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## International Tax: Tax Treaties

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# Introduction to the Principles of International Taxation

## Learning Objectives: You should

1. Be able to explain the underlying principles of international taxation
2. Feel comfortable discussing how those principles inform tax treaty design

## International Tax Principles

- Equity
- Individual equity
- Inter-nation equity
- Neutrality/Efficiency
- Capital export neutrality
- Capital import neutrality
- Other neutrality concepts
- Administrability
- Source versus residence taxation
- Tax evasion and avoidance
- Sovereignty
- The importance of international taxation

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# Overview of Tax Treaty Structure and Model Tax Treaties

## Learning Objectives: You should

1. Have a general understanding of the tax treaty structure and a sense of its historical roots

## Treaty Models

- History of model tax treaties
- The features, structure and purpose of tax treaties
- The relationship between tax treaties and domestic law
- Introduction to the UN model treaty and commentary
- Introduction to the OECD model treaty and commentary
- Other tax treaty models
- Case studies

## Amendments to the Purpose of the Treaty Models

Before the amendments, the titles and preambles to both the UN and OECD Model Treaties were worded to provide that tax treaties were developed to prevent double taxation. Both model treaties have been amended to reflect that tax treaties are also to prevent tax avoidance or evasion. See the OECD [Amendments](#) the UN [Amendments](#).

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# Introduction to Tax Treaty Interpretation

## Learning Objectives: You should

1. Be able to apply different approaches to and canons of tax treaty interpretation
2. Be confident referring to principles governing international tax treaty interpretation documents

## Treaty Interpretation Principles

- Interpretation of tax treaties
- Vienna Convention
- Case studies

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## **Income Tax Conventions Interpretation Act**

<https://perma.cc/6TT5-A5BR>

Vienna Convention on the Interpretation of Treaties

<https://perma.cc/WN6G-RFZM>

## **Article 1: Persons Covered**

### **Learning Objectives: You Should:**

- Be able to understand the scope of the UN and OECD Model Tax Conventions

#### Chapter I: Scope of the Convention

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **Article 1**

#### **Persons Covered**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under [paragraph 3 of Article 7], paragraph 2 of Article 9 and Articles 19, 20, 23 A [23 B], 24 and 25 A[25 B] and 28.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### Chapter I: Scope of the Convention

### **Article 1**

#### **Persons Covered**

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

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

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

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## **Article 2: Taxes Covered**

### **Learning Objectives: You Should:**

- Be able to understand the scope of the UN and OECD Model Tax Conventions

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **Article 2**

#### **Taxes Covered**

1. This Convention 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 the Convention shall apply are in particular:

(a) (in State A): .....

(b) (in State B): .....

4 The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax law.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 2**

#### **Taxes Covered**

1. This Convention 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 the Convention shall apply are in particular:

a) (in State A): . . . . .

b) (in State B): . . . . .

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.

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## Article 2

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**Article 3: General Definitions**

**United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

**Article 3**

**General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) The term "person" includes an individual, a company and any other body of persons;
  - (b) The term "company" means any body corporate or any entity that 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, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
  - (e) The term "competent authority" means:
    - (i) (In State A): .....
    - (ii) (In State B): .....
  - (f) 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, 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.

# OECD Model Tax Convention on Income and on Capital (2017 Update)

## Article 3

### General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term "person" includes an individual, a company and any other body of persons;
  - b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - c) the term "enterprise" applies to the carrying on of any business;
  - 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 except when the ship or aircraft is operated solely between places in the other Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;;
  - f) the term "competent authority" means:
    - (i) (in State A): . . . . .
    - (ii) (in State B): . . . . .
  - g) the term "national", in relation to a Contracting State, 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 "business" includes the performance of professional services and of other activities of an independent character.
  - i) the term "recognised pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
    - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
    - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

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 or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, 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.

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## **Article 4: Definition of Residence**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 4**

##### **Resident**

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

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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be

entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 4**

#### **Resident**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, 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 or capital situated therein.
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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such persons shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be

entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

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## **Article 5: Permanent Establishment**

Learning Objectives: You should Understand

- What constitutes a permanent establishment under the UN and OECD Model Tax Conventions
- The implications of having permanent establishments in source jurisdictions

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **Article 5: Permanent Establishment**

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

2. The term "permanent establishment" includes especially:

(a) A place of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop;

(f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3 The term "permanent establishment" also encompasses:

(a) A building site, a 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 within a Contracting State for a period or periods aggregating more than 183 days in 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.

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

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

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

5 Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an 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, 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 the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

(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 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) the person does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.

6 Notwithstanding the preceding provisions of this Article but subject to the provisions of paragraph 7, 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.

7 Paragraphs 5 and 6 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.

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 or enterprise 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 or enterprise 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 or in the two enterprises.

# OECD Model Tax Convention on Income and on Capital (2017 Update)

## 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 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;

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;

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.

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

a) in the name of the enterprise, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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 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.



8 For the purposes of this Article, a person or enterprise 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 or enterprise 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 or in the two enterprises.

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## **Article 6: Income from Immovable Property**

### **Learning Objectives: You should**

- Know how to identify immovable property and real property
- Know when source countries can tax income from immovable property

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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.

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## **Article 7: Business Profits**

### **Learning Objectives: You should**

1. understand the uses of the business activities concept
2. be able to identify when an enterprise undertakes activities in a territory
3. know how to determine when an expense should be deductible in calculating profits
4. be able to explain how profits are attributed to particular representatives or facilities

### **Key Concepts**

- Business Profits
- Meaning of business activities
- The comparable concept of permanent establishment
- Deductible expenses
- Profit allocation
- Relationship between business profits and other articles
- Case studies

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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 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 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 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 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 Convention, then the provisions of those articles shall not be affected by the provisions of this article.

**[NOTE:** The question of whether profits should be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods and merchandise for the enterprise was not resolved. It should therefore be settled in bilateral negotiations.]

# OECD Model Tax Convention on Income and on Capital (2017 Update)

## Article 7: Business Profits

1. 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.
2. For the purposes of this Article and Article [23 A] [23 B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.
4. 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.

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## **Article 8: Shipping, Inland Waterways Transport and Air Transport**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 8**

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

###### Article 8 (Alternative A)

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

###### Article 8 (Alternative B)

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 shall be taxable only in that State unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by \_\_\_\_\_ per cent. (The percentage is to be established through bilateral negotiations.)
3. 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.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **Article 8 International 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 that state.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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## **Article 9: Associated Enterprises**

### **Learning Objectives: You should**

1. Have a sense of the application of the associated enterprise article
2. Understand the concept of transfer pricing, the notion that profits are allocated in the way they would be between independent enterprises, and the OECD's arm's length principle

### **Relationships and Administration**

- Associated Enterprises
- When are enterprises associated?
- What are the consequences of association

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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 the Convention 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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

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## Article 10: Dividends

### Learning Objectives: You should

- understand what the term dividends refers to

### Key Concepts

- Passive Investment
- Dividends
- Beneficial Ownership
- Rate of withholding
- Case studies

## United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)

### 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) \_\_\_\_ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

(b) \_\_\_\_ per cent (the percentage is to be established through bilateral negotiations) 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, "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.

