risks situated therein through a person, other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

**Article 6****INCOME FROM IMMOVABLE PROPERTY**

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

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

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

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 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 of this Article, 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. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

4. In so far 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**

##### **SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of ships or aircrafts 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, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall apply to profits from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise.

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4. The provisions of paragraphs 1 and 2 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 may 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 taxable in that other State.

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

- (a) five (5) per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10 percent of the capital of the company paying the dividends;
- (b) ten (10) per cent of the gross amount of the dividends in all other cases.

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

3. Notwithstanding provisions of paragraphs 1 and 2 of this Article, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the dividend is the other Contracting State, its political subdivisions, local authorities, statutory bodies, Central Bank or any entity wholly owned directly or indirectly by that other State, including, in the case of Qatar, Qatar Investment Authority and Qatar Holding.

4. 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 Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 of this Article 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 the 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 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 taxable only in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding provisions of paragraphs 1 and 2 of this Article, interest paid by a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the interest is the other Contracting State, its political subdivisions, local authorities, statutory bodies, Central Bank or any entity wholly owned directly or indirectly by that other State, including, in the case of Qatar, Qatar Investment Authority and Qatar Holding.

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 purposes of this Article.

5. The provisions of paragraphs 1 and 2 of this Article 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 the 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 that person 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 of the interest 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

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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.

#### **Article 12**

##### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 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, tapes or discs for radio or 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 or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article 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 the other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **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 a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 in this Article, 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 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 Contracting State; or
  - (b) of 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 taxable year or year of income 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 independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### Article 15

##### DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 (one hundred eighty three) days in any twelve-month period commencing or ending in the taxable year or year of income 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 from an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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**Article 16****DIRECTORS' FEES**

Directors' fees and 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****ARTISTES 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 his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sports person are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempted from tax in that other State if the visit to that other State is supported wholly or substantially by funds of either Contracting State, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

**Article 18****PENSIONS AND ANNUITIES**

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

2. However, such pensions, annuities and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State or a permanent establishment situated therein.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

**Article 19****GOVERNMENT SERVICE**

- (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 other State and the individual is a resident of that other State who:
  - (i) is a national of that other State; or



- (ii) did not become a resident of that other State solely for the purpose of rendering the services.
- (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16, 11, and 18 of this Agreement 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**

##### **TEACHERS AND RESEARCHERS**

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institutions in that first-mentioned Contracting State or under an official program of cultural exchange, is present in that Contracting State for a period not exceeding three consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institutions shall be exempt from tax in that Contracting State on his remuneration for such activities.
2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.
3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the calendar year in which he visits the other Contracting State or in the immediately preceding calendar year.

#### **Article 21**

##### **STUDENTS, BUSINESS APPRENTICES AND TRAINEES**

1. A student, trainee or a business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants and scholarships be exempt from tax in that other State on:
  - (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
  - (b) remuneration which he derives from an employment, which he exercises during his full time education or training in the other Contracting State.
2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purpose of his education or training in that other 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 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State, if the recipient of such income carries on business in the Contracting State through a permanent establishment situated therein, or performs in the

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other State independent personal services from a fixed base situated therein, and the right or properly in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

### **Article 23**

#### **ELIMINATION OF DOUBLE TAXATION**

Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, is taxable in other Contracting State, then the first-mentioned Contracting State shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting State provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from the other Contracting State.

### **Article 24**

#### **NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements 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, relief 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 requirements 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 non taxation of Qatari nationals under Qatari tax law shall not be regarded as a discrimination under the provision of this Article.
6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

### **Article 25**

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with 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 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual

agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

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 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

#### **Article 26**

#### **EXCHANGE OF INFORMATION**

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

2. Any information received under paragraph (1) of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph (1) of this Article. 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.

3. In no case shall the provisions of paragraphs (1) and (2) of this Article 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.

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) of this Article 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) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank or other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

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**ARTICLE 27****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.

**Article 28****LIMITATION OF BENEFITS**

A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

**Article 29****ENTRY INTO FORCE**

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force; and
- (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force.

**Article 30****TERMINATION**

1. This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year following the expiration of a period of five years from the date of its entry into force.

2. This Agreement shall cease to have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the notice is given; and
- (b) with regard to other taxes, in respect of taxable year or year of income beginning on or after the first day of January of the calendar year immediately following the year in which the notice is given.

**THE INCOME TAX-EXEMPTION**

[Legal Notice 91 of 2015]

The Cabinet Secretary for the National Treasury directs that the interests to be paid on loan from foreign sources for investing in the energy or water sectors, or in roads, ports, railways or aerodromes shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 146 of 2015]

In order to effectively implement the Investment Incentives Agreement entered into between the Government of Kenya and the Government of the United States of America on the 3rd December, 1998, the Cabinet Secretary for the National Treasury directs that the income accrued or derived from Kenya by the Overseas Private Investment Corporation, which is an agency of the Government of the United States of America, shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 165 of 2015]

In order to attract more investments in the energy sector for the purpose of lowering the cost of energy, as may be provided for under any Power Purchase Agreement, the Cabinet Secretary for the National Treasury directs that the payment that shall be made to a non-resident for services rendered under a Power Purchase Agreement shall be exempt from tax.

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**THE INCOME TAX - EXEMPTION**

[Legal Notice 60 of 2016]

The Cabinet Secretary for the National Treasury, on the recommendation of the Cabinet Secretary for Land, Housing and Urban Development, directs that the initial nominal share capital of a company registered or to be registered with limited liability shall be exempt from the ad valorem stamp duty charged under section 39 of the Act.

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**THE INCOME TAX (RESIDENTIAL  
RENTAL INCOME TAX) REGULATIONS**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation
  2. Interpretation
  3. Application
  4. Election to be excluded from residential rental income tax
  5. Residential rental income Tax as a final tax
  6. Records
  7. Submission of returns and payment of tax
  8. Penalties
  9. Inspection of records
  10. Deductions
  11. Disputes
  12. Transitional provisions
-



**THE INCOME TAX (RESIDENTIAL  
RENTAL INCOME TAX) REGULATIONS**

[Legal Notice 106 of 2016]

**1. Citation**

These Regulations may be cited as the Income Tax (Residential Rental Income Tax Regulations).

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"gross rent" means payments received from a right granted to another person for use or occupation of immovable property which includes rent, premium or similar consideration received for the use or occupation of property;

"return of income" means a return of income furnished by a person chargeable to tax under these Rules;

"tax period" means a calendar month;

"property" means building occupied as a residential house;

"residential rental income tax" means tax payable under section 6A of the Act.

"year of income" has the meaning assigned to it under the Act.

**3. Application**

(1) These Regulations shall also apply where the rental property is owned by a partnership.

(2) These Rules shall not apply to a person whose income is exempt from tax under the First Schedule to the Act.

**4. Election to be excluded from residential rental income tax**

(1) A person who opts not to be subject to the residential rental income tax under section 6A of the Act shall notify the Commissioner, at least three months before the end of the year of income.

(2) The Commissioner shall within sixty days from the date of receipt of such notice acknowledge receipt of the notice, in writing.

(3) Where the Commissioner fails to acknowledge receipt of the notice within the time specified in regulation 4(2), the Commissioner shall be deemed to have received the notice.

(4) The option not to be subject to residential rental income shall take effect in the subsequent year of income.

(5) Where a person is subject to residential rental income tax and during a year of income the rental income exceeds ten million shillings or that person has reason to believe that the rental income is likely to exceed ten million shillings, the person shall inform the Commissioner of that fact before the end of that year of income.

(6) Any person who fails to notify the Commissioner of the as required under paragraph (5) shall be guilty of an offence under the Act.

**5. Residential rental income Tax as a final tax**

Any income from rent that is subject to residential rental income tax shall not be liable to any other tax under the Act.

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[Subsidiary]

## **6. Records**

A person subject to residential rental income tax shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedure Act (Cap. 469B).

## **7. Submission of returns and payment of tax**

A person subject to residential rental income tax shall submit a return and pay the tax due to the Commissioner, on or before the 20th day of the month immediately following the month which the rent was received.

## **8. Penalties**

A person who fails to comply with regulation 7 shall be liable to the penalty prescribed in section 83 of the Tax Procedure Act (Cap. 469B).

## **9. Inspection of records**

For purposes of obtaining full information in respect of accounting for residential rental income tax under these Regulations, the Commissioner may by notice require any person to—

- (a) produce books and records relating to the computation the tax; or
- (b) appear at such time and place as may be specified in the notice.

## **10. Deductions**

No expenses or capital deductions allowances shall be deducted while computing the tax.

## **11. Disputes**

Any dispute arising from the administration of these Regulations relating to the assessment of tax shall be dealt with in accordance with the provisions of the Tax Procedure Act (Cap. 469B).

## **12. Transitional provisions**

(1) These Regulations shall not affect-

- (a) the assessment and collection of rent income tax under section 15(7)(b) of the Act that was due before the 31st December, 2015;
- (b) penalty, audit or investigation that commenced before coming into force of these Regulations;

(2) Any losses brought forward under section 15(7)(b) of the Act shall be deemed to have been extinguished as at 31st December, 2015.

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**THE INCOME TAX (SET-OFF TAX REBATE FOR  
GRADUATE APPRENTICESHIPS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation
  2. Interpretation
  3. Eligible employer
  4. Engagement of an apprentice
  5. Contract of apprenticeship
  6. Issuance of apprenticeship certificate
  7. Maintenance of records
  8. Deduction of tax rebate
  9. Time limit for deduction of tax rebate
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## THE INCOME TAX (SET-OFF TAX REBATE FOR GRADUATE APPRENTICESHIPS) REGULATIONS

[Legal Notice 97 of 2016]

### 1. Citation

These Regulations may be cited as the Income Tax (Set-off Tax Rebate for Graduate Apprenticeships) Regulations and shall come into operation on the 1st April, 2016.

### 2. Interpretation

In these Regulations, unless the context otherwise requires-

"graduate apprentice" means a university graduate who is bound by a written contract of apprenticeship to serve an employer for a period of at least six to twelve months during any year of income;

"contract of apprenticeship" means a written agreement which provides for specific terms of apprenticeship and employment including but not limited to job training;

"Director-General" means the Director-General appointed under section 4 (c) of the Industrial Training Act (Cap. 237);

"employer" has the meaning assigned to it under the Employment Act (Cap. 226):

"tax rebate" means an allowable expenditure that is in addition to the expenditure already allowed under section 15 (1) of the Act;

"university graduate" means a graduate from a university who has at least a bachelor's degree from a university recognized in Kenya;

### 3. Eligible employer

An employer who is subject to tax under section 3 of the Act, other than an employer whose income is wholly exempt, shall, subject to section 39B of the Act, be eligible for a tax rebate.

### 4. Engagement of an apprentice

An employer shall not engage graduate apprentice without the written permission of the Director-General of the National Industrial Training Authority.

### 5. Contract of apprenticeship

(1) An employer shall, before engaging a graduate apprentice, enter into a contract of apprenticeship with the graduate apprentice for a period of apprenticeship of six to twelve months and register the contract with the Director-General of the National Industrial Training Authority.

(2) A contract of apprenticeship shall not be binding unless it has been registered by the Director-General of the National Industrial Training Authority.

