L.N. 189 of 2007

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (Kingdom of Morocco) Order, 2007

IN exercise of the powers conferred by article 76 of the Income Tax Act (Cap. 123), the Prime Minister and Minister of Finance has made the following Order:-

Citation.

1. The title of this Order is the Double Taxation Relief (Taxes on Income) (Kingdom of Morocco) Order, 2007.

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 Kingdom of Morocco with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Kingdom of Morocco:

(i) the general income tax;

(ii) the corporation tax;

(iii) the tax on income from shares or corporate rights and assimilated income;

(iv) the tax on gains from immovable property;

(v) the participation in the national solidarity;

(vi) the tax on income from fixed revenue investments;

(vii) the tax on gains from movable values and other titles of capital and debt-claims;

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

(c) that the Convention has entered into force on the 15th June, 2007.

B 2576

SCHEDULE

CONVENTION BETWEEN

MALTA

AND

THE KINGDOM OF MOROCCO

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 Kingdom of Morocco, 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

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

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

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

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

a) in the case of Malta:

the income tax;

(hereinafter referred to as “Malta tax”);

b) in the case of the Kingdom of Morocco:

i) the general income tax;

ii) the corporation tax;

iii) the tax on income from shares or corporate rights and assimilated income;

iv) the tax on gains from immovable property;

v) the participation in the national solidarity;

vi) the tax on income from fixed revenue investments;

vii the tax on gains of movable values and other titles of capital and debt-claims;

(hereinafter referred to as “Moroccan taxes”).

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 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 “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 subsoil 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;

b) the term “Morocco” means the Kingdom of Morocco and, when used in a geographical sense, the term “Morocco” includes:

i) the territory of the Kingdom of Morocco, the territorial sea thereof; and

ii) the maritime areas beyond the territorial sea, including the seabed and subsoil thereof (continental shelf) and the exclusive economic zone over which Morocco exercises sovereign rights, in accordance with its domestic laws and international law, for the purpose of exploration and exploitation of the natural resources of such areas;

c) the terms “a Contracting State” and “the other Contracting State” mean Malta or Morocco as the context requires;

d) the term “tax” means Malta tax or Moroccan tax, as the context requires;

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

f) the term “company” means any body corporate or any entity 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 “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;

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

j) the term “competent authority” means:

i) in the case of Malta, the Minister responsible for finance or his authorised representative;

ii) in the case of Morocco, the Minister of Economy and Finance or his authorised 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 any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of 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 Sates 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;

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

g) a sales outlet;

h) a warehouse in relation to a person providing storage facilities for others; and

i) a building site or construction or assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than six months.

3. The term “permanent establishment” likewise encompasses the

furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than two months within any twelve-month period.

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

a) the use of facilities solely for the purpose of storage, 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 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a

broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

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

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

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

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

5. The foregoing provisions shall also apply to income derived from movable properties or income derived from services connected with the use of or the right to use immovable properties which, under the domestic law of the Contracting State in which these properties are situated, shall be deemed to be income from immovable properties.

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

b) In the case of Morocco, no such deduction shall be allowed in respect of payments made by the permanent establishment to the head office of the enterprise or to any of its branches, such as honoraria or commissions. As regards interests on payments made in advance or amounts lent to the permanent establishment, a deduction shall be allowed, but the amount shall not exceed that which results from the computation of the interest in accordance with the provisions of the domestic law. This limitation concerning interests shall not apply to banking establishments.

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 or aircraft in international traffic shall be taxable only in that State in which the place of effective management of the enterprise is situated.

If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State of which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

2. For the purpose of this Article, profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall include inter alia profits derived from the use or rental of containers, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

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

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

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

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

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

2. 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 Morocco to a resident of Malta who is the beneficial owner thereof, the Moroccan tax so charged shall not exceed:

i) 6.5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

ii) 10 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 Morocco 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.

3. The provisions of paragraphs 1 and 2 do not concern the liability of the company for the profits on which the dividends are paid.

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

5. 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.

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

7. Where a company which is a resident of Malta has a permanent establishment in Morocco, it may be liable to a tax in Morocco, but that tax may not exceed 6.5 per cent of the amount of the net profits of the permanent establishment, after the deduction of the corporate income tax related to such profits.

ARTICLE 11

INTEREST

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in:

a) Morocco and paid to the Government of Malta or to the Central Bank of Malta shall be exempt from tax in the Kingdom of Morocco;

b) Malta and paid to the Government of the Kingdom of Morocco or to the Central Bank of Morocco (Bank Al Maghrib) shall be exempt from tax in Malta.

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

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

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or 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 a fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 12

ROYALTIES

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

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

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films, tapes or disks for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, as well as technical assistance.