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 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 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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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:
  - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the

purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

b) 15 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, "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.

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 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 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 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.

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## **Article 11: Interest**

### **Learning Objectives: You should**

- understand what the term interest refers to
- feel comfortable explaining the consequences of interest payments between parties with a special relationship
- know how to describe the concept of beneficial ownership

### **Key Concepts**

- Passive Investment
- Interest
- Rate of withholding
- Geographic source
- Payments to political bodies and beneficial ownership
- Payments between parties with a special relationship
- Case studies

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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 per cent (the percentage is to be established through bilateral negotiations) 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 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of article 7. In such cases 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 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.
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 Convention.

## **OECD Model Convention on Income and on Capital (2017 Update)**

### **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, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 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 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 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.
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 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.
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 Convention.

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## **Article 12: Royalties**

### **Learning Objectives: You should**

1. Understand what the term royalties refers to
2. Feel comfortable explaining the consequences of royalty payments between parties with a special relationship

### **Key Concepts**

- Passive Investment
- Royalties
- Rate of withholding
- Geographic source
- Payments between parties with a special relationship
- Case studies

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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\_\_ per cent (the percentage is to be established through bilateral negotiations) 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 scientific work including cinematograph films, or films or tapes used for radio or television 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.

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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of article 7. 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 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 the Convention.

#### **Article 12A**

#### **FEES FOR TECHNICAL SERVICES**

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 State.
2. However, notwithstanding the provisions of Article 14 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State 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 fees is a resident of the other Contracting State, the tax so charged shall not exceed percent of the gross amount of the fees [the percentage to be established through bilateral negotiations].
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 State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with:

a) such permanent establishment or fixed base, or

(b) business activities referred to in (c) of paragraph 1 of Article 7.

In such cases the provisions of Article 7 or Article 14, as the case may be, 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 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 or a fixed base in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.

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 State and carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such fees are borne by that permanent establishment or fixed base.

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 Convention.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 12**

#### **Royalties**

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
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



formula or process, 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 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.
4. 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.

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## **Article 13: Capital Gains**

### **Learning Objectives: You should**

1. Know how to identify immovable property and real property

### **Key Concepts**

- Capital Investment
- Source-based taxation
- Immovable property
- What is immovable property (including what is direct use, letting, or use)?
- Capital Gains
- What is a capital gain (including what is alienation and what is wholly or principally)?
- Relationship between capital gains and other treaty articles
- Case studies

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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 that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.



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, or comparable interests, such as interests in a partnership or trust, which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least \_ per cent (the percentage is to be established through bilateral negotiations) of the capital of that company
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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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 that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
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 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.

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# **Article 14: Independent Personal Services**

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **[Article 14 -- Independent Personal Services]**

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## **Article 15: Dependent Personal Services/Income from Employment**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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 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 by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **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 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 by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

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## **Article 16: Directors' Fees**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 16**

##### **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.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **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.

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## **Article 17: Artistes and Sportspersons/Entertainers and Sportspersons**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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 sportsperson are exercised.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **Article 17**

##### **Entertainers and Sportspersons**

1. Notwithstanding the provision of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provision of Article 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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## **Article 18: Pensions and Social Security Payments**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 18**

##### **Pensions and Social Security Payments**

###### Article 18 (alternative A)

1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

###### Article 18 (alternative B)

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 may be taxed in that 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 State or a permanent establishment situated therein.
3. 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 or a political subdivision or a local authority thereof shall be taxable only in that State.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **Article 18**

##### **Pensions**

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.

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## **Article 19: Government Service**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 19 Government Service**

1.(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 other State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) 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 other State.

3 The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **Article 19 Government Service**

1. 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 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.

2 b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3 The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

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## **Article 20: Students**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 20 Students**

Payments which a student or 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 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.

### **OECD Model Tax Convention on Income and Capital (2017 Update)**

#### **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.

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## **Article 21: Other Income**

# **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

## **Article 21**

### **Other Income**

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

# **OECD Model Tax Convention on Income and Capital (2017 Update)**

## **Article 21**

### **Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein 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.

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## **Article 22: Taxation of Capital**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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 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 State.
3. Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or 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.]

(The question of the taxation of all other elements of capital of a resident of a Contracting State is left to bilateral negotiations. Should the negotiating parties decide to include in the Convention an article on the taxation of capital, they will have to determine whether to use the wording of paragraph 4 as shown or wording that leaves taxation to the State in which the capital is located.)

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **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 of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or 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 22 Cases**

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## **Article 23: Methods for Elimination of Double Taxation**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 23 A**

##### **Exemption Method**

1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State, in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.
2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10, 11 12, and 12A 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 tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in that other State.
3. Where in accordance with any provision of this Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, 12 or 12A to such income; in the latter case, the first-mentioned State shall allow the deduction of tax provided for by paragraph 2.

#### **Article 23 B**

##### **Credit Method**

1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State, in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State

solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first-mentioned State shall allow:

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

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

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

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 23 A**

#### **Exemption Method**

- 1. Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State), the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.
- 2. Where a resident of a Contracting State derives items of income which may be taxed in the other Contracting State in accordance with the provisions of Articles 10 and 11 (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State), the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.
- 3. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital



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

## **Article 23 B**

### **Credit Method**

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

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

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

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

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

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## **Article 24: Non-Discrimination**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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 6 of Article 11, or paragraph 6 of Article 12, or paragraph 6 of Article 12A 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.
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

requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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 6 of Article 11, or paragraph 4 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.
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

requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

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## **Article 25: Mutual Agreement Procedure**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 25**

#### **Mutual Agreement Procedure (MAP)**

##### Article 25 (alternative A)

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 this 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, 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.

##### Article 25 (alternative B)

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 this 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, 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, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.
5. Where,
  - (a) under paragraph 1, 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 within three 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 either competent authority so requests. The person who has presented the case shall be notified of the request. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. The arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the

domestic laws of these States unless both competent authorities agree on a different solution within six months after the decision has been communicated to them or unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

## **OECD Model Tax Convention on Income and on Capital (2017) Update**

### **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 either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
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.
5. Where,
  - a) under paragraph 1, 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 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. 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.<sup>[1]</sup>

### **Mandatory Binding MAP Arbitration Provisions in Bilateral Tax Treaties**

One of the outcomes of the OECD's BEPS Project is the commitment by some countries to include arbitration provisions in their existing tax treaties. Under this framework, unresolved disputes under the Mutual Agreement Procedure will be assigned to an arbitration panel to strengthen the effectiveness and efficiency of the MAP Process . See the OECD's Report [here](#)

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## **Article 26: Exchange of Information**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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 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 Convention. In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance 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 it 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, 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 authorizes such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - (a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

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

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

6 The competent authorities shall, through consultation, develop appropriate methods and techniques concerning the matters in respect of which exchanges of information under paragraph 1 shall be made.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 26**

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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

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

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

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

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

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## **Article 27: Assistance in the Collection of Taxes**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 27**

#### **ASSISTANCE IN THE COLLECTION OF TAXES<sup>1</sup>**

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. 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.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **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. 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.