### 6. Issuance of apprenticeship certificate

(1) An employer of an apprentice shall, on satisfactory completion of the apprenticeship, submit a certificate of completion in the prescribed form, to the Director-General and issue a copy of the certificate to the apprentice.

(2) The Director-General shall, upon receiving a certificate of completion under paragraph (1), issue a certificate of apprenticeship to the apprentice.

### 7. Maintenance of records

An employer who is eligible for deduction of a tax rebate shall maintain certified copies of the contract of apprenticeship and the apprenticeship certificate for every apprentice certified by the Director General.

[Subsidiary]

**8. Deduction of tax rebate**

Notwithstanding section 15 of the Act, an employer shall, subject to regulation 7, deduct a tax rebate equal to fifty percent of the amount of salaries and wages paid to at least ten apprentices.

**9. Time limit for deduction of tax rebate**

No deduction for a tax rebate for an apprentice shall be allowed after a period of three years from the due date of the employer's last tax return.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 200 of 2016]

The Cabinet Secretary for the National Treasury directs that the severance pay, salary in lieu of notice and the accumulated leave days paid to the fifty eight employees of Kenya Airways Limited that were retrenched and left the service between July 2016 and September, 2016 shall be exempt from tax:

Provided that —

- (a) the tax exemption shall not apply to other pension benefits paid to the employees;
  - (b) the employees who were retrenched shall not be re-employed by the Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of retrenchment;
  - (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and
  - (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of the retrenched employee, the date the employee left the service of Kenya Airways Limited, the amount paid to the employee and a copy of the letter from the employee confirming the retrenchment.
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**THE INCOME TAX- THE DOUBLE TAXATION RELIEF (KOREA) NOTICE**

[Legal Notice 217 of 2016]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of Korea in the articles of the agreement set out in the Schedule and signed on the 7th July, 2014, with a view to affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Republic of Korea, desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

**ARTICLE 1****PERSONS COVERED**

1. 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 or 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 paid by enterprises, as well as taxes on capital appreciation.

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

- (a) in Korea:
  - (i) the income tax;
  - (ii) the corporation tax;
  - (iii) the special tax for rural development; and
  - (iv) the local income tax,

(hereinafter referred to as "Korean tax");

- (b) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470

(hereinafter referred to as "Kenyan tax").

4. This 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:

*Income Tax*

[Subsidiary]

- (a) the term "Korea" means the Republic of Korea, and when used in a geographical sense, the territory of the Republic of Korea including its territorial sea, and any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil, and their natural resources may be exercised;
- (b) the term "Kenya" means all territory of the Republic of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Kenya, as the context requires;
- (d) the term "tax" means Korean tax or Kenyan tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) 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;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "national", in relation to a Contracting State, means:
- (j) any individual possessing the nationality of that contracting State; and
- (k) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (l) the term "competent authority" means:
  - (i) in Korea, the Minister of Strategy and Finance or his authorised representative;
  - (ii) in Kenya, the Cabinet Secretary responsible for matters relating to Finance or his authorised representative.

2. As regards the application of this 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 Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

**ARTICLE 4****RESIDENT**

1. For the purposes of this 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 head or main office, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.



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

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

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

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

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

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

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5. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 7 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. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

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

#### **ARTICLE 6**

##### **INCOME FROM IMMOVABLE PROPERTY**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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 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 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. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

4. 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.

5. 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.

6. 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

### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in 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, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

4. For the purposes of this Article the terms "profits from the operation of ships or aircraft in international traffic" shall include profits from:

- (a) the rental of a ship or aircraft on a bare boat charter basis;
- (b) and the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise,

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

## 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

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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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## **ARTICLE 10**

### **DIVIDENDS**

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

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

- (a) 8 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

## **ARTICLE 11**

### **INTEREST**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 12 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that state if the interest is beneficially owned by or paid in respect of a loan or credit owed to, or made or guaranteed by:

- (a) the Government, a political subdivision, a local authority or the Central Bank of the other Contracting State; or
- (b) any institution which is wholly owned by the Government, a political subdivision, a local authority or the Central Bank of the other Contracting State.

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 cases the provisions of Article 7 or Article 15, 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 fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

## **ARTICLE 12**

### **ROYALTIES**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

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scientific work, including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article 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 cases the provisions of Article 7 or Article 15, 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

#### **ARTICLE 13**

##### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State 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 from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. 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.

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**

##### **DEPENDENT PERSONAL SERVICES**

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;
- (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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

#### **ARTICLE 15**

##### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State 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 Contracting 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 12-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 independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.

#### **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**

##### **ARTISTES AND SPORTSMEN**

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

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

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to the other State is supported wholly or mainly by public funds

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of the first mentioned Contracting State, a political subdivision or local authorities thereof, or takes place under a cultural agreement or arrangement between the governments of the Contracting States.

**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. However, such pensions and other similar remuneration may also be taxed in the other contracting State if they arise in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under public schemes, which are parts of the social security system of a Contracting State or a political sub-division or a local authority thereof, shall be taxable only in that Contracting State.

**ARTICLE 19****GOVERNMENT SERVICE**

1. Salaries, wages and other similar remuneration 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.
2. 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:
  - (a) is a national of that State; or
  - (b) did not become a resident of that State solely for the purpose of rendering the services.
3. Notwithstanding the provisions of paragraphs 1 and 2, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
4. 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.
5. The provisions of Articles 14, 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 or a local authority thereof.
6. The provisions of paragraphs 1, 2, 3, 4 and 5 of this Article shall likewise apply in respect of salaries, wages and other similar remuneration paid by:
  - (a) in the case of Korea:
 

the Bank of Korea, the Korea Export-Import Bank, the Korea Trade Investment Promotion Agency, the Korea Trade Insurance Corporation, the Korea Investment Corporation, the Korea Finance Corporation, the Korea Tourism Organization and such other statutory bodies performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;
  - (b) in the case of Kenya:
 

the Central Bank of Kenya, the Kenya Investment Authority, the Export Promotion Council and the Kenya Tourist Board and such other statutory bodies performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.



**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****PROFESSORS AND TEACHERS**

1. An individual who visits a Contracting State for the purpose teaching or carrying out research at a university, college, school, or other similar educational institution recognised as non-profit organization by the Government of that Contracting State and who is or was immediately before that visit a resident of the other Contracting State shall be exempted from taxation in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding 2 years from the date of his first visit for that purpose.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken not for public interest but primarily for the private benefit of a specific person or persons.

**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 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 Contracting 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 cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

**ARTICLE 23****ELIMINATION OF DOUBLE TAXATION**

1. In Korea, double taxation shall be avoided as follows: the exempted income.

**ARTICLE 24****NON-DISCRIMINATION**

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

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

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[Subsidiary]

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.

#### **ARTICLE 25**

##### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

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

4. 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.

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

#### **ARTICLE 26**

##### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention 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 or local authorities, insofar as the taxation thereunder is not contrary to the Convention. 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.

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 fiduciary capacity or because the information relates to ownership interests in a person.

#### **ARTICLE 27**

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

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

#### **ARTICLE 28**

##### **LIMITATION ON BENEFITS**

1. In respect of Articles 10, 11, 12, 13, and 22 a resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention, if:

- (a) the resident is controlled directly or indirectly by one or more persons which are not residents of that Contracting State; and
- (b) the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, a debt-claim, or a right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.

2. Nothing in this Article shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes.

#### **ARTICLE 29**

##### **ENTRY INTO FORCE**

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

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

- (a) in Korea:

*Income Tax*

[Subsidiary]

- (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Convention enters into force; and
  - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Convention enters into force;
- (b) in Kenya:
- (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which this Convention enters into force; and to other taxes, on income arising for years of income - beginning on or after the first day of January next following the date upon which this Convention enters into force.

**ARTICLE 30****TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year from the fifth year following that in which the Convention entered into force. In such event, the Convention shall cease to have effect:

(a) in Korea:

- (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which the notice is given; and
- (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given;

(b) in Kenya:

- (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
  - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.
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**THE INCOME TAX ACT- THE DOUBLE TAXATION  
RELIEF (UNITED ARAB EMIRATES) NOTICE**

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**THE INCOME TAX- THE DOUBLE TAXATION  
RELIEF (UNITED ARAB EMIRATES) NOTICE**

[Legal Notice 218 of 2016]

The Cabinet Secretary for Finance declares that the arrangements made between the Government of the Republic of Kenya and the Government of the United Arab Emirates in the articles of the agreement set out in the Schedule and signed on the 21st of November, 2011, with a view to affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the United Arab Emirates desiring to enhance the existing economic cooperation by concluding an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

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 and on capital imposed on behalf of a Contracting State or of its political subdivisions or local government or 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, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
  - (a) in the case of the United Arab Emirates; the income tax; and the corporate tax; (hereinafter referred to as "United Arab Emirates tax");
  - (b) in case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, (Cap. 470); (hereinafter referred to as "Kenyan Tax")
4. The Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

**ARTICLE 3****General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the terms "Contracting State" and "other Contracting State" mean United Arab Emirates or Kenya, as the context requires;
  - (b) the term "United Arab Emirates" when used in geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the territorial sea, airspace and submarine areas over which the United Arab Emirates exercises, in conformity with international law and the laws of

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- the United Arab Emirates, sovereign rights in respect of any activity carried on in connection with the exploration for or the exploitation of natural resources;
- (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
  - (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (e) 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;
  - (f) the term "competent authority" means:
    - (i) in the case of Kenya, the Cabinet Secretary for the National Treasury or his authorized representative;
    - (ii) in the case of the United Arab Emirates, the Minister of Finance or his authorized representative;
  - (g) the term "international traffic" means any transport by sea or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;
  - (h) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
  - (i) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

#### **ARTICLE 4**

##### **Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
- (a) in the case of Kenya, any person who under the laws of Kenya, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in Kenya;
  - (b) in the case of the United Arab Emirates:
    - (i) an individual who under the laws of the United Arab Emirates or of any political subdivision or local government thereof is a national;
    - (ii) any person other than an individual that is incorporated or otherwise recognized under the laws of the UAE or any political subdivision;
    - (iii) or local government thereof.
2. For the purposes of paragraph 1, a resident of a Contracting State includes:
- (a) the Government of that Contracting State and any political subdivision or local authority thereof;



- (b) any person other than an individual owned or controlled directly or indirectly by that State or any political subdivision or local government or county government or local authority thereof;
- (c) a registered pension fund;
- (d) charities or religious, educational and cultural organizations.

3. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (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 none of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 of this Article, 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.

#### **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" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, oil or gas well, a quarry or any other place of exploration for or extraction of natural resources and any other related activities including an offshore drilling site.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site or construction, assembly project and supervisory activities in connection therewith or drilling rig used for exploration or exploitation of natural resources constitutes a permanent establishment only if the site, rig, project or activity lasts for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating more than 4 months within any 12-month period.

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

*Income Tax*

[Subsidiary]

- (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; and
- (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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident 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 Hydrocarbons**

Notwithstanding any other provision of this Agreement nothing shall affect the right of either one of the contracting States, or any of their local government or local authorities thereof to apply their domestic laws and regulations related to the taxation of income, and profits derived from hydrocarbons and its associated activities situated in the territory of the respective Contracting State, as the case may be.

