

**L.N. 139 of 1994**

**INCOME TAX ACT  
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)  
(Republic of Cyprus) Order, 1994**

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance has made the following order: —

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Cyprus) Order, 1994. Citation.  
Arrangements to have effect.
2. It is hereby declared: —

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Republic of Cyprus with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Republic of Cyprus:

- (i) the income tax;
  - (ii) the corporate income tax;
  - (iii) the special contribution;
  - (iv) the capital gains tax;
  - (v) the immovable property tax;
- (b) that it is expedient that those arrangements should have effect.

**SCHEDULE**

**AGREEMENT  
BETWEEN THE GOVERNMENT OF MALTA  
AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME  
AND ON CAPITAL**

The Government of Malta and the Government of the Republic of Cyprus desiring to conclude an Agreement for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

## **CHAPTER I**

### **Scope of the Agreement**

#### **ARTICLE 1**

##### *Personal Scope*

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

#### **ARTICLE 2**

##### *Taxes Covered*

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) in Cyprus:

- (i) the income tax;
- (ii) the corporate income tax;
- (iii) the special contribution;
- (iv) the capital gains tax;
- (v) the immovable property tax,

(hereinafter referred to as 'Cyprus tax');

(b) in Malta:

the income tax,  
(hereinafter referred to as 'Malta tax').

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

(5) Notwithstanding the other provisions of this Article this Agreement shall not apply to tax paid or payable in Malta at the rate provided for in subsection (11) of section 31 of the Income Tax Act (Cap. 123) concerning the chargeable income of any person engaged in the production of petroleum produced in Malta.

## **CHAPTER II**

### **Definitions**

#### **ARTICLE 3**

##### *General Definitions*

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

(a) the term “Cyprus” means the Republic of Cyprus including the national territory, the territorial sea, the continental shelf, and any other area which in accordance with international law and the law of the Republic of Cyprus has been or may hereafter be designated as an area within which the Republic of Cyprus exercises sovereign rights or has jurisdiction or any other rights and duties;

(b) the term “Malta”, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised.

(c) the terms “a Contracting State” and “the other Contracting State” mean the Republic of Cyprus or Malta as the context requires;

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

(e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

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

(g) the term “national” means:

(i) in the case of Cyprus, individuals possessing the citizenship of Cyprus and any person other than an individual deriving its status as such from the law in force in Cyprus;

(ii) in the case of Malta, any citizen of Malta and any legal person, partnership or association deriving its status as such from the law in force in Malta;

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

(i) the term “competent authority” means:

(i) in the case of Cyprus, the Minister of Finance or his authorised representative;

(ii) in the case of Malta, the Minister responsible for finance or his authorised representative.

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

#### ARTICLE 4

##### *Resident*

(1) For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term 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 of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

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

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

## ARTICLE 5

### *Permanent Establishment*

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

(2) The term “permanent establishment” includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including an offshore drilling site;

(g) a building site or construction or assembly or installation project or supervisory activities in connection therewith, where such site, project or activity continues for more than six months.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

(a) it carries on supervisory activities in that other State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State; or

(b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise; or

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

(5) Notwithstanding the provisions of paragraphs (1) and (2) where a person — other than an agent of an independent status to whom paragraph (6) applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (3) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered as agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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

### **CHAPTER III**

#### **Taxation of Income**

#### **ARTICLE 6**

##### *Income from Immovable Property*

(1) Income derived by a resident of a Contracting State from immovable property (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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work or to explore for, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## ARTICLE 7

### *Business Profits*

(1) The 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 thereof as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independent with the enterprise of which it is a permanent establishment or with other associated enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. 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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available to the competent authority of that State, it is not possible or not practicable to ascertain the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of profits from the business of the insurance.

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

## ARTICLE 8

### *International Traffic*

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

(2) If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in 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) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## ARTICLE 9

### *Associated Enterprises*

(1) Where

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

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

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

(2) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of such liability by the exercise of a discretion or the making of an estimate by the competent authority of that State in cases which, from the information available to the competent authority of that State, it is not possible or not practicable to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

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

## ARTICLE 10

### *Dividends*

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

(2) However, 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:

(a) where the dividends are paid by a company resident of Cyprus to a resident of Malta who is the beneficial owner thereof, the Cyprus tax so charged shall not exceed 15 per cent of the gross amount of the dividends;

(b) where the dividends are paid by a company which is a resident of Malta to a resident of Cyprus who is the beneficial owner thereof Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

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 that State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the 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 a 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 insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## ARTICLE 11

### *Interest*

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

(2) However, such interest may be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) interest arising in a Contracting State and derived by the Government of the other Contracting State including political sub-divisions and local authorities thereof, the Central Bank or any statutory body of that other Contracting State with respect to loans or credits made or guaranteed by the Government of that other Contracting State including political sub-divisions and local authorities thereof, the Central Bank or any statutory body of that other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

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

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

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

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

## ARTICLE 12

### *Royalties*

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

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

(3) The term “royalties” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b), or any such knowledge or information as is mentioned in sub-paragraph (c);

- (e) the use of, or the right to use:
  - (i) motion picture films;
  - (ii) films or video tapes for use in connection with television; or
  - (iii) tapes for use in connection with radio broadcasting; or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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

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

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

## ARTICLE 13

### *Alienation of Property*

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

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

(3) Income or gains from the alienation of movable property forming part of the business property of a 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 income or gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in the other State.