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In some countries, national law, policy or administrative considerations may not allow or justify the type of assistance envisaged under this Article or may require that this type of assistance be restricted, e.g. to countries that have similar tax systems or tax administrations or as to the taxes covered. For that reason, the Article should only be included in the Convention where each State concludes that, based on the factors described in paragraph 1 of the Commentary on the Article, they can agree to provide assistance in the collection of taxes levied by the other State.

## **Article 28: Members of Diplomatic Missions and Consular Posts**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **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.

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **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.

## Article 29: Entitlement to Benefits

### United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)

#### Entitlement to Benefits<sup>[1]</sup>

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 25) unless such resident is a “qualified person”, as defined in paragraph 2, at the time that the benefit would be accorded.
2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:
  - (a) an individual;
  - (b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;
  - (c) a company or other entity, if, throughout the taxable period that includes that time, the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognised stock exchanges, and either:
    - (i) its principal class of shares is primarily traded on one or more recognised stock exchanges located in the Contracting State of which the company or entity is a resident; or
    - (ii) the company’s or entity’s primary place of management and control is in the Contracting State of which it is a resident;
  - (d) a company, if:
    - (i) throughout the taxable period that includes that time, at least 50 per cent of the aggregate vote and value of the shares (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies or entities entitled to benefits under subparagraph c) of this paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of the Contracting State from which a benefit under this Convention is being sought or is a qualifying intermediate owner; and
    - (ii) with respect to benefits under this Convention other than under Article 10, less than 50 per cent of the company’s gross income, and less than 50 per cent of the tested group’s gross income, for the taxable period that includes that time, is paid or accrued, directly or

indirectly, in the form of payments that are deductible in that taxable period for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), b), c) or e);

(e) a person, other than an individual, that

(i) is a [agreed description of the relevant non-profit organisations found in each Contracting State],

(ii) is a recognised pension fund<sup>1</sup> to which subdivision (i) of the definition of recognised pension fund in paragraph 1 of Article 3 applies, provided that more than 50 per cent of the beneficial interests in that person are owned by individuals resident of either Contracting State, or more than [\_\_\_\_\_]per cent] of the beneficial interests in that person are owned by individuals resident of either Contracting State or of any other State with respect to which the following conditions are met

(A) individuals who are residents of that other State are entitled to the benefits of a comprehensive convention for the avoidance of double taxation between that other State and the State from which the benefits of this Convention are claimed, and

(B) with respect to income referred to in Articles 10 and 11 of this Convention, if the person were a resident of that other State entitled to all the benefits of that other convention, the person would be entitled, under such convention, to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

(iii) is a recognised pension fund to which subdivision (ii) of the definition of recognised pension fund in paragraph 1 of Article 3 applies, provided that it is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in the preceding subdivision;

(f) a person other than an individual, if

(i) at that time and on at least half the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph a), b), c) or e) own, directly or indirectly, shares representing at least 50 per cent of the aggregate vote and value (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) of the shares in the person, provided that, in the case of indirect ownership, each intermediate owner is a qualifying intermediate owner, and

(ii) less than 50 per cent of the person's gross income, and less than 50 per cent of the tested group's gross income, for the taxable period that includes that time, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions), to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), b), c) or e) of this paragraph; or

(g) [possible provision on collective investment vehicles];

3 (a) A resident of a Contracting State shall be entitled to benefits under this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank or [list financial institutions similar to banks that the Contracting States agree to treat as such], insurance enterprise or registered securities dealer respectively), and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" shall not include the following activities or any combination thereof:

(i) operating as a holding company;

(ii) providing overall supervision or administration of a group of companies;

(iii) providing group financing (including cash pooling); or

(iv) making or managing investments, unless these activities are carried on by a bank [list financial institutions similar to banks that the Contracting States agree to treat as such], insurance enterprise or registered securities dealer in the ordinary course of its business as such.

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

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

4 [A rule providing so-called derivative benefits. The question of how the derivative benefits paragraph should be drafted in a convention that follows the detailed version is discussed in the Commentary.]

5 A company that is a resident of a Contracting State that functions as a headquarters company for a multinational corporate group consisting of such company and its direct and indirect subsidiaries shall be entitled to benefits under this Convention with respect to dividends and interest paid by members of its multinational corporate group, regardless of whether the resident is a qualified person. A company shall be considered a headquarters company for this purpose only if:

(a) such company's primary place of management and control is in the Contracting State of which it is a resident;

(b) the multinational corporate group consists of companies resident of, and engaged in the active conduct of a business in, at least four States, and the businesses carried on in each of the four States (or four groupings of States) generate at least 10 per cent of the gross income of the group;

(c) the businesses of the multinational corporate group that are carried on in any one State other than the Contracting State of residence of such company generate less than 50 per cent of the gross income of the group;

(d) no more than 25 per cent of such company's gross income is derived from the other Contracting State;

(e) such company is subject to the same income taxation rules in its Contracting State of residence as persons described in paragraph 3 of this Article; and

(f) less than 50 per cent of such company's gross income, and less than 50 per cent of the tested group's gross income, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property or payments in respect of financial obligations to a bank that is not a connected person with respect to such company, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), b), c) or e) of paragraph 2.

If the requirements of subparagraph b), c) or d) of this paragraph are not fulfilled for the relevant taxable period, they shall be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four taxable periods.