**Article 7****Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated, but the tax so charged shall be reduced by 50% if the beneficial owner of the income derived from immovable property is the state itself or local authorities, political subdivision, local governments, county governments or local financial institutions wholly owned by the Government of a Contracting 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, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.
4. The provisions of paragraphs 1 and 3 of this Article 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 8****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 of this Article, 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:
  - (a) 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, in accordance with the taxation laws of that State, whether in the State in which the permanent establishment is situated or elsewhere;
  - (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far 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 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may

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[Subsidiary]

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 9

### Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Provided that where such an enterprise derives profits from such operation in the other Contracting State:

- (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
- (b) the tax chargeable in that other State shall be reduced by an amount equal to fifty per cent thereof.

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

3. 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 10

### 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.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. the provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

## **ARTICLE 11**

### **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 to the beneficial owner shall not exceed 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the dividends is:

- (a) the Government, political subdivision or a local authority of other Contracting State;
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting State.

4. 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 the shares by the laws of the Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 of this Article 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 any of the other States 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 a case, the provisions of Article 8 or Article 15, 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, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far 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 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 12**

### **Interest**

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

[Subsidiary]

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the interest is:

- (a) the Government, political subdivision or a local authority of other Contracting State;
- (b) the Central Bank of the other Contracting State; or
- (c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting State.

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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 11 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article 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 a case, the provisions of Article 8 or Article 15, 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 lastmentioned amount. In such a 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.

## **ARTICLE 13**

### **Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent 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, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret

formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the 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 a case, the provisions of Article 8 or Article 15, 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 sub-division, 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, 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 paid, 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 a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **ARTICLE 14**

##### **Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 7, and situated in the Contracting State shall be taxed in that other Contracting 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 permanent establishment (alone or with the whole enterprise) or of such fixed base, shall be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

#### **ARTICLE 15**

##### **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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for

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[Subsidiary]

periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

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

#### **ARTICLE 16**

##### **Dependent Personal Services**

1. Subject to the provisions of Articles 17, 19, 20 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 there from may be taxed in the State in which the employment is exercised.

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 in the calendar year concerned;
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. An individual who is both a national of a Contracting State and an employee of an enterprise having its place of effective management in that Contracting State, the principal business of which consists of the operation of aircraft in international traffic, and who derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in that Contracting State (place of effective management of the enterprise).

#### **ARTICLE 17**

##### **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 the State in which the company is resident.

#### **ARTICLE 18**

##### **Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles 8, 15 and 16, 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 his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 8, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.



3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or The sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the Contracting State or local authority.

#### **ARTICLE 19**

##### **Pensions, Annuities and Social Security Payments**

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in the other Contracting State if the payment is made by a resident of the other Contracting State, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

4. Income arising in a Contracting State that is derived by a registered pension fund resident in the other Contracting State shall be taxable only in that other Contracting State.

#### **ARTICLE 20**

##### **Remuneration and Pension in Respect of Government Service**

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political sub-division, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in the other Contracting State creating the funds if the services are rendered in that other State and the individual is a resident of that State and: is a national of that State; or did not become a resident solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

#### **ARTICLE 21**

##### **Professors, Teachers and Researchers**

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to the Contracting State for a period not exceeding four years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

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[Subsidiary]

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

#### **ARTICLE 22**

##### **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 or who is, or immediately before being so present was, a resident of the other Contracting State shall besides grants and scholarships be exempt from tax in the (first-mentioned State) on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

#### **ARTICLE 23**

##### **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 in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, 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 paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

#### **ARTICLE 25**

##### **Non-discrimination**

1. The 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 the other States in the same circumstances 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 any of the other States carrying on the same activities.

3. An enterprise 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 that firstmentioned State are or may be subjected.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, nothing in this Article shall affect the right of either Contracting State to grant exemption or reduction of tax in accordance with its own laws, regulations or administrative practice to its own nationals and companies.

5. In this Article the term "taxation" means taxes which are the subject of 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 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 two years or as stipulated by the domestic law of a Contracting State, from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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. 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 this Agreement.

3. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

## 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 relevant or to the administration or enforcement of the domestic laws of the Contracting State concerning taxes covered by this Agreement imposed on behalf of a Contracting State, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this 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 Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. 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.

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.

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[Subsidiary]

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 agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **ARTICLE 28**

##### **Diplomatic Agents and Consular Officers**

Nothing in this agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

#### **ARTICLE 29**

##### **Entry into force**

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force; and
- (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the Agreement enters into force.

#### **ARTICLE 30**

##### **Termination**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. This Agreement shall cease to have effect:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the year in which the notice is given; and
  - (b) with regard to other taxes, in respect of taxable years/years of income beginning on or after the first day of January of the calendar year immediately following the year in which the notice is given
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**THE INCOME TAX-THE DOUBLE TAXATION RELIEF (ITALY) NOTICE**

[Legal Notice 79 of 2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Italian Republic in the articles of a convention set out in the Schedule and signed on the 15th October, 1979 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Italian Republic desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income;

HAVE AGREED upon the following measure:

**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 each Contracting State 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 and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular:
  - (a) In the case of Kenya;
    - (i) the income tax;(hereinafter referred to as Kenyan tax")
  - (b) In the case of Italy;
    - (i) the personal income tax (*l'imposta sul reddito delle persone fisiche*);
    - (ii) the corporate income tax (*l'imposta sul reddito delle persone giuridiche*); even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").
4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

**Article 3*****General Definitions***

1. In this Convention, unless the context otherwise requires:
  - (a) the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;

*Income Tax*

[Subsidiary]

- (b) the term "Italy" means the Republic of Italy including any area beyond the territorial waters of Italy; specifically it includes the sea-bed and the sub-soil contiguous to the territory of the Peninsula and the Italian Islands situated beyond the territorial waters within bounds indicated by the Italian law on the exploration and the exploitation of their natural resources;
- (c) the terms "a Contracting State" and "the other Contracting State" means Kenya or Italy as the context requires;
- (d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "International traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national means":
  - (i) any individual possessing the nationality of a Contracting State,
  - (ii) any legal person partnership or association deriving its status as such from the law in force in a Contracting State,
- (i) The term "competent authority" means:
  - (i) in the case of Kenya, the Cabinet Secretary or his authorised representative,
  - (ii) in the case of Italy, the Ministry of Finance.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State, relating to the taxes which are the subject of the Convention.

**Article 4*****Fiscal Domicile***

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, 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 this case shall be determined in accordance with the following rules:

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. For the purpose of this Article, a permanent home shall be where he dwells with his family. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
- (b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

- (d) If he is a national of both Contracting 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 Contracting 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 in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry, oil well or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than 6 months;
- (h) the provision of supervisory activities for more than 6 months on a building site or construction or assembly project;
- (i) a farm or plantation.

3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person - other than an agent of an independent status to whom paragraph 5 applies - acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if—

- (a) he has, and habitually exercise in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in that State of stock of goods or merchandise from which he regularly fulfils orders on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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 where the activities of such an agent are devoted wholly or almost wholly to that

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enterprise he shall not be considered an agent of an independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is 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 from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purpose of this Convention the term "immovable property" shall be defined in accordance with 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, 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 professional 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. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless it is established that such sales or services are not attributable to the activity of the permanent establishment.

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.

4. 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 permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an independent enterprise of that State engaged in the same or similar activities.

5. Insofar as it has been customary in the 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 3 shall preclude that Contracting State from determining the profits to be taxed by apportionment as may be customary: the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

6. 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.

7. 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.

8. 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**

#### ***Shipping and Air Transport***

1. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of ships in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

However, such profits may be taxed in the other Contracting State, but the tax so charged shall be reduced by fifty percent.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is not such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

### **Article 9**

#### ***Associated Enterprises***

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.

### **Article 10**

#### ***Dividends***

1. Dividends paid by a company which is 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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

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- (a) 15 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
- (b) 20 per cent of the gross amount of the dividends' in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "dividends" as used in this Article means income from shares. "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights including any other item which is deemed to be a dividend or distribution of a company which is subjected to the same taxation treatment as income from shares by the taxation law of that State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the dividends are taxable in that other Contracting State according to its own law.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision of this Convention:

a company which is a resident of Kenya and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenya Law. but such additional rate shall not exceed 7.5 per cent.

**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 be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term -interestas used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation of the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case the interest is taxable in that other Contracting State according to its own laws.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative 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 that interest is borne by that 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.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provision 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 be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 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, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or tapes for use in connection with radio or television.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case, the royalties are taxable in that other Contracting State according to its own laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative 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 those royalties are borne by that 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to other provisions of this Convention.

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**Article 13*****Gains from the Alienation of Property***

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operations of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management is situated.
3. Gains from the alienation of
  - (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
  - (b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax of gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the seven years immediately preceding the alienation of the property.

**Article 14*****Independent Personal Services***

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State unless:
  - (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
  - (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the taxable year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed 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*****Dependent Personal Services***

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable 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 in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 16**

##### **Directors' Fees**

Directors' fees and 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**

##### **Artistes and Athletes**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete 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 athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the other Contracting State, including any political or administrative subdivision, local authority or statutory body thereof.

#### **ARTICLE 18**

##### **Pensions and Annuities**

1. Subject to the provisions of paragraph 2 of Article 19 pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State, but in the case of periodic pension payments, the tax so charged shall not exceed 5 per cent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 5 percent of the gross amount of the payment.

#### **Article 19**

##### **Governmental Functions**

- (a) Remuneration, other than a pension, paid by a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual

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in respect of services rendered to that state or subdivision or local authority thereof shall be taxable only in that State.

- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:
- (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of performing the services.

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pension in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political or an administrative subdivision or a local authority thereof

**ARTICLE 20*****Students***

1. Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 first-mentioned State. provided that such payments are made to him from sources outside that State.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

**Article 21*****Teachers***

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a University, College, School or other Educational Institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

**Article 22*****Income Not Expressly Mentioned***

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

**Article 23*****Elimination of Double Taxation***

1. In the case of Kenya, double taxation shall be avoided as follows—

Subject to the provisions of the law of Kenya regarding the allowance as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable under the laws of Italy and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Italy shall be allowed as a credit against any Kenyan tax payable in respect of that income; provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Italy.

2. In the case of Italy, double taxation shall be avoided as follows:-

If a resident of Italy owns items of income which are taxable in the Republic of Kenya, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide. In such a case. Italy shall deduct from the taxes so calculated the Kenyan tax on income paid in Kenya but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. For the purpose of paragraphs 1 and 2 of this Article where tax on business profits arising in a Contracting State is exempted or reduced for a limited period of time in accordance with the laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount not exceeding 25% of the business profits referred to under Article 7.

#### **ARTICLE 24**

##### ***Non-Discrimination***

1. The 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 are or may be subjected.

In particular, nationals of a Contracting State who are taxable in the other Contracting State shall, if they are residents of that other Contracting State, receive any personal allowances, reliefs and reductions for taxation purposes on account of civil status which that other Contracting State grants to its residents, but no otherwise.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State. that 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 Contracting 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 that first-mentioned State are or may be subjected.

4. In this Article the term "taxation" means taxes which are the subject of this Convention.

**ARTICLE 25*****Mutual Agreement Procedure***

Where a resident of a Contracting State considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The claim must be lodged within two years from the date of the assessment or of the withholding of tax at the source whichever is the later.

