

SUBSIDIARY LEGISLATION 123.77

**DOUBLE TAXATION RELIEF ON TAXES ON
INCOME WITH THE STATE OF KUWAIT ORDER**

19th March, 2004

LEGAL NOTICE 349 of 2004.

1. The title of this order is the Double Taxation Relief on Taxes on Income with the State of Kuwait Order. Citation.

2. It is hereby declared:

Arrangements to
have effect.

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the State of Kuwait with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the State of Kuwait:
 - (i) the corporate income tax;
 - (ii) the percentage of the net profits of shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
 - (iii) the Zakat; and
 - (iv) the tax subjected according to the supporting of national employee law;
- (b) that it is expedient that those arrangements should have effect;
- (c) that the Convention has entered into force on the 19th March, 2004.

SCHEDULE

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

The Government of Malta and the Government of The State of Kuwait, desiring to promote their mutual economic relations by removing fiscal obstacles through the conclusion of 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, a political subdivision or a local authority thereof, irrespective of the manner in which they are levied.

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

3. The taxes to which this Convention shall apply are:

(a) in Kuwait:

- (i) the corporate income tax;
 - (ii) the percentage of the net profits of shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
 - (iii) the Zakatg; and
 - (iv) the tax subjected according to the supporting of national employee lawg;
- (hereinafter referred to as "Kuwaiti 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 this Convention in addition to, or in place of, the taxes referred to above. The competent authorities of the Contracting States shall notify each other of any 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 term "Kuwait" means the State of Kuwait and includes any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area in which Kuwait may exercise sovereign rights or jurisdiction;
- (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 Kuwait or Malta, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "national" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;
- (i) the term "tax" means Kuwaiti tax or Malta tax, as the context requires;
- (j) the term "competent authority" means:
 - (i) in Kuwait: the Minister of Finance or his authorized representative;
 - (ii) in Malta: the Minister responsible for finance or his authorized representative.

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

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

- (a) in the case of Kuwait, an individual who has his domicile in Kuwait and is a Kuwaiti national and a company which is incorporated in Kuwait;
- (b) in the case of Malta, a person who is resident in Malta for the purposes

of Malta tax.

2. For the purposes of paragraph 1, a resident of a Contracting State shall include:

- (a) the Government of a Contracting State or any political subdivision or local authority thereof; and
- (b) any government institution created under public law of a Contracting State such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity; and
- (c) any inter-governmental entity established in a Contracting State in whose capital that Contracting State subscribes together with other States.

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him;
- (b) if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (c) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (d) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (e) if his status cannot be determined under the provisions of subparagraphs (a) - (d), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. 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, or, if that cannot be established, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of this Convention to such person.

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 including an offshore drilling site.

3. A building site or a construction, assembly or installation project or supervisory activity in connection therewith constitutes a permanent establishment only if such site, project or activity continues for a period of more than three months.

4. The furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State constitutes a permanent establishment provided that such activity continues for the same project or a connected project for a period or periods aggregating more than three months within any twelve-month period.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial equipment in that other Contracting State is being used or installed by, for or under contract with the enterprise.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) - (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2 above, where a person - other than an agent of an independent status to which paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if -

- (a) he has and habitually exercises in the first-mentioned Contracting State a general authority to negotiate and conclude contracts for or on behalf of such enterprise; or
- (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly sells goods or merchandise for or on behalf of such enterprise; or
- (c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it; or

- (d) in so acting, he manufactures in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.

8. 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 Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions made between that agent and the enterprise are not made under arm's length conditions, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 Contracting 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) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture, 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 resourcesg ships and aircraft shall not be regarded as immovable property.

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

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

Article 7

BUSINESS PROFITS

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

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

with the enterprise of which it is a permanent establishment 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 of the enterprise which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere. However, in so far as Kuwait is concerned, 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 or any of its other offices.

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

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

6. 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.

7. 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 a 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 law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

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

9. 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 insurance.

Article 8

INTERNATIONAL TRAFFIC

1. Profits derived by a resident of a Contracting State from the operation of ships, aircraft or road vehicles in international traffic shall be taxable only in that Contracting State.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where -

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

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

2. Where one of the Contracting States includes in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this 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 Contracting State.

2. Where:

- (a) dividends are paid by a company resident of Kuwait to a resident of Malta who is the beneficial owner thereof, no Kuwaiti tax shall be charged on such dividend;
- (b) dividends are paid by a company which is a resident of Malta to a resident of Kuwait who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall in no case exceed that chargeable on the profits out of which the dividends are paid provided, however, that such tax on the gross amount of dividends payable to the Government of

Kuwait or any of its institutions or any inter-governmental entities referred to in paragraph 2 of Article 4 shall not exceed ten per cent (10%), and that in all other cases such tax shall not exceed fifteen per cent (15%) of the gross amount of the dividends.

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 assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 11

INTEREST

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

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.

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

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

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

Article 12

ROYALTIES

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

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works (including cinematograph films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such 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 Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and of shares in a company whose assets wholly or overwhelmingly consist of immovable property, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing 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 the other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships, aircraft or road vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or road vehicles shall be taxable only in that Contracting State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2, 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 State 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 calendar year; or
- (c) if the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds thirty thousand United States dollars or the equivalent during the calendar year, notwithstanding that his stay in that State is for a period or periods amounting in the aggregate to less than 183 days during that year.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other

Contracting State.

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 that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting 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 by an enterprise of a Contracting State may be taxed in that Contracting State.

4. Ground staff resident of a Contracting State appointed from head office of the national air carrier of that Contracting State to the other Contracting State shall be exempted from taxes levied on their remunerations in the other Contracting State.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State may be taxed only in the first-mentioned Contracting 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. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived by entertainers or athletes who are residents of a Contracting State from activities in the other Contracting State if their visit to that other Contracting State is substantially supported from the public funds of the first-mentioned Contracting State, including those of any political subdivision, a local authority or statutory body thereof.