6 If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3, 4 or 5, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income or capital, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

7 For the purposes of this and the previous paragraphs of this Article:

(a) the term “recognised stock exchange” means:

(i) [list of stock exchanges agreed to at the time of signature]; and

(ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

(b) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;

(c) the term “principal class of shares” means the ordinary or common shares of the company or entity, provided that such class of shares represents the majority of the aggregate vote and value of the company or entity. If no single class of ordinary or common shares represents the majority of the aggregate vote and value of the company or entity, the “principal class of shares” are those classes that in the aggregate represent a majority of the aggregate vote and value;

(d) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

(e) the term “equivalent beneficiary” means:

(i) a resident of any State, provided that:

(A) the resident is entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between that State and the Contracting State from which the benefits of this Convention are sought, under provisions substantially similar to subparagraph a), b), c) or e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident’s multinational corporate group, the resident is entitled to benefits under provisions substantially similar to paragraph 5 of this Article in such convention, provided that, if such convention does not contain a detailed limitation on benefits article, such convention shall be applied as if the provisions of subparagraphs a), b), c) and e) of paragraph 2 (including the definitions relevant to the application of the tests in such subparagraphs) were contained in such convention; and

(B) (1) with respect to income referred to in Article 10, 11, 12 or 12A if the resident had received such income directly, the resident would be entitled under such Convention, a provision of domestic law or any international agreement, to a rate of tax with respect to such income for which benefits are being sought under this Convention that is less than or equal to the rate applicable under this Convention. Regarding a company seeking, under paragraph 4, the benefits of Article 10 with respect to dividends, for purposes of this subclause:

(I) if the resident is an individual, and the company is engaged in the active conduct of a business in its Contracting State of residence that is substantial in relation, and similar or complementary, to the business that generated the earnings from which the dividend is paid, such individual shall be treated as if he or she were a company. Activities conducted by a person that is a connected person with respect to the company seeking benefits shall be deemed to be conducted by such company. Whether a business activity is substantial shall be determined based on all the facts and circumstances; and

(II) if the resident is a company (including an individual treated as a company), to determine whether the resident is entitled to a rate of tax that is less than or equal to the rate applicable under this Convention, the resident’s indirect holding of the capital of the company paying the dividends shall be treated as a direct holding; or

(2) with respect to an item of income referred to in Article 7, 13 or 21 of this Convention, the resident is entitled to benefits under such Convention that are at least as favourable as the benefits that are being sought under this Convention; and

(C) notwithstanding that a resident may satisfy the requirements of clauses A) and B) of this subdivision, where the item of income has been derived through an entity that is treated as fiscally transparent under the laws of the Contracting State of residence of the company seeking benefits, if the item of income would not be treated as the income of the resident



under a provision analogous to paragraph 2 of Article 1 had the resident, and not the company seeking benefits under paragraph 4 of this Article, itself owned the entity through which the income was derived by the company, such resident shall not be considered an equivalent beneficiary with respect to the item of income;

(ii) a resident of the same Contracting State as the company seeking benefits under paragraph 4 of this Article that is entitled to all the benefits of this Convention by reason of subparagraph a), b), c) or e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident's multinational corporate group, the resident is entitled to benefits under paragraph 5, provided that, in the case of a resident described in paragraph 5, if the resident had received such interest or dividends directly, the resident would be entitled to a rate of tax with respect to such income that is less than or equal to the rate applicable under this Convention to the company seeking benefits under paragraph 4; or

(iii) a resident of the Contracting State from which the benefits of this Convention are sought that is entitled to all the benefits of this Convention by reason of subparagraph a), b), c) or e) of paragraph 2, provided that all such residents' ownership of the aggregate vote and value of the shares (and any disproportionate class of shares) of the company seeking benefits under paragraph 4 does not exceed 25 per cent of the total vote and value of the shares (and any disproportionate class of shares) of the company;

(f) the term "disproportionate class of shares" means any class of shares of a company or entity resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;

(g) a company's or entity's "primary place of management and control" is in the Contracting State of which it is a resident only if:

(i) the executive officers and senior management employees of the company or entity exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, in that Contracting State than in any other State; and

(ii) such executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision-making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, than the officers or employees of any other company or entity;

(h) the term "qualifying intermediate owner" means an intermediate owner that is either:

(i) a resident of a State that has in effect with the Contracting State from which a benefit under this Convention is being sought a comprehensive convention for the avoidance of double taxation; or

(ii) a resident of the same Contracting State as the company applying the test under subparagraph d) or f) of paragraph 2 or paragraph 4 to determine whether it is eligible for benefits under the Convention;

(i) the term “tested group” means the resident of a Contracting State that is applying the test under subparagraph d) or f) of paragraph 2 or under paragraph 4 or 5 to determine whether it is eligible for benefits under the Convention (the “tested resident”), and any company or permanent establishment that:

(i) participates as a member with the tested resident in a tax consolidation, fiscal unity or similar regime that requires

members of the group to share profits or losses; or

(ii) shares losses with the tested resident pursuant to a group relief or other loss sharing regime in the relevant taxable period; [and]

(j) the term “gross income” means gross receipts as determined in the person’s Contracting State of residence for the taxable period that includes the time when the benefit would be accorded, except that where a person is engaged in a business that includes the manufacture, production or sale of goods, “gross income” means such gross receipts reduced by the cost of goods sold, and where a person is engaged in a business of providing non-financial services, “gross income” means such gross receipts reduced by the direct costs of generating such receipts, provided that:

(i) except when relevant for determining benefits under Article 10 of this Convention, gross income shall not include the portion of any dividends that are effectively exempt from tax in the person’s Contracting State of residence, whether through deductions or otherwise; and

(ii) except with respect to the portion of any dividend that is taxable, a tested group’s gross income shall not take into account transactions between companies within the tested group; [and]

#### 8.(a) Where

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and

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

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

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

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

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **ARTICLE 29 ENTITLEMENT TO BENEFITS**

1. [Provision that, subject to paragraphs 3 to 5, restricts treaty benefits to a resident of a Contracting State who is a “qualified person” as defined in paragraph 2]
2. [Definition of situations where a resident is a qualified person, which covers

– an individual;

- a Contracting State, its political subdivisions and their agencies and instrumentalities;
- certain publicly-traded companies and entities;
- certain affiliates of publicly-listed companies and entities;
- certain non-profit organisations and recognised pension funds;

3 [Provision that provides treaty benefits to certain income derived by a person that is not a qualified person if the person is engaged in the active conduct of a business in its State of residence and the income emanates from, or is incidental to, that business]

4 [Provision that provides treaty benefits to a person that is not a qualified person if at least more than an agreed proportion of that entity is owned by certain persons entitled to equivalent benefits]

5 [Provision that provides treaty benefits to a person that qualifies as a “headquarters company”]

6 [Provision that allows the competent authority of a Contracting State to grant certain treaty benefits to a person where benefits would otherwise be denied under paragraph 1]

7 [Definitions applicable for the purposes of paragraphs 1 to 7]

8 (a) Where

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and

(ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State,

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

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

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

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

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[1] The drafting of this Article will depend on how the Contracting States decide to implement their common intention, reflected in the preamble of the Convention and incorporated in the minimum standard agreed to as part of the OECD/G20 Base Erosion and Profit Shifting Project, to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements. This may be done either through the adoption of paragraph 9 only, through the adoption of the detailed version of paragraphs 1 to 7 that is described in the Commentary on Article 29 together with the implementation of an anti-conduit mechanism as described in paragraph 187 of that Commentary, or through the adoption of paragraph 9 together with any variation of paragraphs 1 to 7 described in the Commentary on Article 29.

<sup>1</sup> As to incorporation of such a definition, see paragraph 14 of the Commentary on Article 29.

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## **Article 30: Entry into Force/Territorial Extension**

### **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

#### **Article 30**

##### **ENTRY INTO FORCE**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at \_\_\_\_\_ as soon

as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) (In State A): .....