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 an appropriate 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 not in accordance with the Convention.

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 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 26*****Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States or preventing fraud or fiscal evasion concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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.

**Article 27*****Diplomatic and Consular Officials***

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of International law or under the provisions of special agreements.

**Article 28*****Refunds***

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.



2. Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of the Article 25 of this Convention.

### **Article 29**

#### ***Entry into Force***

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at NAIROBI as soon as possible.

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

(a) In the case of Kenya:

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1st January 1979; and

(b) in respect of other tax for any taxation year beginning on or after the 1st January, 1979.

(b) In the case of Italy:

in respect of income assessable for any taxable period commencing on or after the 1st January, 1979.

### **Article 30**

#### ***Termination***

1. This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels not earlier than five years after its entry into force by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to have effect:

(a) In the case of Kenya;

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st January in the calendar year next following that in which the notice of termination is given; and

(b) in respect of other tax for any taxation year beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.

(b) In the case of Italy;

in respect of income assessable for any taxable period commencing on or after 1st January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the present Convention.

Done in duplicate at Nairobi the 15th day of October, 1979 in the English and Italian languages, both texts being equally authoritative.

#### ***Additional Protocol***

To the Convention between the Republic of Kenya and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

[Subsidiary]

At the signing of the Convention concluded today between the Republic of Kenya and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention.

It is understood:

(a) that, with reference to article 7, paragraph 2, the expression "it is established" means that the competent authorities of both Contracting States, in application of the exchange of information, agree that the profits are attributable to the permanent establishment;

(b) that, with reference to article 7, paragraph 4, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment;

(c) that, with reference to article 8, paragraph 2, when a Contracting State determines the profits derived from the operation of ships in international traffic as a percentage of the gross amount derived by an enterprise from transporting passengers or freight embarked in that State, this percentage shall not exceed 5 per cent of the said gross amount;

(d) that, with reference to article 22, the tax imposed in a Contracting State on "management or professional fees" paid to a resident of the other Contracting State shall not exceed 20 per cent of the gross amount of such -management or professional fees;

(e) that, with reference to article 25, paragraph 1, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not an alternative to the national contentions proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with this Convention;

(f) that, the provision of paragraph 3 of Article 28 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for taxation purposes provided for in this Convention;

(g) that, notwithstanding the provisions of paragraph 2 of Article 29, the provisions of paragraph 1 of Article 8 shall have effect in respect of income derived during any taxable period commencing on or after the 1st January, 1970.

Done in duplicate at Nairobi the 15th October day of 1979 in the English and Italian languages, both texts being equally authoritative.

#### ***Protocol***

AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT NAIROBI ON 15TH OCTOBER, 1979.

The Government of the Republic of Kenya and the Government of the Italian Republic having regard to the Convention between them for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Nairobi on 15th October, 1979. with this Protocol have agreed on the following further provisions which will form an integral part of the said Convention.

It is understood that:

1. Article 8 shall be deleted and replaced by the following:

(1) Profits from the operation of ships or aircraft 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, then it shall be deemed to be situated in the Contracting State in which the home harbour of the

ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

**2.** Paragraph 2 of Article 10 shall be deleted and replaced by the following:

"(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of the 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 dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation."

**3.** With reference to paragraph 2 of Article 11, the rate of interest shall be deleted and replaced by the following rate: 12.50 per cent.

**4.** The text of Article 12 shall be deleted and replaced by the following:

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

(2) 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 television or broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph 1 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 a case, the royalties are taxable in that other Contracting State according to its own law.

(4) Where, owing to special relationship between the payer and the recipient or between both of them and some other person, the amount of 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention."

**5.** Article 29 shall be deleted and replaced by the following:

**"1.** This Convention shall be ratified and the instrument of ratification shall be exchanged at Rome as soon as possible

**2.** The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

- (a) in respect of taxes withheld at source, to amounts derived on or after 1st January 1997
- (b) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after 1st January 1997"

**6.** Letter g) of the Additional Protocol shall be deleted.

**7.** This Protocol shall be ratified and instruments of ratification shall be exchanged at Rome as soon as possible.

*Income Tax*

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[Subsidiary]

This Protocol shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect in accordance with the provisions of Article 29 of the Convention.

IN WITNESS WHERE OF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Nairobi on 18th February, 1997, in two originals in the Italian and English languages, both texts being equally authoritative.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 115 of 2017]

The Cabinet Secretary for the National Treasury directs that the three months basic salary or golden handshake, salary in lieu of notice, transport allowance and the accumulated leave days paid as package for early retirement to the thirteen employees of the National Hospital Insurance Fund who left the service on 28th February 2017, shall be exempt from tax:

Provided that—

- (a) the tax exemption shall not apply to other pension benefits paid to the employees;
  - (b) the employees who left the service on the early retirement programme shall not be re-employed by the National Hospital Insurance Fund in any capacity or under any terms whatsoever before the expiry of five years from the date of leaving the service;
  - (c) the National Hospital Insurance Fund shall comply with any condition imposed by the Commissioner of Income Tax; and
  - (d) the National Hospital Insurance Fund shall furnish the Commissioner of Income Tax with the name of every employee leaving the service on early retirement, the date the employee left the service of National Hospital Insurance Fund, the amount paid to the employee and a copy of the letter from the employee confirming he or she left the service on early retirement.
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**THE INCOME TAX-AGREEMENT BETWEEN THE GOVERNMENT  
OF THE REPUBLIC OF KENYA AND THE GOVERNMENT  
OF THE REPUBLIC OF INDIA FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO TAXES OF INCOME**

[Legal Notice 147 of 2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of India in the articles of a convention set out in the Schedule and signed on the 11th July, 2016 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Republic of India desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries;

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 or 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, and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are, in particular:
  - (a) in the case of India: the income-tax, including any surcharge thereon (hereinafter referred to as "Indian tax");
  - (b) in the case of Kenya: taxes on income chargeable under the Income Tax Act (Cap. 470) (hereinafter referred to as "Kenyan tax").
4. The Agreement shall apply also to any identical or substantially similar taxes which 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 which have been made in their respective taxation laws.

**ARTICLE 3**

**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "India" means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and

*Income Tax*

[Subsidiary]

- in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also Special Economic Zone and Continental Shelf, and all installations erected thereon as defined in the Continental Shelf Act over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the sea bed, its subsoil and superjacent waters, in accordance with the international law;
  - (c) the terms "Contracting State" and "the other Contracting State" mean India or Kenya as the context requires;
  - (d) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
  - (e) the term "company" means anybody corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "competent authority" means:
    - (i) in the case of India, the Finance Cabinet Secretary, Government of India, or his authorized representative;
    - (ii) in the case of Kenya, the Cabinet Secretary responsible for Finance or his authorized representative;
  - (i) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (j) the term "tax" means Indian or Kenyan tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
  - (k) The term "fiscal year" means:
    - (i) in the case of India: the financial year beginning on the 1st day of April;
    - (ii) in the case of Kenya: the year of income beginning on the 1st day of January.

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 and 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 management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof.



This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

## 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;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) 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, construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six 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 connected project) within a Contracting State for a period or periods aggregating more than 90 days within any 12-month period.

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

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[Subsidiary]

- (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 or display;
- (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 for 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.

**5.** Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of 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;
- (b) as 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 that enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

**6.** Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of independent status to whom paragraph 7 applies.

**7.** An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises he will not be considered an agent of an independent status within the meaning of this paragraph.

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

**ARTICLE 6****INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State,
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall also 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 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 or has carried 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 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
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 Contracting State

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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**

##### **SHIPPING AND AIR TRANSPORT**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

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

4. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to its international operation of ships or aircrafts shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

5. 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.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

## **ARTICLE 10**

### **DIVIDENDS**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

## **ARTICLE 11**

### **INTEREST**

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

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[Subsidiary]

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India and the Export-Import bank of India; and  
(ii) in the case of Kenya, the Central Bank of Kenya; or government financial institution/entity as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.

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 15, as the case may be, shall apply.

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

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

**ARTICLE 12****ROYALTIES**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 percent 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 or films or tapes used for television or radio 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 or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 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 15, 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 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.

### ARTICLE 13

#### FEES FOR MANAGEMENT, PROFESSIONAL AND TECHNICAL SERVICES

1. Fees for management, professional and technical services 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 fees for management, professional and technical services may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner of fees for management, professional and technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for management, professional and technical services.

3. The term "fees for management, professional and technical services" as used in this article means payments of any kind to any person, other than to an employee of the person making the payments and those mentioned in Articles 15 and 16 of this Agreement in consideration for any services of a managerial, technical, professional or consultancy nature including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for management, professional and technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for management, professional and technical services arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the fees for management, professional and technical services are effectively connected with such permanent establishment or a fixed base. In such case the provisions of Article 7 or Article 15 as the case may be shall apply.

5. Fees for management, professional and technical services shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the fees for management, professional and technical services, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the fees for management, professional and technical services was incurred and such fees for management, professional and technical services are borne by such permanent establishment then such fees for management, professional and technical services shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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[Subsidiary]

6. Where, owing to a special relationship between the payer and the beneficial owner of the fees for management, professional and technical services or between both of them and some other person, the amount of the fees for management, professional and technical services paid, having regard to the service 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 that case the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **ARTICLE 14**

##### **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 from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

#### **ARTICLE 15**

##### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar 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 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 period of 12 — months 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, surgeons, dentists and accountants.



**ARTICLE 16****DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

**Article 17****DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member or on behalf of a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

**Article 18****ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 15 and 16, 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 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 in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

**ARTICLE 19****PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 20, 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.

[Subsidiary]

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 or a political subdivision or a local authority thereof shall be taxable only in that State.

**ARTICLE 20****GOVERNMENT SERVICE**

- (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 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 21****PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.

2. This Article shall apply to income from research if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

**ARTICLE 22****STUDENTS**

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants and scholarships be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment, which he exercises during his full time education or training in the other Contracting State.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purpose of his education or training in that other State.

#### **ARTICLE 23**

##### **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 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

#### **ARTICLE 24**

##### **METHODS FOR ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Double taxation shall be eliminated in India as follows:

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

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

- (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. Double taxation shall be eliminated in Kenya as follows:

- (a) Where a resident of Kenya derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Kenya shall allow as a credit against the tax on the income of that resident, an amount equal to the tax paid in India.

Such credit shall not, however, exceed that portion of the tax as computed before the credit is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

[Subsidiary]

**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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the 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.

**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 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 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 endeavour 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 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 27

##### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary 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 or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles I 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 contracting states 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 authorizes such use.

3. 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 (including documents or certified copies of the documents) 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.

[Subsidiary]

**ARTICLE 28****ASSISTANCE IN THE COLLECTION OF TAXES**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
  - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
  - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

#### ARTICLE 29

##### LIMITATION OF BENEFITS

1. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.
2. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.
3. Any person including legal entities not having *bonafide* business activities shall not be entitled to the benefits of this Agreement.