Article 18

PENSIONS AND ANNUITIES

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

consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

3. As used in this Article:

- (a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment;
- (b) the term "annuities" means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 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 Contracting State or subdivision or authority shall be taxable only in that Contracting State.
 - (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State who:
 - (i) is a national of that Contracting State or
 - (ii) did not become a resident of that Contracting 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 Contracting State or subdivision or authority shall be taxable only in that Contracting 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 Contracting State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision 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 Contracting State to a specialist or volunteer seconded to the other Contracting State with the consent of that other Contracting State, such remuneration shall be deemed to have been paid by the first-mentioned Contracting State and shall be taxable only in that Contracting State.

Article 20

TEACHERS AND RESEARCHERS

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 received 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

1. Payments which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments arise from sources outside that first-mentioned Contracting State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting. This paragraph shall only apply if the student or business trainee stays for more than six months in that Contracting State.

Article 22

OTHER INCOME

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 Contracting State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided in accordance with the following subparagraphs:

(a) In the case of Kuwait:

If a resident of Kuwait derives income which in accordance with the provisions of this Convention is taxable in Malta, Kuwait may tax this income and may give relief for the Malta taxes suffered in accordance with the provisions of its domestic law.

In such a case, Kuwait shall deduct from the taxes so calculated the tax paid in Malta but in an amount not exceeding that proportion of the aforesaid Kuwaiti tax which such income bears to the entire income.

(b) In the case of Malta:

(i) 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 Kuwait, the Kuwaiti tax on such income shall be allowed

as a credit against the relative Malta tax payable thereon.

- (ii) For the purpose of (i) of this sub-paragraph the Kuwaiti tax Zakat mentioned in paragraph 3 of Article 2 shall be considered an income tax.

3. Where in accordance with the laws of a Contracting State, taxes covered by this Convention are exempted or reduced in accordance with the special investment incentive measures for a limited period of time, such taxes which have been exempted or reduced shall be deemed to have been paid for the purposes of the preceding paragraphs of this Article.

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that Contracting State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

5. Nothing in this Article shall affect the right of a Contracting State to grant an exemption or reduction of taxation to its own nationals who are residents of that Contracting State. This paragraph shall not apply to the share of the capital of companies which is owned by residents of the other Contracting State.

6. Nothing in this Article shall be interpreted as imposing a legal obligation on either Contracting State to extend to the residents of the other Contracting State the benefit of any treatment, preference or privilege which may be accorded to any other Contracting State or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such Contracting State may be a party.

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

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting 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 this Convention.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 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 this 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 27

DIPLOMATIC AND CONSULAR PRIVILEGES

Nothing in this Convention shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

Article 28

MISCELLANEOUS

1. The provisions of this Convention shall not be construed so as to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or thereafter accorded:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that State, or
- (b) by any other convention or agreement entered into by a Contracting State.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Convention.

Article 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other that its constitutional requirements for the entry into force of this Convention have been complied with.

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

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year in which this Convention is signed;
- (b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year in which this Convention is signed.

Article 30

DURATION AND TERMINATION

This Convention shall remain in force for a period of five years and shall continue thereafter for similar period or periods unless, six months before the expiry of the initial or any subsequent period, either Contracting State notifies the other in writing, of its intention to terminate this Convention. In such event, the Convention shall cease to have effect in both Contracting States:

- (a) in respect of tax withheld at the source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice is given;
- (b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Riyadh, this 14th day of Jamad Al-Awwal 1423 A.H. corresponding to the 24th day of July, 2002, in three originals, in the Arabic, Maltese and English languages, in the case of divergence in interpretation the English text shall prevail.

For the Government of Malta
H.E. Dr Saviour P. Gauci
Ambassador of Malta

For the Government of the State of Kuwait
H.E. Sheikh Jaber Duaij Al-Ibrahim Al-Sabah
Ambassador of the State of Kuwait

PROTOCOL

The Government of Malta and the Government of the State of Kuwait on signing at Riyadh, Kingdom of Saudi Arabia on this fourteenth day of Jamad Al-Awwad 1423 A.H., corresponding to the twenty-fourth day of July, 2002, the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed upon the following provisions which shall form an integral part of the said Convention:

With respect to Article 7:

- (a) With regard to paragraph 1 of this Article, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience including consultancy, and technical assistance experience, shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply.
- (b) The term "expenses which are incurred for the purposes of the permanent establishment" mentioned in paragraph 3 of this Article means all expenses actually incurred whether in the Contracting State in which the permanent establishment is situated or elsewhere, reasonably allocable to such permanent establishment, and which have contributed to earning of profits.

With respect to Article 10:

With respect to sub-paragraph (b) of paragraph 2 of Article 10, it is understood that the Malta tax shall not exceed ten per cent (10%) or fifteen per cent (15%), as the case may be, of that share of pre-tax profits of a company resident in Malta which are attributable to a shareholder who is a resident in Kuwait. In effect, the 10% or 15% rate of tax shall be applied to the relevant company profits. Dividends paid out of such profits shall not suffer any further Malta tax (including any tax imposed on dividends).

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Riyadh, this 14th day of Jamad Al-Awwal 1423 A.H. corresponding to the 24th day of July, 2002, in three originals, in the Arabic, Maltese and English languages, in the case of divergence in interpretation the English text shall prevail.

For the Government of Malta

H.E. Dr Saviour P. Gauci

Ambassador of Malta

For the Government of the State of Kuwait

H.E. Sheikh Jaber Duaij Al-Ibrahim Al-Sabah

Ambassador of the State of Kuwait