(b) (In State B): .....

### **OECD Model Tax Convention on Income and on Capital (2017 Update)**

#### **Article 30: Territorial Extension<sup>1</sup>**

1. This Convention may be extended, either in its entirety or with any necessary modifications [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or], to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention 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 through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 30 shall also terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

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<sup>1</sup>. The words between brackets are of relevance when, by special provision, a part of the territory of the Contracting State is excluded from the application of the Convention.

## **Article 31: Termination/Entry Into Force**

### **Chapter VII**

#### **FINAL PROVISIONS**

## **United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)**

### **Article 31**

#### **Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year \_\_\_\_\_.

In such event, the Convention shall cease to have effect:

(a) (In State A): .....

(b) (In State B): .....

TERMINAL CLAUSE NOTE: The provisions relating to the entry into force and termination and the terminal clause concerning the signing of the Convention shall be drafted in accordance with the constitutional procedure of both Contracting States.

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 31**

#### **Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at .....as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) (in State A): .....

b) (in State B): .....

## **OECD Model Tax Convention on Income and on Capital (2017 Update)**

### **Article 32**

#### **Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year. .

. . . In such event, the Convention shall cease to have effect:

a) (in State A): . . . . .

b) (in State B): . . . . .

#### **Terminal Clause<sup>1</sup>**

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<sup>1</sup> The terminal clause concerning the signing shall be drafted in accordance with the constitutional procedure of



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## **1997 EAC Income Tax Agreement**

**PUBLICATION-DATE:** April 28, 1997

**STATUS:**Pending

### **AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF KENYA THE UNITED REPUBLIC OF TANZANIA AND THE REPUBLIC OF UGANDA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

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).

1. 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.

2. 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.

## **Article 3**

### **General Definitions**

In this Agreement, unless the context otherwise requires:

1.

(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 Minister 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 authorised representative; and

iii. in Uganda, the Minister for the time being responsible for finance or his authorised 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.

1. 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 center 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;**Article 29** 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**

1997 EAC Income Tax Agreement

PUBLICATION-DATE: April 28, 1997

STATUS: Pending

AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF KENYA THE UNITED REPUBLIC OF TANZANIA AND THE REPUBLIC OF UGANDA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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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.
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1. 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.
2. 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.

## **Article 3**

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In this Agreement, unless the context otherwise requires:

1.

(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 Minister 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 authorised representative; and
- iii. in Uganda, the Minister for the time being responsible for finance or his authorised 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.

1. 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 center 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.

1. 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.

1. 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.

1. 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

- (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.

1. 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.

1. 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.

2. 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.

1. 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.
2. 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.
3. 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.
4. 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 containers and related equipment which is 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 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 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.

1. 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 enterprise 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 States shall if necessary consult each other.
2. 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.
3. 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% 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.
2. 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 is a resident of a Contracting State which is not a member 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 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 not exceed 20% 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.

1. 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.
2. 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.

3. 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.
4. 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 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% 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 per-son 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 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

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 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 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 so 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 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.

1. 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**

### **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 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 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 paragraph 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 sub- division, local authority or statutory body thereof in

the dis-charge 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.

1. 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.
2. 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 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. 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 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 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 is 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 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

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 device 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 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 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;
  - (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 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 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 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 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.

In witness whereof the undersigned being duly authorized, have signed this Agreement.

Done at Arusha this 28th day of April 1997.

FOR THE GOVERNMENT OF THE REPUBLIC OF KENYA:

Hon. W Musalia Mudavadi

Minister of Finance

FOR THE GOVERNMENT OF THE REPUBLIC OF UGANDA:

Hon. J S Mayanja-Nkangi

Minister of Finance

FOR THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA:

Hon. Daniel Yona

Minister of Finance



## **Agreement Among The Member States of The CARICOM for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion**

<https://perma.cc/L622-CQHM>

# **SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters**

## **PREAMBLE**

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka;

Desiring to conclude an Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in tax matters with a view to promoting economic cooperation amongst the SAARC Member States Have agreed as follows:

## **ARTICLE 1**

### **GENERAL DEFINITIONS**

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

(a) the term "Member State" means one of the States as per Schedule-I;

(b) 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 Member States;

(c) the term "tax" means, tax (s) covered as per Schedule-II, as the context requires;

(d) the term "Competent Authority" means Competent Authority as per Schedule III;

(e) the term "national" means any individual possessing the nationality of a Member State; and

(f) the term "fiscal year" means the year as defined in Schedule IV.

1. As regards the application of the Agreement at any time by a Member 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 Member State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that Member State prevailing over a meaning given to the term under other laws of that Member State.

## **ARTICLE 2**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or more of the Member States, in respect of which it has entered into force in accordance with Article 16.

## ARTICLE 3

### TAXES COVERED

1. This Agreement shall apply to taxes on income imposed by or on behalf of the Member States.
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 or deemed to be paid by enterprises.
3. The existing taxes to which the Agreement shall apply are listed in Schedule-II.
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 Member States shall notify the SAARC Secretariat of any significant changes that have been made in the irrespective taxation laws.

## ARTICLE 4

### RESIDENT

1. For the purposes of this Agreement, the term "resident of a Member State" means any person who, under the laws of that Member State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Member State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Member State in respect only of income from sources in that Member State.
2. Where, by reason of the provisions of paragraph 1, an individual is a resident of more than one Member State, his/her status shall be determined as follows:
  - a) he/she shall be deemed to be a resident only of the Member State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in more than one Member State, he/she shall be deemed to be a resident only of the Member State with which his/her personal and economic relations are closer (centre of vital interests);
  - b) if the Member State in which he/she has his/her centre of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in any Member State, he/she shall be deemed to be a resident only of the Member State in which he/she has an habitual abode:

c) if he/she has an habitual abode in more than one Member State or in neither of them, he/she shall be deemed to be a resident only of the Member State of which he/she is a national;

d) if he/she is a national of more than one Member State or of none of them, the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

1. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of more than one Member State, it shall be deemed to be a resident only of the Member State in which its place of effective management is situated. If the Member State in which its place of effective management is situated cannot be determined, then the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

## ARTICLE 5

### EXCHANGE OF INFORMATION

1. The Competent Authorities of the Member States shall exchange such information, including documents and public documents or certified copies thereof, as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Member States concerning taxes covered by this agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that Member 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 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

Member State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Member State;

(b) to supply information, including documents and public documents or certified copies thereof, which are not obtainable under the laws or in the normal course of the administration of that or of the other Member 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 6

