

L.N 124 of 1999

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

**Double Taxation Relief (Taxes on Income)
(Kingdom of Denmark) Order, 1999**

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

Citation.

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Kingdom of Denmark) Order, 1999.

Arrangements to have effect.

2. It is hereby declared:-

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

- (i) the income tax to the State;
- (ii) the income tax to the municipalities;
- (iii) the income tax to the county municipalities;
- (iv) taxes imposed under the Hydrocarbon Tax Act;

(b) that it is expedient that those arrangements should have effect;

(c) that the Convention has entered into force on the 30th December, 1998.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE THE REPUBLIC OF MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Kingdom of Denmark and the Government of the Republic of Malta, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

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

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

3. The existing taxes to which the Convention shall apply are in particular:

a) In Denmark:

- (i) the income tax to the State
(indkomsskatten til staten);
- (ii) the income tax to the municipalities
(den kommunale indkomstskat);
- (iii) the income tax to the county municipalities
(den amtskommunale indkomstskat);

- (iv) taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinteskatteloven); (hereinafter referred to as “Danish tax”);
- b) In Malta:
the income tax;
(hereinafter referred to as “Malta tax”).

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

ARTICLE 3

General Definitions

- 1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the terms "a Contracting State" and "the other Contracting State" mean Denmark or Malta, as the context requires;
 - b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;
 - c) the term "Malta" means the Republic of Malta and, 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, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein the Republic of Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the Continental Shelf and exploitation of its natural resources;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity that is - treated as a body corporate for tax purposes;
 - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting

State;

g) the term "international traffic" means any transport by a ship or aircraft, operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term "competent authority" means:

(i) in Denmark:

the Minister for Taxation or his authorised representative;

(ii) in Malta:

the Minister responsible for finance or his authorised representative;

i) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

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

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

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

ARTICLE 5

Permanent Establishment

1. For the purposes of this 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. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

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

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

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

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, or to explore for, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

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

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

ARTICLE 8

Shipping And Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships and aircraft in international traffic shall be taxable only in that State.

2. Profits derived by an enterprise of a Contracting State from the use, demurrage, or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except where such containers, trailers, barges and related equipment are used for transport solely between places within the other Contracting State.

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

4. With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium the Scandinavian Airlines System (SAS), the provisions of paragraphs 1 and 3 shall apply only to such proportion of the profits as corresponds to the participation held in that consortium by SAS Danmark A/S, the Danish partner of Scandinavian Airlines System.

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.

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 which is a resident of Denmark to a resident of Malta who is the beneficial owner thereof, the Danish tax so charged shall not exceed:

(i) 0 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds and has held directly at least 25 per cent of the capital of the company paying the dividends for a twelve month period prior to the date the dividends are declared;

(ii) 15 per cent of the gross amount of the dividends in all other cases;

b) where the dividends are paid by a company which is a resident of Malta to a resident of Denmark 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.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such 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.

6. Where a Contracting State has levied the tax at the source in excess of the amount of tax chargeable under the provisions of this Convention, application for the refund of the excess amount must be lodged with the competent authority of that State within a period of four years after the expiration of the calendar year in which the tax was levied. The refund shall be given within a six month period from the date on which the application was submitted to the competent authority. The six month period may be extended if both of the Contracting States agree that the necessary documentation has not been presented to the competent authority of the first-mentioned State.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of the first sentence of this paragraph, the competent authority of that other State shall notify the competent authority of the first-mentioned State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. 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.

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

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 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.

5. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of the first sentence of this paragraph, the competent authority of that other State shall notify the competent authority of the first-mentioned State.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret 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, 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.

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.

5. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person connected with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of the first sentence of this paragraph, the competent authority of that other State shall notify the competent authority of the first-mentioned State.

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 shares or comparable interests in a company the assets of which consist directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

3. 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.

4. Gains derived by an enterprise of a Contracting State 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 that State.

5. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods and merchandise shall be taxable only in that State, except where such containers, trailers, barges and related equipment are used for transport solely between places within the other Contracting State.

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

7. With respect to gains derived by the Danish, Norwegian and Swedish air transport consortium the Scandinavian Airlines System (SAS), the provisions of paragraph 4 shall apply only to such proportion of the gains as corresponds to the participation held in that consortium by SAS Danmark A/S, the Danish partner of Scandinavian Airlines System.

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 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 the activity exercised in the other Contracting State may be taxed in that other State.

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

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 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 a resident of the first-mentioned State, and

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident provided that such remuneration is subject to tax in that Contracting State.

Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the consortium the Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Denmark.

ARTICLE 16

Directors' Fees

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

ARTICLE 17

Artistes And Sportsmen

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is substantially supported by public funds of the other Contracting State or a political subdivision or a local authority thereof.

ARTICLE 18

Pensions And Similar Payments

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

2. Notwithstanding the provisions of paragraph 1, payments received by an individual, being a resident of a Contracting State, under the social security legislation of the other Contracting State, or under any other scheme out of funds created by that other State or a political subdivision or a local authority thereof, shall be taxable only in that other State.

3. In the case of an individual who was a resident of a Contracting State and has become a resident of the other Contracting State, the provisions of paragraph 1 shall not affect the right of the first-mentioned State under its national laws to tax pensions, annuities and other similar remuneration accruing to such individual from sources within that State.

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

ARTICLE 19

Government Service

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

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

(i) is 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) 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, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

Activities In Connection With Preliminary Surveys, Exploration Or Extraction Of Hydrocarbons

1. Notwithstanding the provisions of Articles 5 and 14, a resident of a Contracting State who carries on activities in connection with preliminary surveys, exploration or extraction of hydrocarbons situated in the other Contracting State shall be deemed to be carrying on in respect of such activities a business in that other State through a permanent establishment or to be performing independent personal services from a fixed base situated therein.