(4) Income or gains from the alienation of ships, aircraft and road vehicles operated in international traffic or movable property pertaining to the operation of such means of transportation shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

## ARTICLE 14

### *Independent Personal Services*

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting for the purpose of performing his activities (in which 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 during any twelve month period; or

(c) if the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds five thousand U.S. dollars (US\$ 5,000) during the calendar year, notwithstanding that his stay in that State is for a period or periods amounting in the aggregate to less than 183 days during that twelve month period.

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

## ARTICLE 15

### *Dependent Personal Services*

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period, and

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

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

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## ARTICLE 16

### *Directors' Fees*

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

## ARTICLE 17

### *Artistes and Athletes*

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

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

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or athlete is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

## ARTICLE 18

### *Pensions*

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

(2) Notwithstanding the provisions of paragraph (1), pensions and other payments made under the social security legislation of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

## ARTICLE 19

### *Government Service*

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services 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 purposes of rendering the services.

(2) (a) Any pension paid by, or out of funds created by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

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

(4) Where remuneration is paid under a development assistance programme of a Contracting State, out of funds exclusively supplied by that State to a specialist or volunteer seconded to the other Contracting State with the consent of that other State, such remuneration shall be deemed to have been paid by the first-mentioned State and shall be taxable only in that State.

## ARTICLE 20

### *Teachers*

(1) Remuneration which a professor or teacher who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that State, provided that such remuneration is derived by him from outside that State.

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

## ARTICLE 21

### *Students and Trainees*

An individual who is resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State; or

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious, or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

(b) the amount of such grant, allowance or award; and

(c) any remuneration not exceeding six thousand U.S. dollars (US\$ 6,000) in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purpose of his maintenance.

## ARTICLE 22

### *Other Income*

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

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

## **CHAPTER IV**

### **Taxation of Capital**

#### ARTICLE 23

##### *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 represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

## **CHAPTER V**

### **Elimination of Double Taxation**

#### ARTICLE 24

##### *Elimination of Double Taxation*

(1) In the case of Cyprus double taxation shall be eliminated as follows:

Subject to the provisions of the law of Cyprus regarding the allowance as a credit against Cyprus tax of tax payable in a territory outside Cyprus, Malta tax payable under the laws of Malta, whether directly or by deductions in respect of profits, income or gains from sources within Malta shall be allowed as a credit against any Cyprus tax payable in respect of that profit, income or gains. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to such income derived in Malta.

(2) In the case of Malta, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within Cyprus the Cyprus tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

(3) The tax payable in a Contracting State mentioned in paragraphs (1) and (2) of this Article shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives granted under the laws of the Contracting State, provided that in the case of dividends, interest or royalties any such tax which has been exempted or reduced shall be deemed to have been paid at:

(a) 15 per cent of the gross amount of the dividends referred to in Article 10;

(b) 10 per cent of the gross amount of the interest referred to in Article 11; and

(c) 10 per cent of the gross amount of the royalties referred to in Article 12.

(4) Where under the provisions of this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof then the relief to be allowed under this Agreement in the first mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

## **CHAPTER VI**

### **Special Provisions**

#### **ARTICLE 25**

##### *Non-discrimination*

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

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on in the same activities.

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

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

(5) Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status, family responsibilities or any other personal circumstances which it grants to its own residents.

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

## ARTICLE 26

### *Mutual Agreement Procedure*

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of

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

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

## ARTICLE 27

### *Exchange of Information*

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

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

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

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

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

## ARTICLE 28

### *Diplomatic 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.

## CHAPTER VII

### Final Provisions

## ARTICLE 29

### *Entry into Force*

(1) The Government of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

(2) The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph (1) and its provisions shall have effect:

(a) in Cyprus:

in respect of taxes which are levied on any income or capital which has accrued on or after the first day of January,

(b) in Malta:

in respect of taxes for any year of assessment beginning on or after the first day of January in the year immediately following the year of the signature.

## ARTICLE 30

### *Termination*

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

(a) in Cyprus:

in respect of taxes for any year of assessment beginning in the year following the year in which the notice of termination has been given;

(b) in Malta:

in respect of taxes for any year of assessment beginning on or after the first day of January in the second calendar year next following that in which the notice of termination has been given.

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

DONE in duplicate at Rome this 22nd day of October, 1993, in the English language.

FOR THE GOVERNMENT OF  
MALTA

CARMEL J. AQUILINA

Ambassador for Malta

FOR THE GOVERNMENT OF  
REPUBLIC OF CYPRUS

PEDROS MICHAELIDES

Cypriot High Commissioner for Malta