### ASSISTANCE IN THE COLLECTION OF TAXES

1. The Member States shall lend assistance to each other in the collection of revenue claims. The Competent Authorities of the Member 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 covered by the Agreement together with interest, penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Member State is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of collection by the Competent Authority of the other Member State, and that revenue claim shall be collected by that other Member 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 Member State.
4. When a revenue claim of a Member State is a claim in respect of which that Member 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 Member State, be accepted for purposes of taking measures of conservancy by the Competent Authority of the other Member State. That other Member 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 Member State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Member State or is owed by a person who has a right to prevent its collection.
5. The provisions of this Article shall be invoked on request of a Member State only after all permissible measures of recovery under the domestic laws of that Member State have been exhausted.
6. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Member State for purposes of paragraph 3 or 4 shall not, in that Member State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Member State by reason of its nature as such. In addition, a revenue claim accepted by a Member State for the purposes of paragraph 3 or 4 shall not, in that Member State, have any priority applicable to that revenue claim under the laws of the other Member State.
7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Member State shall only be brought before the courts or administrative bodies of that Member State. Nothing in this Article shall be construed as creating or providing any right

8. Where, at any time after a request has been made by a Member State under paragraph 3 or 4 and before the other Member State has collected and remitted the relevant revenue claim to the first-mentioned Member 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 Member State that is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Member State in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensure its collection. The Competent Authority of the first-mentioned Member State shall promptly notify the Competent Authority of the other Member State of that fact and, at the option of the other Member State, the first-mentioned Member State shall either suspend or withdraw its request.

1. In no case shall the provisions of this Article be construed so as to impose on a Member State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Member State;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Member State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practices;

(d) to provide assistance in those cases where the administrative burden for that Member State is clearly disproportionate to the benefit to be derived by the other Member State.

## ARTICLE 7

### SERVICE OF DOCUMENTS

1. At the request of the applicant Member State the requested Member State shall serve upon the addressee, documents and public documents including those relating to judicial decisions, which emanate from the applicant Member State and which relate to a tax covered by this Agreement.

2. The requested Member State shall effect service of documents, including public documents:

(a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

(b) to the extent possible, by a particular method requested by the applicant Member State or the closest to such method available under its own laws.

1. A Member State may effect service of documents directly through the post on a person in another Member State.

2. Nothing in the Agreement shall be construed as invalidating any service of documents by a Member State in accordance with its laws.
3. When a document is served in accordance with this Article and it is not in English language, the same should be accompanied by a translation into English.

## ARTICLE 8

### PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Member State immediately before visiting the other Member State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Member State shall be exempt from tax in that other Member State on any remuneration for such teaching or research for a period not exceeding two years from the date of his/her arrival in that other Member State.
2. For the purposes of this Article, an individual shall be deemed to be a resident of a Member State if he/she is resident in that Member State in the fiscal year in which he/she visits the other Member State or in the immediately preceding fiscal year.
3. For the purposes of paragraph 1 “approved institution” means an institution which has been approved in this regard by the Government of the concerned Member State.

## ARTICLE 9

### STUDENTS

1. A student who is or was a resident of one of the Member States immediately before visiting the other Member State and who is present in that other Member State solely for the purpose of his/her education or training shall, besides grants, loans and scholarships and any payments received from sources outside that State for the purpose of his/her maintenance, education or training, be exempt from tax in that other Member State on remuneration which he/she derives from an employment which he/she exercises in the other Member State if the employment is directly related to his/her studies.
2. The exemption available under paragraph 1 above in respect of remuneration from employment shall not exceed an amount equal to US\$ 3000/- per annum.
3. 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/her first arrival in that other Member State.

## ARTICLE 10

### TRAINING

1. The Member States shall endeavour to hold and organise training programmes, seminars and workshops for the tax administrators with the objective of:

(i) providing a common forum for senior tax administrators to meet and discuss problems of common concern;

(ii) enhancing the technical and administrative knowledge and skills of tax administrators; and

(iii) evolving strategies to combat common tax problems like tax avoidance/evasion in the SAARC region.

## ARTICLE 11

### SHARING OF TAX POLICY

1. Each Member State shall endeavour to bring out a yearly report on changes made in its tax laws. This may also cover introduction of new systems or techniques for circulation among the Member States.

2. A Member State may, on request, make available its pool of talented experts to other Member States for the purposes of drafting and organising legislation, tax procedures, operational management, on-the-job training programmes, information system and technology etc.

## ARTICLE 12

### IMPLEMENTATION

The Member States shall hold periodic consultations, as appropriate, of Competent Authorities, with a view to facilitating the effective implementation of this Agreement.

## ARTICLE 13

### REVIEW

The Member States shall meet in order to review this Agreement on request or at the end of five years from the date of its entry into force, unless they notify the SAARC Secretariat, in writing, that no such review is necessary.

## ARTICLE 14

### AMENDMENTS

This Agreement may be amended by consensus. Any such amendment will become effective upon the deposit of instrument(s) of acceptance with the Secretary-General of SAARC by all Member States and issuance of notification thereof by the SAARC Secretariat. Such an amendment shall have effect in the Member States from the date of commencement of their respective fiscal year following the issuance of notification by the SAARC Secretariat.



## ARTICLE 15

### DEPOSITARY

This Agreement will be deposited with the Secretary General of SAARC, who will furnish a certified copy thereof to each Member State.

## ARTICLE 16

### ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the notification issued by the SAARC Secretariat regarding completion of all formalities, including ratification, wherever applicable, by all Member States, which shall be done no later than 30 June 2006.

2. The provisions of this Agreement shall have effect:

#### (i) In Bangladesh

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force;

#### (ii) In Bhutan

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force

(ii) In India, in respect of income derived in any fiscal year on or after the first day of April next following the date upon which the Agreement enters into force;

(iv) In Maldives in respect of income derived in any fiscal year on or after the first day of January next following the date upon which the Agreement enters into force;

(v) In Nepal in respect of income arising in any year of income beginning on or after the first day of Nepalese fiscal year starting mid-July next following the date upon which the Agreement enters into force;

#### (vi) In Pakistan

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force; and

(vii) In Sri Lanka in respect of income derived on or after the first day of April of the year next following the date upon which the Agreement enters into force;

## ARTICLE 17

### TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Member State. A Member 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:

(i) In Bangladesh, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;

(ii) In Bhutan, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;

(iii) In India, in respect of income derived in any fiscal year on or after the first day of April next following the expiration of six months period from the date on which the written notice of termination is given;

(iv) In Maldives, in respect of income derived in any fiscal year on or after the first day of January next following the expiration of six months period from the date on which the written notice of termination is given;

(v) In Nepal, in respect of income derived in any fiscal year on or after the first day of mid- July next following the expiration of six months period from the date on which the written notice of termination is given;

(vi) In Pakistan, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given; and

(vii) In Sri Lanka, in respect of income derived on or after the first day of April of the year next following the expiration of six months period from the date on which the written notice of termination is given;

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement. DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.