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

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

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares or comparable interests, other than shares quoted on an approved stock exchange, 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 from the alienation of ships or aircraft operated in international traffic, by an enterprise of a Contracting State, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and

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

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

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

ARTICLE 16

DIRECTORS' FEES

Directors' fees and 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 SPORTSPERSONS

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by an entertainer or a sportsperson from activities exercised in a Contracting State shall be exempt from tax in that State, if the visit to that State is supported wholly or mainly by the Government of the other Contracting State, a political subdivision or a local authority thereof.

ARTICLE 18

PENSIONS AND SOCIAL SECURITY PAYMENTS

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

2. Pensions and life annuities paid, and other periodical or occasional payments made by the government of a Contracting State, or one of its political subdivisions in respect of insuring personal accidents, shall be taxable only in that State.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

ARTICLE 19

GOVERNMENT SERVICE

1. a) Salaries, wages and 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 other 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 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 AND BUSINESS APPRENTICES

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall

not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State at the invitation of that State, of a public university and other educational or cultural institution which is recognized as non-profitable by the Government of that State, as part of a programme of a cultural exchange for a period not exceeding two years with the aim of teaching, giving conferences or carrying out researches for that institution, who is or was immediately before that visit, a resident of the other Contracting State, shall be exempt from tax in the first Contracting State on his remuneration in respect of such activity, provided that such remuneration is derived by him from sources outside that State.

2. The provisions of paragraph 1 shall not apply to remuneration received in respect of research works undertaken not in the public interest but chiefly for the private benefit of a specific person or persons.

ARTICLE 22

OTHER INCOME

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

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

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of Malta, double taxation shall be avoided as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Convention, there is included in a Malta assessment income

from sources within Morocco, the Moroccan tax on such income shall be allowed as a credit against the relative Malta tax payable thereon. However, such credit may not exceed that part of the tax on the Malta income, as computed before the credit is given, which is attributable to such income derived from Morocco.

2. In the case of a resident of Morocco, double taxation shall be avoided as follows:

Subject to the provisions of the law of Morocco, where a resident of Morocco derives income which, in accordance with the provisions of this Convention, may be taxed in Malta, Morocco shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax payable on the income in Malta. However, such deduction may not exceed that part of the tax on the Moroccan income, as computed before the deduction is given, which is attributable to such income derived from Malta.

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

4. For the purposes of allowance as a credit, the tax payable in Morocco or Malta, as the context requires, shall be deemed to include the tax which is otherwise payable in a Contracting State but has been reduced or waived by that State under its legal provisions for tax incentives.

ARTICLE 24

NON-DISCRIMINATION

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

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

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

carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

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

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

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

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

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

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the

sense of the preceding paragraphs.

ARTICLE 26

EXCHANGE OF INFORMATION

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

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 28

ENTRY INTO FORCE

1. The Contracting States shall notify 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 thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a) 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;

b) in Morocco:

i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the first calendar year following that in which this Convention enters into force; and

ii) in respect of other taxes, for any taxable year beginning on or after the first day of January of the first calendar year following that in which this Convention enters into force.

ARTICLE 29

TERMINATION

This Convention shall remain in force indefinitely, but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the Convention has entered into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

a) 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;

b) in Morocco:

i) with regard to taxes withheld at source, for amounts paid or credited on or after the first day of January of the first calendar year following that in which such notice is given; and

ii) with regard to other taxes, for any taxable year beginning on or after the first day of January of the first calendar year following

that in which such notice is given.

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

Done in duplicate at Morocco this 26th day of October 2001 in the Arabic and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALTA	FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO
Joe Borg Minister for Foreign Affairs	Mohamed Benaissa Minister for Foreign Affairs

PROTOCOL

At the moment of signing the Convention between the Government of Malta and the Government of the Kingdom of Morocco for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the two parties have agreed upon the following provisions, which will form an integral part of the Convention.

With respect to Article 10 “Dividends”, under the Malta law in force, income tax paid or payable by a company, as is referable to that part of its profits which is distributed by way of dividends , is assimilated with the personal income tax of the shareholder in receipt of such a dividend. In the shareholder’s hands the dividend is charged to tax gross, and the relevant amount of tax, so assimilated, is set off against the shareholder’s tax liability on his income from all liable sources.

It is agreed that, if, in future, there will be a change in the imputation system described above or a change in the rate of tax applicable to companies, the competent authorities of the Contracting States will consult each other to review the provisions of Article 10.

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

Done in duplicate at Morocco this 26th day of October 2001 in the Arabic and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALTA	FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO
Joe Borg Minister for Foreign Affairs	Mohamed Benaissa Minister for Foreign Affairs