#### ARTICLE 30

##### 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.

#### ARTICLE 31

##### ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect:
  - (a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
  - (b) In Kenya, in respect of:
    - (i) taxes withheld at source on amounts paid or credited to non residents on or after first January, in the calendar year following the year in which all the required formalities are completed;
    - (ii) other taxes on income arising for the year of income commencing on or after the 1st January in the calendar year in which all the required formalities are completed.
4. The Agreement between the Government of the Republic of India and the Government of the Republic of Kenya for the Avoidance of Double Taxation and Prevention of fiscal evasion with respect to taxes on income signed at Nairobi on the 12th day of April, 1985 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3

[Subsidiary]

**ARTICLE 32****TERMINATION**

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

**(a)** in India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;

**(b)** in Kenya:

- (i) with regard to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
  - (ii) with regard to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given.
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**THE INCOME TAX-EXEMPTION**

[Legal Notice 156 of 2017]

The Cabinet Secretary for the National Treasury directs that the severance pay, three months' salary in lieu of notice and payment of accumulated leave days, paid as the package for early retirement to the thirty two employees of Kenya airways Limited who left service between January, 2017 and April, 2017, shall be exempt from tax:

Provided that—

- (a) the tax exemption shall not apply to other pension benefits paid to the employees;
- (b) the employees who left service under the early retirement programme shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of leaving the service;
- (c) Kenya Airways Limited shall comply with any conditions imposed by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of every employee leaving the service on early retirement, the date the employee left the service of Kenya Airways Limited, the amount paid to the employee and a copy of the letter from the employee confirming that the employee left the service on early retirement.



**THE INCOME TAX-THE DOUBLE TAXATION  
RELIEF (NETHERLANDS) NOTICE**

[Legal Notice 169 of 2017]

The Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Kingdom of the Netherlands in the articles of a convention set out in the Schedule and signed on the 22nd July, 2015 with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

**SCHEDULE**

The Government of the Republic of Kenya and the Government of the Kingdom of the Netherlands, desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income;

HAVE AGREED as follows:

**ARTICLE 1****PERSONS COVERED**

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

**ARTICLE 2****TAXES COVERED**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income 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 paid by enterprises, as well as taxes on capital appreciation.

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

(a) in the case of the Netherlands:

- de inkomstenbelasting (income tax);
- de loonbelasting (wages tax);
- de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);

- de dividendbelasting (dividend tax);

(hereinafter referred to as "the Netherlands tax");

(b) in the case of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470;

(hereinafter referred to as "Kenyan tax").

4. The Convention shall apply also to any identical or substantially similar taxes that 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 significant changes that have been made in their taxation laws.

**ARTICLE 3****GENERAL DEFINITIONS**

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or Kenya, as the context requires;
  - (b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
  - (c) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with 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 or aircraft operated by an enterprise of a Contracting State which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "competent authority" means:
    - (i) in the case of the Netherlands the Minister of Finance or his authorised representative;
    - (ii) in the case of Kenya the Cabinet Secretary responsible for Finance or his authorised representative;
  - (i) the term "national" means:
    - (i) any individual possessing the nationality or having the citizenship of that Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
2. As regards the application of the Convention 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 Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

**ARTICLE 4****RESIDENT**

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

2. Where by reason of the provisions of paragraph 1 of this Article 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only 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 Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if the residence status of an individual cannot be determined in accordance with the provisions of subparagraphs (a), (b) and (c) above, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article 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.

#### ARTICLE 5

##### PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

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

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

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

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

*Income Tax*

[Subsidiary]

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

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

**ARTICLE 6****INCOME FROM IMMOVABLE PROPERTY**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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 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 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 of this Article, 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 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 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

## ARTICLE 8

### SHIPPING AND AIR TRANSPORT

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

2. Notwithstanding paragraph 1 of this Article where an enterprise derives profits from the operation of ships in international traffic in the other Contracting State:

- (a) such profits shall be deemed to be an amount not exceeding 5 per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
- (b) the tax chargeable in that other state shall be reduced by an amount equal to fifty per cent thereof.

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

4. The provisions of paragraphs 1 and 2 of this Article 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;

*Income Tax*

[Subsidiary]

- (b) or 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

**ARTICLE 10****DIVIDENDS**

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

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

- (a) 10% of the gross amount of the dividends in case the company paying the dividends is a resident of Kenya; and
- (b) 15 % of the gross amount of the dividends in case the company paying the dividends is a resident of the Netherlands.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

- (a) a company the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends; or
- (b) a pension fund that is recognised and controlled according to the statutory provisions of the other Contracting State.

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, "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.

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 a 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. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article.

## 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, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which recipient is a resident, if such resident is the beneficial owner of such interest and if one of the following conditions is met:

- (a) such recipient is a Contracting State, a local authority or a statutory body thereof, including the Central Bank of that State; or such interest is paid by one of those States, local authorities or statutory bodies;
- (b) such interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State;
- (c) such interest is paid to a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State.

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, 2 and 3 of this Article 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 a fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be shall apply.

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[Subsidiary]

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, or a local authority thereof 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.

8. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the interest or with the creation or assignment of the debt-claim in respect of which the interest is paid or with the establishment acquisition or maintenance of the company that is the beneficial owner of the interest and the conduct of its operations to take advantage of this Article. The competent authority of the Contracting State has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

## **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 law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent 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, any patent, trade mark, design or model, plan, secret formula or process, 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 that State itself, a political sub-division, or a local authority thereof 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, 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.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the royalties or with the creation or assignment of the rights in respect of which the royalties are paid or with the establishment acquisition or maintenance of the company that is the beneficial owner of the royalties and the conduct of its operations, to take advantage of the Article. The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

### **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 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 from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

### **ARTICLE 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by 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 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 Contracting 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.

[Subsidiary]

**ARTICLE 15****INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 16, 18, 19 and 20 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;
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

**ARTICLE 16****DIRECTORS' FEES**

Directors' fees and other remuneration 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****ARTICLE ENTERTAINERS AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such case, the income shall be exempt from tax in the Contracting State in which the activities are exercised.

**ARTICLE 18****PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS**

1. Pensions, annuities and other similar remuneration, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State. The preceding sentence shall also apply to pensions paid and other payments made under the provisions of the social security legislation of a Contracting State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make payments in return for adequate and full consideration in money or money's worth.
3. The provisions of this Article shall also apply in case a lump sum payment is made in lieu of a pension, an annuity or other similar remuneration before the date on which the pension, the annuity or other similar remuneration commences.
4. A pension, an annuity or other similar remuneration shall be deemed to arise in a Contracting State if and insofar as the contributions or payments associated with the pension, annuity or similar remuneration, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State shall not restrict in any way the taxing rights of the first-mentioned State under this Article.

#### ARTICLE 19

##### GOVERNMENT SERVICE

- (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State:
  - (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration 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

##### PROFESSORS AND TEACHERS

1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in that other State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

#### ARTICLE 21

##### STUDENTS AND BUSINESS APPRENTICES

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.

[Subsidiary]

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

**ARTICLE 23**  
**ELIMINATION OF DOUBLE TAXATION**

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed or shall be taxable only in Kenya.
2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 of Article 14, paragraph 1 of Article 15, paragraph 1 of Article 18, paragraph 1(a) of Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Kenya and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.
3. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 8, paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 16, paragraphs 1 and 2 of Article 17 and paragraph 3 of Article 18 of this Convention may be taxed in Kenya to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Kenya on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income for which the Netherlands gives a reduction under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in Kenya on the said items of income to subsequent years.

4. Notwithstanding the provisions of paragraph 2, of this Article the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Kenya on items of income which according to paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraph 2 of Article 13 and paragraph 2 of Article 22 of this Convention may be taxed in Kenya to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In Kenya double taxation shall be eliminated as follows:

- (a) where a resident of Kenya receives income derived from sources within the Netherlands, which, in accordance with the provisions of this Convention, shall be taxable only in the Netherlands and is exempt from Kenyan tax, then Kenya may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from the sources within the Netherlands had not been exempted;
- (b) where a resident of Kenya receives income derived from sources within the Netherlands, which, in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Netherlands. Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from the Netherlands.

#### **ARTICLE 24**

##### **NON-DISCRIMINATION**

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

2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

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

4. 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.

5. 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.

6. Contributions paid by, or on behalf of, an individual who exercises employment or self-employment in a Contracting State to a pension scheme that is recognised for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension scheme that is recognised for tax purposes in that first-mentioned State:

Provided that:

- (a) such individual was contributing to such pension scheme before he became a resident of the first-mentioned State; and

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[Subsidiary]

- (b) the competent authority of the first-mentioned State agrees that the pension scheme generally corresponds to a pension plan recognised for tax purposes by that State.

For the purpose of this paragraph, "pension scheme" includes a pension scheme created under a public social security system.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **ARTICLE 25**

##### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where:

- (a) under paragraph 1 of this Article, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of this Article within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests.

Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

#### **ARTICLE 26**

##### **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 Convention 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 or local authorities, insofar as the taxation thereunder is not contrary to the Convention. 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.
3. The Contracting States may release to the panel of arbitrators, established under the provisions of paragraph 5 of Article 25, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.
4. In no case shall the provisions of the previous paragraphs 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*).
5. 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 4 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.
6. In no case shall the provisions of paragraph 4 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 27

### ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the applicant State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

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[Subsidiary]

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purpose of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (a) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## ARTICLE 28

### 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.

For the purposes of the Convention, an individual who is a member of a diplomatic mission or consular post of a Contracting State in the other Contracting State or in a third State and who is a national of the sending State shall be deemed to be a resident of the

sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

#### **ARTICLE 29**

##### **TERRITORIAL EXTENSION**

This Convention may be extended, either in its entirety or with any necessary modifications, to Aruba, Curaçao, Sint Maarten, or the Caribbean parts of the Kingdom of the Netherlands (Bonaire, Saba and Sint Eustatius), if the part concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and shall be Subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

#### **ARTICLE 30**

##### **ENTRY INTO FORCE**

This Convention shall enter into force on the last day of the month following the month after the latter of the dates on which the respective Contracting Parties have notified each other in writing that the formalities required by its law for the bringing into force of this Agreement have been complied with. Its provisions shall thereupon have effect as follows:

- (a) in the Netherlands for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force;
- (b) in Kenya:

to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Convention enters into force; and to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Convention enters into force.

#### **ARTICLE 31**

##### **TERMINATION**

1. This Convention shall remain in force indefinitely. Either Contracting State may terminate the Convention through diplomatic channels, by giving to the other Contracting State written notice of termination not later than the 30th June of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event the Convention shall cease to have effect:

- (a) in the Netherlands: on income for the taxable year or period beginning on or after the first day of January next following the calendar year in which such notice is given;
- (b) in Kenya:
  - (i) with regard to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
  - (ii) with regard to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given.

[Subsidiary]

**PROTOCOL**

At the signing of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Kingdom of the Netherlands and the Republic of Kenya the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a Contracting State, but the income of that entity is taxed in the other Contracting State as income of the participants in that entity, the competent authorities shall take such measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Convention income is (partly) not subject to tax.

II It is understood that if the competent authorities of the Contracting States, by mutual agreement, have reached a solution within the context of the Convention, for cases in which double taxation or double exemption would occur:

(a) as a result of the application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Convention; or

(b) as a result of differences in qualification (for example of an item of income or of a person), this solution-after publication thereof by both competent authorities - shall also be binding in other similar cases in the application of the provisions of the Convention.