ARRANGEMENT TO AVOID DOUBLE TAXATION AND PREVENT FISCAL EVASION THE COMMISSION OF THE ANDEAN COMMUNITY, HAVING SEEN: Articles 3, 22 items a) and b), 30 item c), 51 and 54 of the Cartagena Agreement, Decision 40 of the Commission and Article 19 of Decision 292 of the Commission;

WHEREAS: It is necessary to eliminate the double taxation of the activities of individuals and corporations domiciled in the Member Countries of the Andean Community acting at the community level and to establish a framework and rules for cooperation between tax administrations for this purpose; It is also essential to update the rules to avoid double taxation between Member Countries in order to promote trade among member countries, attract foreign investment and prevent fiscal evasion;

DECIDES:

To establish this:

ARRANGEMENT TO AVOID DOUBLE TAXATION AND PREVENT FISCAL EVASION

## **Chapter I**

### **Scope and General Definitions**

#### **Article 1 Scope**

This Decision is applicable to persons domiciled in any of the Member Countries of the Andean Community, in respect of taxes on income and on capital. It applies mainly to the following:

- In Bolivia, the income tax.
- In Colombia, the income tax.
- In Ecuador, the income tax.
- In Peru, the income tax.
- In Venezuela, income tax and tax on business assets.

The rules set forth in this Decision are intended to avoid double taxation on the same income or capital at community level.

This Decision shall also apply to the modifications introduced to said taxes and any other tax which, on account of its tax base or taxable matter, is essential and economically similar to those described above and that may be established by any of the Member Countries after the publication of this Decision.

#### **Article 2 General Definitions**

For purposes of this decision and unless the context otherwise requires:

- (a) The terms “Member Countries” shall be used interchangeably to refer to Bolivia, Colombia, Ecuador, Peru and Venezuela.
- (b) The term “territory of a Member Country” shall refer to either the territories of Bolivia, Colombia, Ecuador, Peru or Venezuela.
- (c) The term “person” shall be used to designate:
  - (1) A natural person
  - (2) A legal person
  - (3) Any other entity or group of persons, whether associated or not, subject to tax liability.
- (d) The term “company” shall refer to an organization constituted by one or more persons engaged in gainful activity.
- (e) A natural person shall be deemed to be domiciled in the Member Country in which he has his habitual residence. It is understood that a company is domiciled in the Country indicated in its articles of incorporation. If no such articles of incorporation exist, or they do not indicate a domicile, the company shall be considered domiciled at the place where it has its effective management. If, despite these regulations, it is not possible to determine the domicile, the competent authorities of the Member Countries concerned shall resolve the case by mutual agreement.
- (f) The term “source of production” refers to the activity, right or asset that generates or may generate an income.
- (g) The term “business activities” means activities carried out by companies.
- (h) The terms “company of a Member Country” and “company of another Member Country” mean a company domiciled in one or another Member Country.
- (i) The term “royalty” means any benefit, value or sum of money paid for the use or right to use intangible assets such as trademarks, patents, licenses, unpatented technical knowledge or other knowledge of a similar nature in the territory of a Member Country, including, in particular, the rights of breeders of new plant varieties under Decision 345 and the copyright and related rights covered by Decision 351.
- (j) The term “capital gains” refers to the profit made by a person in the sale of property not acquired, produced or disposed of regularly in the ordinary course of its activities.
- (k) The term “pension” means a periodic payment made in consideration of services rendered or for harm suffered, and the term “annuity” means a stated sum of money payable periodically during a specified period of time for free or in return for a payment made or appreciable in money.
- (l) The term “interest” means income of any nature, including the financial performance of loans, deposits and amounts obtained on deposit ??by private financial institutions, with or without a mortgage or the right to participate in the debtor's profits, in particular, income from

public funds (securities issued by government entities) and bonds or debentures, including premiums and prizes attaching to such securities. Penalties for late payment shall not be regarded as interest for the purposes of this article.

(m) The term “competent authority” means in the case of:

Bolivia, the Minister of Finance or his delegate.

Colombia, the Minister of Finance and Public Credit or his delegate.

Ecuador, the Minister of Economy and Finance or his delegate.

Peru, the Minister of Economy and Finance or his delegate.

Bolivarian Republic of Venezuela, the National Superintendent of Customs and Tax of the National Integrated Service of Customs and Tax Administration (SENIAT) or his delegate.

## **Chapter II**

### **Income Tax**

#### **Article 3 Tax Jurisdiction**

Regardless of nationality or domicile of the persons, income of any kind obtained by them shall be taxable only in the Member Country in which such income has its source of production, barring the cases of exception provided for in this Decision. Therefore, the other Member Countries, which, in accordance with their domestic law, assume the power to tax said income must consider it exempt for the purposes of the corresponding determination of the income or capital tax.

#### **Article 4 Income From Immovable Property**

Income of any kind from immovable property shall be taxable only by the Member Country in which such property is situated.

#### **Article 5 Income From the Right to Exploit Natural Resources**

Any profit obtained from the lease or sublease or the assignment or granting of the right to exploit or use in any way the natural resources of one of the Member Countries shall be taxable only in that Member Country.

#### **Article 6 Business Profits**

Profits resulting from business activities shall be taxable only by the Member Country where they were obtained. Be considered, among other cases, a company active in the territory of a member country when it has in it:

It shall be considered, among other cases, that a company conducts activities in the territory of a Member Country when it has therein:

- (a) An office or place of business administration or management;
- (b) An industrial or assembly factory, plant or workshop;
- (c) A construction site;
- (d) A place or facility that extracts or exploits natural resources, such as a mine, well, quarry, plantation or fishing boat;
- (e) A sales agency or store;
- (f) A purchasing agency or store;
- (g) A storeroom, warehouse or similar establishment for the reception, storage or delivery of products;
- (h) Any other store, office or facility whose purpose is to prepare or assist in the activities of the company;
- (i) An agent or representative.

When a company carries out activities in two or more Member Countries, each of them may tax the income generated in their territory, for which purpose each Country shall apply its internal rules regarding the determination of the tax base as if it were a separate company, independent and distinct, but avoiding the causation of double taxation in accordance with the rules of this Decision. If activities are carried out by means of representatives or by using facilities like those indicated in the preceding paragraph, said persons or facilities shall be attributed the profits they would have obtained if they were totally independent of the company.

## **Article 7 Associated or Related Enterprises**

### **1. When**

- (a) an enterprise of a Member Country participates directly or indirectly in the management, control or capital of an enterprise in another Member Country, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one Member Country and an enterprise of another Member Country, and in either case, conditions are made or imposed between the two enterprises in their commercial or financial relations that differ from those that would be made between independent enterprises, then the profits which would have accrued to one of the companies in the absence of such conditions, and in fact by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and therefore subject to tax.

- 1. When a Member Country includes in the profits of an enterprise of that Country, and taxes accordingly the profits on which an enterprise of the other Member Country has been charged to tax in that other Member Country, and the profits so included are profits

which would have accrued to the enterprise in the first-mentioned Member Country if the conditions made between the two enterprises had been those which had been made between independent enterprises, then that other Country shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, the other provisions of this Decision shall be taken into account, and the competent authorities of the Member Countries shall be consulted, if necessary.