2. The provisions of paragraph 1 shall not apply where the activities are carried on for a period or periods not exceeding 30 days in the aggregate in any twelve month period. However, for the purpose of this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be deemed to be carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

3. Notwithstanding the provisions of paragraphs 1 and 2, drilling rig activities carried on offshore shall constitute a permanent establishment only if the activities are carried on for a period or periods exceeding 183 days in the aggregate in any twelve month period. However, for the purpose of this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be deemed to be carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

4. Notwithstanding the provisions of Article 13, capital gains on drilling rigs used for activities, as mentioned in paragraph 3, which are deemed to be derived by a resident of a Contracting State when the activities cease to be subject to tax in the other Contracting State, shall be exempt from tax in that other State. For the purpose of this paragraph, the term "capital gains" means the amount by which the market value at the moment of transfer exceeds the residual value at that moment, as increased by any depreciation taken.

ARTICLE 22

Other Income

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

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

ARTICLE 23

Elimination Of Double Taxation

Double taxation shall be avoided as follows:

1. In the case of Denmark:

a) Subject to the provisions of sub-paragraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Malta, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Malta;

b) such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Malta;

c) where a resident of Denmark derives income which, in accordance with the provisions of this Convention, shall be taxable only in Malta, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from Malta.

2. In the case of Malta:

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 Convention, there is included in a Malta assessment income from sources within Denmark, the Danish tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

ARTICLE 24

Limitation Of Relief

1. Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, a person, in respect of that 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 Convention in the first-mentioned State shall apply only to so much of the income as is taxed in the other Contracting State.

2. The provisions of this Convention shall not apply to persons entitled to any special tax benefits under:

- a) a law of either one of the Contracting States which has been identified in an Exchange of Notes between the Contracting States; or
- b) any substantially similar law subsequently enacted.

ARTICLE 25

Non-Discrimination

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

2. 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 4 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.

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

6. The provisions of this Article shall apply to the taxes which are the subject of this Convention.

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 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 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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.

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar

as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I. 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) 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 Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 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

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the territory of Denmark which is specifically excluded from the application of the Convention and 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.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory to which it has been extended under this Article.

ARTICLE 30

Entry Into Force

1. The Governments of the Contracting States shall notify to each other, through diplomatic channels, that the legal requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a) in Denmark:

in respect of taxes for the income year immediately following that in which the Convention enters into force and subsequent income years;

b) in Malta:

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

ARTICLE 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 beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

a) in Denmark:

in respect of taxes for the income year immediately following that in which the notice of termination is given and subsequent income years;

b) in Malta:

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

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

Done in duplicate at Brussels this thirteenth day of July 1998, in the English language.

Ole Philipson
For the Government of
the Kingdom of Denmark

Victor Camilleri
For the Government of
the Republic of Malta

PROTOCOL

At the signing of the Convention between the Government of the Kingdom of Denmark and the Government of the Republic of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provision shall form an integral part of the Convention:

Concerning paragraph 4 of Article 13 it is understood that capital gains as mentioned in that provision can only be taxed in the State where the owner is a resident, even where the ship or aircraft is operated by a resident of a third state.

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

Done in duplicate at Brussels this thirteenth day of July 1998, in the English language.

Ole Philipson
For the Government of
the Kingdom of Denmark

Victor Camilleri
For the Government of
the Republic of Malta

EXCHANGE OF NOTES

His Excellency Victor Camilleri
Ambassador of Malta
Rue Jules Lejeune 44
1050 Brussels

Your Excellency,

13 July, 1998

I have the honour to refer to the Convention, signed today, and to propose on behalf of the Government of the Kingdom of Denmark that:

With reference to paragraph 2 of Article 24, the provisions of this Convention shall not apply to persons who are entitled to:

(i) a special tax benefit under the Malta Financial Services Centre Act (Cap. 330), except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap.123) and of the Income Tax Management Act, 1994; or

(ii) exemption or any other special tax benefit under the provisions of the Merchant Shipping Act, 1973, as amended. However, this does not apply to income that is subject to the normal Malta income tax; or

(iii) any special tax benefit in respect of distributions by a trust subject to the provisions of the Trusts Act given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Convention in its own right, or

(iv) any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of paragraph 2 of Article 24.

If the foregoing proposals are acceptable to the Government of the Republic of Malta, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

OLE PHILIPSON
Ambassador
His Excellency Ole Philipson
Ambassador of Denmark
Avenue Louise 221
1050 Brussels

Brussels 13 July, 1998

EXCHANGE OF NOTES

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Convention, signed today, and to propose on behalf of the Government of the Kingdom of Denmark that:

With reference to paragraph 2 of Article 24, the provisions of this Convention shall not apply to persons who are entitled to:

(i) a special tax benefit under the Malta Financial Services Centre Act (Cap. 330), except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap.123) and of the Income Tax Management Act, 1994; or

(ii) exemption or any other special tax benefit under the provisions of the Merchant Shipping Act, 1973, as amended. However, this does not apply to income that is subject to the normal Malta income tax; or

(iii) any special tax benefit in respect of distributions by a trust subject to the provisions of the Trusts Act given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Convention in its own right, or

(iv) any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of paragraph 2 of Article 24.

If the foregoing proposals are acceptable to the Government of the Republic of Malta, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention."

The foregoing proposal being acceptable to the Government of the Republic of Malta, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

VICTOR CAMILLERI
Ambassador