## III Ad Article

1 Notwithstanding Article 1, a company which is treated as a *vrijgestelde beleggingsinstelling* (tax exempt investment institution) according to article 6a Wet op de Venootschapsbelasting 1969 (Dutch Corporate Income Tax Act 1969) or any identical or substantially similar regime introduced after today shall not be entitled to the benefits of Articles 10, 11, 12, 13, 22 and 23 of the Convention and the corresponding articles of the Protocol.

2. The competent authorities of the Contracting States shall by mutual agreement decide to which extent other specific categories of residents of one of the Contracting States shall not be entitled to the benefits of this Convention.

## IV Ad Article 4

A company shall be regarded to be liable to tax:

- (a) in the Netherlands, if the company is a resident of the Netherlands for the purposes of the company tax;
- (b) in Kenya, if the company has its place of management in Kenya, provided that the income derived by that company is treated under the tax laws of that State as income of that company.

## V Ad Article 4

An individual living aboard a ship without any real domicile in either of the Contracting States shall be deemed to be a resident of the Contracting State in which the ship has its home harbour.

## VI Ad Article 7

- (i) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business.

- (ii) Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is carried out by the permanent establishment in the Contracting State in which the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

#### VII Ad Article 7

In relation to paragraph 1 of Article 7, it is agreed that, if an enterprise of a Contracting State sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or carries out business activities of the same or similar kind as those carried out by the permanent establishment, the profits of such sales or activities may be attributed to the permanent establishment if it is demonstrated:

- (a) that these profits are related to the activities of the permanent establishment;
- (b) and that no sound business reasons exist for not conducting the activities through the permanent establishment.

#### VIII Ad Article 7 and 15

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14, as the case may be, apply.

#### IX Ad Article 7

The competent authorities of the Contracting States may by mutual agreement adopt a new method of attribution of profits to permanent establishments as developed by the OECD or the UN.

#### X Ad Articles 7 and 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

#### XI Ad Article 8

It is understood that the provisions of Article 8 shall also apply to taxes on income levied on the basis of the gross receipts in respect of the carriage of passengers and cargo in international traffic.

#### XII Ad Articles 8, 13, and 22

1. For the purposes of Articles 8, 13 and 22 the place of effective management of the aircraft enterprise of Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be situated in the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to the aircraft enterprise of KLM N.V. under the Agreement between the Government of the Kingdom of the Netherlands and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with Protocol); Paris, 16 March 1973, as amended by the Protocol of the 7th of April 2004.

2. The provision of paragraph 1 of this Article shall also apply if the aircraft enterprise of the existing KLM N.V. is continued fully or substantially by another person.

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[Subsidiary]

XIII Ad Article 10

The provisions of paragraph 3 of Article 10 shall apply as long as, under the provisions of the Income Tax Laws of the Contracting State of which the company that beneficially owns the dividends is a resident applies a full tax exemption to dividends which that company receives from a company which is resident of the other Contracting State.

XIV Ad Article 10

The determination of the purpose referred to in paragraph 8 of Article 10 shall be based on all facts and circumstances including:

- (a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;
- (b) both the historical and the current ownership of the company; and
- (c) the business reasons for the company residing in its country of residence including the extent to which the company that beneficially owns the dividends would be entitled to treaty benefits comparable to those afforded by this Convention if it had been a resident of the country of residence of the majority of its shareholders.

The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under paragraph 8 of Article 10.

XV Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

XVI Ad article 12

Notwithstanding paragraph 2 of Article 12 the competent authorities of the Contracting States may decide by mutual agreement on exemption at source of royalties paid as a consideration for the use or the right to use agricultural or environmental technologies.

XVII Ad Articles 10 and 13

1. Notwithstanding the provisions of paragraphs 1, 2 and 7 of Article 10 dividends paid by a company whose capital is divided into shares and which under the laws of the Netherlands is a resident of the Netherlands, to an individual who has a qualified shareholding in that company and who is a resident of Kenya may be taxed in the Netherlands in accordance with its own laws.

2. Notwithstanding the provisions of paragraph 4 of Article 13, the Netherlands may, in accordance with its own laws, including the interpretation of the term "alienation", levy tax on gains derived by an individual who and is a resident of Kenya from the alienation of shares in, "jouissance" rights or debt-claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, "jouissance" shares or debt-claims, provided that individual has a qualified shareholding in that company.

3. The term "qualified shareholding" means a shareholding by an individual - either alone or with his or her spouse - or one of their relations by blood or marriage in the direct line directly or indirectly of at least 5 per cent of the issued capital of a particular class of shares in a company.

XVIII Ad Articles 10 and 13

1. It is understood that income received in connection with the (total or partial) liquidation of that company or a purchase of own shares or a purchase or redemption of own profit

sharing certificates by that company, such income is treated as income from shares and not as capital gains.

2. Notwithstanding paragraphs 1, 2 and 3 of Article 10 and paragraph 4 of Article 13, the Netherlands may apply the following provisions relating to the prevention of tax avoidance:

Article 17, paragraph 3, subparagraph (b) in connection with article 17a, paragraph 1, subparagraph c of the Corporate Income tax act 1969, or any identical or substantially similar provisions replacing these articles.

IXX Ad Article 16

Where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". The terms "bestuurder" and "commissaris" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

XX Ad Article 25

The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any increases, surcharges, interest and costs with respect to this additional tax charge, to the extent that a corresponding deduction of tax is made in the other State as a result of the agreement and no interest is payable in that State with respect to such a reduction of tax.





**THE INCOME TAX-EXEMPTION**

[Legal Notice 221 of 2017]

The Cabinet Secretary for the National Treasury directs that the three months basic salary or golden handshake, salary in lieu of notice, transport allowance and accumulated leave days, paid as the package for early retirement to the twenty-six employees of the National Hospital Insurance Fund, who left the service on 31st February, 2017, shall be exempt from tax.

Provided that—

- (a) the tax exemption shall not apply to other pension benefits paid to the employees;
  - (b) the employees who left service under the early retirement programme shall not be re-employed by National Hospital Insurance Fund in any capacity or under any terms whatsoever before the expiry of five years from the date of leaving the service;
  - (c) the National Hospital Insurance Fund shall comply with any conditions imposed by the Commissioner of Income Tax; and
  - (d) the National Hospital Insurance Fund shall furnish the Commissioner of Income Tax with the name of every employee leaving the service on early retirement, the date the employee left the service of National Hospital Insurance Fund, the amount paid to the employee and a copy of the letter from the employee confirming that the employee left the service on early retirement.
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**UNTITLED**

[Legal Notice 45 of 2018]

[This is a stub. Please see the publication document for the original content.]



**THE INCOME TAX-EXEMPTION**

[Legal Notice 44 of 2018]

The Cabinet Secretary for the National Treasury directs that the gains made on the transfer of any bond issued outside Kenya by the National Government shall be exempt from tax.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 234 of 2018]

The Cabinet Secretary for the National Treasury and Planning directs that the severance pay, salary in lieu of notice, payment of accumulated leave days, transport allowance and golden handshake to three hundred and fifteen employees of the Kerio Valley Development Authority who qualify to leave service under the Voluntary Early Retirement Programme shall be exempt from the provisions of the Act:

Provided that—

- (a) this exemption shall not apply to employees who have attained the age of sixty years or have less than one year before they retire from service;
- (b) this exemption shall not apply to any payment received from the Provident Fund;
- (c) any employee who shall retire under the Voluntary Early Retirement Programme and benefit from this exemption shall not be re-employed by the Kerio Valley Development Authority in any capacity or under any terms whatsoever before the expiry of five years from the date of retrenchment;
- (d) the Kerio Valley Development Authority shall comply with any condition imposed on it by the Commissioner of Income Tax; and
- (e) the Kerio Valley Development Authority shall provide the Commissioner of Income Tax with the name of each employee who retires under the Voluntary Early Retirement Programme, the date that the retired, the total amount paid to the employee and a copy of the letter from the employee confirming the employee's retirement.





**THE INCOME TAX-EXEMPTION**

[Legal Notice 22 of 2019]

The Cabinet Secretary for the National Treasury and Planning directs that the severance pay, three months' salary in lieu of notice and payment of accumulated leave days paid to the nine employees of Kenya Airways Limited who left service between February 2018 and December 2018 under the early retirement programme shall be exempt from the provisions of the Act:

Provided that—

- (a) this exemption shall not apply to any other pension benefits paid to the employees;
  - (b) the employees who left service under the early retirement programme shall not be re-employed by Kenya Airways Limited in any capacity or on any term whatsoever before the expiry of five years from the date of leaving service;
  - (c) Kenya Airways Limited shall comply with any conditions imposed on it by the Commissioner of Income Tax; and
  - (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of every employee leaving service under the early retirement programme, the date the employee left service, the amount paid to the employee and a copy of the letter to the employee confirming that the employee has left service under the early retirement programme.
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**THE INCOME TAX- CRITERIA FOR THE DETERMINATION OF REBATE**

[Legal Notice 132 of 2019]

**SCHEDULE**

1. This rebate program shall not apply to manufacturers involved in the generation, transmission and distribution of electrical energy and shall be subject to the Key Performance Indicators (KPIs) specified in the table below—

*Table 1: Targets and Weights for the KPIs for Manufacturers*

	<i>Increase in Electricity Consumption (D)</i>	<i>Increase in Capital Investment ( C )</i>	<i>Increase in Sales Revenue (R)</i>
Annual Target in Percentage(%) (T)	10%	10%	10%
Weight(W)	0.30	0.30	0.40

2. The rebate entitlement shall be based on an Actual Overall Performance (AOP) in accordance with the formula below—

$$AOP = \frac{W_D * D + W_C * C + W_R * R}{(T_D * W_D) + (T_C * W_C) + (T_R * W_R)}$$

Where; AOP is Actual Overall Performance;

$W_D$  is Weight allocated to the Demand;

$W_C$  is Weight allocated to increase in Capital Investment;

$W_R$  is Weight allocated to increase in Sales Revenue;

D is actual percentage increase in Electricity Consumption;

C is actual percentage increase in Capital Investment;

R is actual percentage increase in Sales Revenue;

$T_D$ ,  $T_C$  and  $T_R$  is the target growth in Demand, Capital Investment and Sales Revenue respectively.

*Note:*

- The manufacturer must have a valid Tax Compliance Certificate.
- The rebate is based on an AOP up-to a maximum of 100% and a minimum of 0%.
- A manufacturer with an AOP of 100% qualifies for a maximum rebate of an extra 30% of the electricity cost incurred for purposes of computation of taxable income.
- In the first year of claim, 20% of the cost of electricity from the grid will be allowed and the remaining 10% by the weighted Key Performance Indicators.
- For subsequent years, the rebate claimed will be determined by the weighted Key Performance Indicator.

3. The Evaluation Mechanism is as set out in the table below—

*Table 2: Evaluation Mechanism Criteria*

<i>KPI</i>	<i>Measure</i>	<i>Evidence</i>	<i>Weight(W)</i>
Increase in electricity consumption by 10% for manufacturers	Total annual electricity consumption (Grid electricity).	Total electricity bills of the manufacturer.	0.30

[Subsidiary]

(based on Small Commercial (SCs) and Commercial Customers (Cis) categories.