## **Article 8 Profits of Transport Companies**

The profits obtained by air, land, sea, lake and river transport companies shall be subject to tax liability only in the Member Country in which these companies are domiciled.

## **Article 9 Royalties**

Royalties on an intangible asset shall be taxable only in the Member Country where the intangible asset is used or there is a right to use it.

## **Article 10 Interest**

Interest and other financial income shall be taxable only in the Member Country in whose territory their payment is charged and recorded.

## **Article 11 Dividends and Shares**

Dividends and shares shall be taxable only by the Member Country where the company that distributes them is domiciled.

The Member Country of domicile of the company or individual recipient or beneficiary of the dividends or shares may not tax them in the name of the receiving company or investor or in the name of shareholders or partners of the receiving or investor company.

## **Article 12 Capital Gains**

Capital gains may be taxed only by the Member Country in whose territory the assets are located at the time of their sale, except for those arising from the alienation of:

- (a) Ships, aircraft, buses and other transport vehicles, which shall be taxable only by the Member Country where the owner is domiciled, and
- (b) Bonds, shares and other securities, which shall be taxable only by the Member Country in whose territory they were issued.

## **Article 13 Income From Personal Services**

Payments, fees, wages, salaries, benefits and similar compensation received in return for services rendered by employees, professionals, technicians or for personal services in general, including consultancy, shall be taxable only in the territory in which such services were provided, with the exception of wages, salaries, payments and similar compensation received by:

official functions; such income shall be taxable only in that country, although the services are rendered within the territory of another Member Country.

(b) The crews of ships, aircraft, buses and other transport vehicles engaged in international traffic;

such income shall be taxable only by the Member Country in which the employer is domiciled.

#### **Article 14 Business Profits From the Provision of Services, Technical Services, Technical Assistance and Consulting**

Income earned by companies engaging in professionals, technicians, technical assistance, and consulting services shall be taxable only in the Member Country in whose territory the profit from such services is produced. Unless proven otherwise, it is presumed that the place where the profit is produced is the one in which the corresponding expense is charged and recorded.

#### **Article 15 Pensions and Annuities**

Pensions, annuities and other similar periodic income shall be taxable only by the Member Country in whose territory its source of production is located. It is considered that the source is located in the territory of the country where the contract giving rise to the regular income has been signed and, when there is no contract, in the country from which such income is paid.

#### **Article 16 Income From Public Entertainment Activities**

Income derived from the performance of artistic and public entertainment activities shall be taxable only in the Member Country in whose territory the activities were carried out, regardless of the time the persons engaging in such activities remained in that territory.

### **Chapter III Taxes**

#### **on Capital**

#### **Article 17 Taxes on Capital**

The capital located in the territory of a Member Country shall be taxable only by that country.

### **Chapter IV**

#### **General Provisions**

#### **Article 18 Tax Treatment Applicable to Persons Domiciled in Other Member Countries**

No Member Country shall apply to persons domiciled in other Member Countries less favorable treatment than that applied to persons domiciled in its territory concerning the taxes that are the subject of this Decision.

#### **Article 19 Consultation and Information**

The competent authorities of the Member Countries shall consult each other and exchange the information necessary to resolve by mutual agreement any difficulties or doubts that may



arise in the implementation of this Decision and to establish the necessary administrative controls to prevent fraud and tax evasion. The information exchanged pursuant to the provisions of the preceding paragraph shall be deemed secret and may not be transmitted to any person other than the authorities responsible for the administration of the taxes that are the subject of this Decision. For the purposes of this Article, the competent authorities of the Member Countries may communicate directly with each other, conduct concurrent audits and use the information for purposes of tax control. In no case shall the provisions of the first paragraph of this Article be construed as obligating a Member Country to:

- (a) adopt administrative measures contrary to its laws or administrative practice or those of the other Member Country;
- (b) provide information not obtainable on the basis of its own laws or in the exercise of its normal administrative practice or that of another Member Country;
- (c) provide information that reveals trade, industrial or professional secrets, trade processes or information where its communication would be contrary to public policy.

## **Article 20 Interpretation and Application**

The interpretation and application of the provisions of this Decision shall be provided in a manner that takes into account that its primary purpose is to avoid double taxation on the same income or capital at the community level. The interpretations or applications that allow for tax evasion concerning income or capital subject to taxes in accordance with the laws of the Member Countries shall not be valid. Nothing in this Decision shall prevent the application of the laws of the Member Countries to prevent fraud and tax evasion.

## **Article 21 Assistance in Collection Processes**

Member Countries shall assist each other in the collection of taxes owed by a certain taxpayer by acts that are final or executory under the law of the requesting Country. Requests for assistance may only be made if the property of the tax debtor located in the creditor Member Country is insufficient to cover the amount of tax liability owed. Unless otherwise agreed by the competent authorities of the Member Countries, it shall be deemed that:

- (a) The ordinary costs incurred by a Member Country that has committed to providing the assistance shall be borne by that Country.
- (b) Extraordinary costs incurred by the Member Country that has committed to providing the assistance shall be borne by the applicant Member Country and shall be payable regardless of the amount to be recovered in its favor. This Article shall be interpreted in accordance with the domestic legislation of Member Countries.

## **Article 22 Term**

This Decision shall enter into force with respect to income tax and capital tax obtained and amounts paid, credited, or accounted as an expense from the first day of the fiscal year following the publication of this decision in the Official Gazette of the Cartagena Agreement.

## OECD Base Erosion and Profit Shifting (BEPS) Project

This project is aimed at reforming gaps in international taxation rules that promote base erosion and profit shifting, and to ensure that profits are taxed where value is created. The BEPS Package contains 15 action plans, containing recommendations on how to tackle BEPS strategies.

See the Explanatory Statement <https://perma.cc/9437-TCWQ>.

See more about the OECD's efforts in tackling tax avoidance and evasion <https://perma.cc/9E48-HXBD>.

See the OECD's approach to address the challenges arising from the digital economy <https://perma.cc/3Z7E-CSVK>.

OECD, Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint (2020) <https://perma.cc/Y48Y-M83F>.

OECD, Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint (2020) <https://perma.cc/G6X9-8C8S>.

OECD, Public Consultation Document: Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing (2022) <https://perma.cc/9GKD-8YJY>.

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Action plan 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

Action Plan 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Action Plan 7: Preventing the Artificial Avoidance of Permanent Establishment Status

Action Plan 8-10: Aligning Transfer Pricing Outcomes with Value Creation

Action Plan 11: Measuring and Monitoring BEPS

Action Plan 12: Mandatory Disclosure Rules

Action plan 13: Transfer Pricing Documentation and Country-by-Country Reporting Action

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