Increase in Capital Investment by 10%	Additional capital investment injected by the company.	Books of accounts.	0.30
Increase in Sales Revenue by 10%	Turnover. It was noted that corporate tax claims are done before filing returns. One should provide for this in the books.	VAT returns Books of accounts Customs entry.	0.40

*Note:*

- (a) The Ministry of Energy may request the Kenya Revenue Authority to conduct an audit to evaluate the rebate.
- (b) The manufacturer must submit a baseline report certified by an external auditor to the Ministry of Energy as a self-declaration form.
- (c) The manufacturer shall submit quarterly financial reports to the Kenya Revenue Authority.

**THE INCOME TAX-EXEMPTION**

[Legal Notice 181 of 2019]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the ten employees of Kenya Airways Limited who were retrenched and left service between May 2019 and July 2019 shall be exempt from the provisions of the Act:

Provided that—

- (a) The exemption shall not apply to other pension benefits paid to the employees;
  - (b) The retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;
  - (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and
  - (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter from the employees confirming the retrenchment.
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**AVOIDANCE OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME**

[Legal Notice 114 of 2020]

The Cabinet Secretary for the National Treasury and Planning declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of Mauritius, in the articles of the convention set out in the Schedule hereto and signed on the 10th April, 2019, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect to income tax under the Act.

**SCHEDULE****AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA  
AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE  
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

The Government of the Republic of Kenya and the Government of the Republic of Mauritius desiring to further develop their economic relationship and to enhance their cooperation in tax matters, 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),

Have agreed as follows:

**ARTICLE 1****Personal Scope**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to benefits granted under paragraph 2 of Article 9 and Articles 18, 20, 22, 23, 24 and 26.

**ARTICLE 2****Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, 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.
3. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
  - (b) in Kenya, the income tax charged in accordance with the provisions of the Income Tax Act, Cap 470 (hereinafter referred to as "Kenyan tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

[Subsidiary]

5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

### ARTICLE 3

#### **General Definitions**

1. In this Agreement, unless the context otherwise requires:

- (a) the term "Mauritius" means the Republic of Mauritius and includes:
  - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
  - (ii) the territorial sea of Mauritius; and
  - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the seabed and sub-soil and their natural resources may be exercised;
- (b) the term "Kenya" means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kenya, as the context requires;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
  - (i) in the case of Mauritius, the Cabinet Secretary responsible for finance or his authorised representative; and
  - (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorised representative.
  - (iii) 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;
- (f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term "national" means any individual having the nationality or citizenship of a Contracting State and any legal person, partnership (societe) or association deriving its status as such from the laws in force in a Contracting State;
- (h) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
- (i) the term "tax" means Mauritius tax or Kenyan tax, as the context requires.

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 management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 in accordance with the following rules:

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

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

4. For the purpose of paragraph 3 of this Article, the term "place of effective management" means the place where strategic management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

## 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" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than 183 days;

[Subsidiary]

For the sole purpose of determining whether the period referred to in this paragraph has been exceeded,

- (i) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding 183 days; and
- (ii) where connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

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

- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 90 days within any 12-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, 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, or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

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

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

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

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

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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) 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:
  - (i) in the name of the enterprise, or
  - (ii) for the transfer of ownership of, or for the granting of the right to use property owned by that enterprise or that the enterprise has a right to use or,
  - (iii) for the provision of services by that enterprise,unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4A would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (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 that enterprise;
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

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

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. 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.

9. 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 or enterprise 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.

## ARTICLE 6

[Subsidiary]

**Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.
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, mineral deposits, sources and other natural resources. Ships 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.

**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—
  - (a) that permanent establishment;
  - (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
  - (c) other business activities carried on in that other State of the same or similar kind as those effected through 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.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far 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 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. 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

##### Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in that Contracting State.

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, provided that such profits are derived from operations in that other Contracting State. However, the tax so charged shall not exceed 50 percent of the tax that is otherwise applicable in that other Contracting State.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) profits derived from the use or rental of containers or other related equipment,

if such profits are incidental to the profits to which the provisions of paragraphs 1 and 2 apply.

4. The provisions of paragraphs 1 and 2 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

[Subsidiary]

of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

#### 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 8 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares 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 Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

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

6. Notwithstanding any other provision of this Agreement, where a company which is a resident of a contracting State has a permanent establishment in the other Contracting State, the profits taxable under Article 7 paragraph 1 may be subject to an additional tax in that other State in accordance with its laws but the additional charge shall not exceed 7.5% per cent of the amount of those profits.

#### ARTICLE 11

##### **Interest**

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

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

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or

- (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 a 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.

#### ARTICLE 12

##### **Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 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:

- (a) the use of, or the right to use, any copyright of literary, artistic, scientific work, including cinematograph film, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like property or right,
- (b) the use of, or the right to use or receipt of, or the right to receive visual images or sounds or both, that are transmitted to the public by satellite, or by cable, optic fibre, or similar technology,
- (c) the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

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

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[Subsidiary]

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 with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 paid, 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 a 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.

#### ARTICLE 12A

##### **Technical Fees**

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State in accordance with its laws.

2. However, subject to the provisions of Articles 8, 15 and 16, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and subject to the laws of that Contracting State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the fees.

3. The term "fees for technical services" as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution; or
- (c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other Contracting State and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that Contracting State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligations to pay the fees was incurred, and such fees are borne by the permanent establishment.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that Contracting State and carries on business in the other Contracting State or a third Contracting State through a permanent establishment situated in that other Contracting State or the third Contracting State and such fees are borne by that permanent establishment.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

**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 including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other Contracting State if the alienator, at any time during the 12-month period preceding such alienation, held directly or indirectly at least 50 per cent of the capital of that company.
6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

**ARTICLE 14****Dependent Personal Services**

1. Subject to the provisions of 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-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 which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

**ARTICLE 15**

[Subsidiary]

**Directors Fees and Remuneration of Top-Level Managerial Officials**

1. 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.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

**ARTICLE 16****Entertainers and Sportspersons**

1. Notwithstanding the provisions of Articles 7 and 14, 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 his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, 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 activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, political subdivision, a local authority or public institution thereof.

**ARTICLE 17****Pensions**

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other 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 or a political subdivision or a local authority thereof shall be taxable only in that State.

**ARTICLE 18****Government Service**

- (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body 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.
- (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 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, local authority or statutory body thereof.

**ARTICLE 19****Professors and Teachers**

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

**ARTICLE 20****Students and Business Apprentices**

1. 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.

2. In respect of grants, scholarships and remuneration for employment not covered by paragraph 1, a student or business trainee or apprentice described in paragraph 1, shall in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

**ARTICLE 21****Other Income**

1. Subject to the provisions of paragraph 2 of this Article, 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

**ARTICLE 22****Elimination of Double Taxation**

Double taxation shall be eliminated as follows:

1. In the case of Mauritius:

- (a) (i) Where a resident of Mauritius derives income from Kenya the amount of tax on that income payable in Kenya in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.

[Subsidiary]

- (ii) Where a company which is a resident of Kenya pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Kenyan tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Kenyan tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this subparagraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Kenya.

- (b) For the purposes of allowance as a credit the tax payable in Kenya shall be deemed to include the tax which is otherwise payable in Kenya but has been reduced or waived by Kenya in order to promote its economic development.

**2. In the case of Kenya:**

- (a) where a resident of Kenya derives income which in accordance with the provisions of this Agreement, may be taxed in the Republic of Mauritius, Kenya shall allow as credit against the tax on the income of that resident an amount equal to the tax paid in the Republic of Mauritius. Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, to the income, which may be taxed in the Republic of Mauritius;
- (b) where, in accordance with the provisions of this Agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

**ARTICLE 23**

**Non-Discrimination**

**1.** The 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.

**1A.** Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and the connected requirements to which nationals of the State concerned 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 resident 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.** 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 that first-mentioned State are or may be subjected.

**4.** 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.

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

#### 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 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 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

#### ARTICLE 25

##### **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 or local authorities, 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 for 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;

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[Subsidiary]

- (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 26

##### **Diplomatic Agents and Consular Officers**

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.

#### ARTICLE 27

##### **Assistance in the Collection of Taxes**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first -mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State

by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## ARTICLE 27A

### **Entitlement to Benefits**

1. Subject to paragraph 2, 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.

2. Where a benefit under this Agreement is denied to a person under the provisions paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement. The competent authority of the Contracting State to which a request has been made under this paragraph by a resident of the other Contracting State shall consult with the competent authority of the other Contracting State before rejecting the request.

## ARTICLE 28

[Subsidiary]

**Entry Into Force**

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of this Agreement shall apply:
  - (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
  - (b) in Kenya:
    - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force; and
    - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force.

**ARTICLE 29****Termination**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.
2. In such event the Agreement shall cease to have effect:
  - (a) in Mauritius, on income for any income year beginning on or after the first day of January next following the calendar year in which such notice is given; and
  - (b) in Kenya:
    - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the calendar year in which such notice is given; and
    - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the calendar year in which such notice is given.

Legal Notice No. 108/2020 is hereby revoked.

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 158 of 2020]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the seven employees of Kenya Airways Limited who were retrenched and left service between August 2019 and March 2020 shall be exempt from the provisions of the Act:

Provided that—

(a) the exemption shall not apply to other pension benefits paid to the employees;

(b) the retrenched employees shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;

(c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and

(d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the names of the retrenched employees, the date on which the employees left the service of Kenya Airways Limited, the amount paid to each employee and a copy of the letter from the employees confirming the retrenchment.

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**THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation and commencement
  2. Interpretation
  3. Digital services
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**THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS**

[Legal Notice 207 of 2020]

**1. Citation and commencement**

These Regulations may be cited as the Income Tax (Digital Service Tax) Regulations and shall come into force on the 2nd January, 2021.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"digital marketplace" has the meaning assigned to it in section 3(3)(ba);

"digital marketplace provider" means a person who provides a digital marketplace platform;

"digital service" means any service that is delivered or provided over a digital marketplace;

"digital service provider" means a person who provides digital services through a digital marketplace; and

"platform" means any electronic application that allows digital service providers to be connected to users of the services, directly or indirectly, and includes a website and mobile application.

**3. Digital services**

(1) Digital services for which digital service tax shall apply include—

- (a) downloadable digital content including downloadable mobile applications, e-books and films;
- (b) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (c) sale of, licensing of, or any other form of monetising data collected about Kenyan users which has been generated from the users' activities on a digital marketplace;
- (d) provision of a digital marketplace;
- (e) subscription-based media including news, magazines and journals;
- (f) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- (g) electronic booking or electronic ticketing services including the online sale of tickets;
- (h) provision of search engine and automated held desk services including supply of customised search engine services;
- (i) online distance training through pre-recorded media or e-learning including online courses and training; and
- (j) any other service provided through a digital marketplace.

(2) Digital service tax shall not apply to income taxed under section 9 (2) or section 35 of the Act.

(3) The following services shall not be digital services for the purposes of these Regulations—

- (a) online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by—
  - (i) a financial institution specified under the Fourth Schedule to the Act; or
  - (ii) a financial service provider authorised or approved by the Central Bank of Kenya; and

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[Subsidiary]

- (b) online services provided by Government institutions.

#### **4. Application of digital service tax**

(1) Digital service tax shall apply to the income of a resident or non-resident person derived from or accrued in Kenya from the provision of services through a digital marketplace.

(2) Digital service tax paid by a resident or non-resident person with a permanent establishment in Kenya shall be offset against the tax payable by that person for that year of income.

(3) Digital service tax paid by a non-resident person without a permanent establishment in Kenya shall be a final tax.

#### **5. User location**

(1) A person shall be subject to digital service tax if that person provides or facilitates the provision of a digital service to a user who is located in Kenya.

(2) A user of a digital service shall be deemed to be located in Kenya if—

- (a) the user receives the digital service from a terminal located in Kenya, where terminal includes a computer, tablet and mobile phone;
- (b) the payment for the digital service is made using a debit or credit facility provided by a financial institution or company located in Kenya;
- (c) the digital service is acquired through an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya; or
- (d) the user has a business, residential or billing address in Kenya.

#### **6. Gross transaction value**

(1) Digital service tax shall be imposed on the gross transaction value of the digital service which shall be—

- (a) in the case of the provision of digital services, the payment received as consideration for the services; and
- (b) in the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform.

(2) The gross transaction value of a digital service shall not include the value added tax charged for the service.

#### **7. Registration**

(1) A non-resident person without a permanent establishment in Kenya who provides a digital service to a user in Kenya may register under the simplified tax registration framework specified in regulation 9.

(2) A resident person, or a non-resident person with a permanent establishment in Kenya, who provides a digital service in Kenya shall be required to apply to the Commissioner for digital service tax registration in the prescribed form.

#### **8. Appointment of a tax representative.**

A non-resident person without a permanent establishment in Kenya who elects not to register in accordance with regulation 9 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act (Cap. 469B).

#### **9. Simplified tax registration**

(1) A person who applies for registration under the simplified tax registration framework shall do so through an online registration form prescribed by the Commissioner.

(2) The application under paragraph (1) shall include the following information—

- (a) the name of the applicant's business including its trading name;
- (b) the name of the contact person responsible for tax matters;

- (c) the postal and registered address of the business and its contact person;
- (d) the telephone number of the contact person;
- (e) the electronic address of the contact person;
- (f) the websites or uniform resource locator of the applicant through which business is conducted;
- (g) the national tax identification number issued to the applicant in the country of residence;
- (h) the certificate of incorporation issued to the applicant's business; and
- (i) any other information that the Commissioner may require.

(3) The applicant may be required to submit to the Commissioner any documents necessary to substantiate the information provided in the application under paragraph (2).

(4) Upon registration, the Commissioner shall issue the applicant with a Personal Identification Number for the purpose of filing returns and payment of the digital service tax.

(5) A person registered under these Regulations who ceases to provide digital services in Kenya shall apply to the Commissioner for deregistration in the prescribed form.

#### **10. Accounting and payment**

(1) Digital service tax shall be paid by—

- (a) the digital service provider or digital marketplace provider; or
- (b) the tax representative appointed under regulation 8.

(2) A person liable to pay digital service tax under paragraph (1) shall submit a return in the prescribed form and remit the tax due by the twentieth day of the month following the end of the month that the digital service was offered.

#### **11. Amendment of returns.**

(1) Any amendment to a return submitted under these Regulations shall be in accordance with section 31 of the Tax Procedures Act (Cap. 469B)

(2) Where an amendment under paragraph (1) results in the overpayment of tax—

- (a) in the case of a non-resident person without a permanent establishment in Kenya, the amount overpaid shall be retained as a credit and offset against the digital service tax payable in the subsequent tax period; and
- (b) in the case of a resident person, or a non-resident person with a permanent establishment in Kenya, the amount overpaid shall be refunded in accordance with section 47 of the Tax Procedures Act (Cap. 469B).

#### **12. Records.**

A person liable to digital service tax shall keep records in accordance with section 23 of the Tax Procedures Act (Cap. 469B).

#### **13. Penalties.**

A person who fails to comply with the provisions of these Regulations shall be liable to the relevant penalties prescribed under the Tax Procedures Act (Cap. 469B).





**THE INCOME TAX-EXEMPTION**

[Legal Notice 15 of 2021]

The Cabinet Secretary for National Treasury and Planning directs that the income which accrued in or was derived from Kenya by Japanese companies, Japanese consultants and Japanese employees involved in the projects under the Financing Agreements specified in the second column of the Schedule that were signed on the corresponding dates specified in the second column of the Schedule shall be exempt from income tax to the extent specified in the Financing Agreements.

SCHEDULE		
<i>S/No.</i>	<i>Agreement</i>	<i>Date</i>
1.	The Project for the Improvement of the Power Distribution System in and around Nakuru City, and around Mombasa City	18th September, 2020
2.	The Project for Infrastructure Development in Mombasa Special Economic Zone near Dongo Kundu Area	27th February, 2020
3.	The Project for Enhancing Trade Facilitation and Border Control Capacity in East Africa	6th November, 2019
4.	The Project for Human Resource Development Scholarship	18th September, 2020
5.	Health Sector Policy Loan for Attainment of the Universal Health Coverage (Phase 2)	27th August, 2020
6.	Olkaria I Unit 4 Geothermal Power Project	31st March, 2010
7.	Mwea Irrigation Development Project	16th August, 2010
8.	Olkaria- Lessos- Kisumu Transmission Lines Project	10th December, 2010
9.	Mombasa Port Area Road Development Project (Phase 1)	2nd June, 2012
10.	Mombasa Port Area Road Development Project (Phase 2)	4th July, 2017
11.	Mombasa Port Development Project (Phase 1)	20th November, 2007
12.	Mombasa Port Development Project (Phase 2)	9th March, 2015

*Income Tax*

[Subsidiary]

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13.	Olkaria V Geothermal Power Development Project	9th March, 2016
14.	Olkaria I Unit 1, 2 and 3 Geothermal Power Plant Rehabilitation Project	16th March, 2018
15.	Mombasa Gate Bridge Construction Project (1)	5th December, 2019
16.	Mombasa Special Economic Zone Development Project (1)	27th February, 2020

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**THE INCOME TAX-EXEMPTION**

[Legal Notice 24 of 2021]

The Cabinet Secretary for National Treasury and Planning directs that the income which accrued in or was derived from Kenya by Spanish companies, Spanish consultants and Spanish employees involved in—

(a) the construction of the Rabai — New Bamburi — Kilifi and New Bamburi — Bamburi Cement Power Generation and Evacuation Lines; and

(b) the New Bamburi Cement Substation, Extension of the Existing Rabai, Bamburi and Kilifi Substations Project,

under the Financing Agreement between the Government of Kenya and the Government of Spain signed on the 7th April, 2017 shall be exempt from withholding tax.



**THE INCOME TAX - EXEMPTION**

[Legal Notice 193 of 2022]

The Cabinet Secretary for National Treasury and Planning directs that the severance pay, salary in lieu of notice and payment of accumulated leave days paid to the six employees of Kenya Airways Limited who were retrenched and left service between August 2021 and December 2021 shall be exempt from the provisions of the Act:

Provided that-

- (a) the exemption shall not apply to other pension benefits paid to the employees;
- (b) the employees who are retrenched shall not be re-employed by Kenya Airways Limited in any capacity or under any terms whatsoever before the expiry of five years from the date of the retrenchment;
- (c) Kenya Airways Limited shall comply with any condition imposed by the Commissioner of Income Tax; and
- (d) Kenya Airways Limited shall furnish the Commissioner of Income Tax with the name of each retrenched employee, the date the employee left the service of Kenya Airways Limited, the amount paid to the employee and a copy of the letter to the employees confirming the retrenchment.

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**THE INCOME TAX (FINANCIAL DERIVATIVES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

*Regulation*

1. Citation
  2. Interpretation
  3. Scope of gains from financial derivatives
  4. Realisation of gain or loss
  5. Record and characterisation of income from financial derivatives
  6. Payment of taxes
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**THE INCOME TAX (FINANCIAL DERIVATIVES) REGULATIONS**

[Legal Notice 4 of 2023]

## PART I – PRELIMINARY

**1. Citation**

These Regulations may be cited as the Income Tax (Financial Derivatives) Regulations, 2023.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

**"call option"** means an option that gives the holder of a financial derivative the right to buy the underlying assets at a stipulated price on or before a specified future date;

**"currency swap"** means a contract between two parties to exchange two currencies at a future date at a predetermined exchange rate;

**"forward contract"** means a customised over-the-counter traded financial derivative contract that provides for the purchase or sale of an underlying asset whose delivery or settlement is to be made at a future date at a price agreed upon on the date when the contract is entered into;

**"futures contract"** means a standardised agreement traded in a recognised exchange market for the acquisition or disposal of an underlying asset whose delivery is to be made at a future date at a price agreed upon on the date when the contract is entered into including a reference to a date and price determined in accordance with the terms of the contract;

**"gain"** means any profit earned by a person from a financial derivative contract including any premium or fee paid in respect of an option contract;

**"interest rate swap"** is an agreement between two parties to exchange one stream of interest payments for another over a specified period;

**"option contract"** means a financial derivative which offers the holder the right, but not the obligation, to buy or sell the underlying assets or security at a specified price on or before the expiry date of the option contract;

**"option premium"** is the price the holder of an option contract pays to buy or sell the option contract;

**"put option"** means an option contract that gives the holder the right to sell the underlying asset within a specified period at a specified price;

**"swap"** means an option contract to purchase or sell the underlying asset at a specified price at a specified time and may involve several settlements before maturity; and

**"underlying assets"** include bonds, commodities, currencies, interest rates, securities, stock indices, price indices, credit ratings or similar assets.

**3. Scope of gains from financial derivatives**

(1) Any realized gain to a non-resident person, being a realized loss to the resident person who is a party to the financial derivative contract, shall be chargeable to tax in accordance with the Act.

(2) For the purposes of subregulation (1), a financial derivatives contract, unless exempted under the Act, includes —

- (a) a futures contract including interest rate futures, stock index futures, volatility futures, weather futures or a similar futures contract whether cash settled or not;

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[Subsidiary]

- (b) a forward contract, whether cash settled or not;
- (c) a swap contract including a contract for interest rate swap, currency swap, credit default swap and hybrid swap;
- (d) an options contract including put options, call options and option spreads; or
- (e) any other financial derivative instrument.

#### **4. Realisation of gain or loss**

(1) Subject to these Regulations, a gain or loss from a financial derivative shall be deemed to have been realized at the earlier of—

- (a) the underlying asset changing hands;
- (b) the settlement of the contract; or
- (c) the expiry of the contract:

Provided that in the case of an options contract, the gain or loss shall be deemed to have been realised at the time of payment of the option premium and at the time the option is exercised.

(2) A realised loss by a resident person from a financial derivative shall be allowed as a deduction against any gain accruing from similar activities to the extent that it has not been claimed.

#### **5. Record and characterisation of income from financial derivatives**

(1) A person involved in a financial derivatives transaction shall keep a record of all contracts and financial activities resulting from such a contract.

(2) Any income from a financial derivative transaction shall —

- (a) clearly be characterised as other income (financial derivative gains/losses) in the tax returns for the period; and
- (b) be treated as a separate source in accordance with section 15(7) of the Act for a resident person or a permanent establishment in Kenya.

#### **6. Payment of taxes**

The tax payable under these Regulations shall be due and payable by the 20th day of the month after which the loss from the transaction with the non-resident person is realised.

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