L.N. 65 of 1997

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (Romania) Order, 1997

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

Citation.

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Romania) Order, 1997.

Arrangements to have effect.

2. It is hereby declared:—

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

(i) the tax on income derived by individuals;

(ii) the tax on profit;

(iii) the tax on salaries and other similar remuneration;

(iv) the tax on dividends;

(v) the tax on agricultural income;

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

(c) that the Agreement has entered into force on the 16th August, 1996.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF ROMANIA 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 Romania, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and to promote and strengthen the economic relations between the two countries on the basis of national sovereignty and respect of independence, full equal rights, mutual advantage and non-interference in the internal affairs, have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed by each of the Contracting States or by its territorial - administrative units, 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.

3. The existing taxes to which this Agreement shall apply are in particular:

(a) In the case of Romania:

(i) the tax on income derived by individuals;

(ii) the tax on profit;

(iii) the tax on salaries and other similar remuneration;

(iv) the tax on dividends; and

(v) the tax on agricultural income;
(hereinafter referred to as "Romanian tax");

(b) In the case of Malta:

the income tax;
(hereinafter referred to as "Malta tax").

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

ARTICLE 3

General Definitions

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

(a) the terms "a Contracting State" and "the other Contracting State" mean Romania or Malta as the context requires;

(b) the term "Romania" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone over which Romania exercises sovereignty, sovereign rights and jurisdiction in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;

(c) the term "Malta" means the Republic of Malta and, when used in a geographical sense, the term "Malta" 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 waters 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 sea bed and subsoil and their natural resources may be exercised;

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

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

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

(g) the term "nationals" means:

(i) in respect of Romania, all individuals possessing the citizenship of Romania and all legal persons or other entities set up under its own legislation;

(ii) in respect of Malta, any citizen of Malta and any legal person, partnership or association deriving its status as such in accordance with its own legislation;

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

(i) the term "competent authority" means:

(i) in the case of Romania, the Minister of Finance or his authorized representative;

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

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

ARTICLE 4

Resident

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

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 solely of the Contracting State in which he has a permanent home available to him; if he has a permanent home

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

(b) 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 solely of the Contracting State in which he has an habitual abode;

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

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

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

ARTICLE 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) a building site or construction or assembly project or supervisory activities in connection therewith which continues for more than 12 months;

(h) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel, where activities of that nature continue in the other Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

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

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

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

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

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

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise;

(f) the maintenance of goods or merchandise exposed by the enterprise in a fair or an exhibition which are sold after the closing of the said fair or exhibition.

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

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

6. 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 and forestry) situated in the other Contracting State may be taxed in that other State.

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

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

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

ARTICLE 7

Business Profits

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses 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.

4. The profits to be attributed to a permanent establishment shall be determined on the basis of separate business books kept by the permanent establishment. If such books do not constitute an adequate basis for the purposes of determining the profits of the permanent establishment, then such profits may be determined on the basis of an apportionment of the total profits of the enterprise to its various parts. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article. If necessary, the competent authorities of the Contracting States shall endeavour to agree on the method for apportioning the profits of the enterprise.

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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Traffic

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

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

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

4. Notwithstanding the provisions of paragraph 1 of this Article and of Article 7, the profits derived by an enterprise of a Contracting State from the operation of

ships, boats, aircraft, railway or road vehicles used mainly for transport exclusively between places situated in a Contracting State are taxable in that State.

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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State, but :

(a) where the dividends are paid by a company resident of Romania to a resident of Malta who is the beneficial owner thereof, the Romanian tax so charged shall not exceed 5 per cent of the gross amount of the dividends;

(b) where the dividends are paid by a company which is a resident of Malta to a resident of Romania who is the beneficial owner thereof, the Malta tax so charged shall not exceed that chargeable on the company paying the dividends in respect of the profits so distributed and in any case shall not exceed 30 per cent of the gross amount of the dividends.

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

ARTICLE 11

Interest

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

2. However, such interest may 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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State, or a territorial-administrative unit thereof or any agency or bank unit or institution of that Government, or a territorial-administrative unit or if the debt claims of a resident of the other Contracting State are warranted, insured, or directly or indirectly financed by a financial institution wholly owned by the Government of the other Contracting State.

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

5. The provisions of paragraph 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 15, 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 territorial-administrative unit or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 12

Commission

1. Commission 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 commission 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 commission, the tax so charged shall not exceed 10 per cent of the gross amount of the commission.

3. The term "commission" as used in this Article means a payment made to a broker, a general commission agent or to any other person assimilated to a broker or agent by the taxation law of the Contracting State in which such commission arises,

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the commission, being a resident of a Contracting State, has, in the other Contracting State in which the commission arises, a permanent establishment or a fixed base with which the activity giving rise to the commission is effectively connected. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Commission shall be deemed to arise in a Contracting State when the payer is that State itself, a territorial-administrative unit or a resident of that State. Where however, the person paying the commission, whether he is a resident of a Contracing State or not, has in a Contracting State a permanent establishment in connection with which the activities for which the payment is made was incurred, and such commission is borne by such permanent establishment, then such commission shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the commission, having regard to the activities 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 that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

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 5 per cent of the gross amount of the royalties.

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

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

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

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

(d) the use of, or the right to use:

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a territorial-administrative unit 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 Agreement.

ARTICLE 14

Income from the Alienation of Property

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

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

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

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

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

ARTICLE 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. 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 in any twelve month period commencing or ending in the fiscal year concerned.

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 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, salaries 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

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

ARTICLE 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of one of the Contracting States 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 18

Entertainers and Sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Income derived from the activities performed within the framework of exchanges established under cultural or sports agreements concluded between the two Contracting States shall be exempt from tax.

ARTICLE 19

Pensions

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State of which he is a resident.

2. 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 20

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a territorial-administrative unit thereof to an individual in respect of services rendered to that State or unit shall be taxable only in that State.

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

(i) is a national of that State; or

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

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a territorial-administrative unit thereof to an individual in respect of services rendered to that State or unit 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 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a territorial-administrative unit thereof.

ARTICLE 21

Professors, Teachers and Researchers

1. A professor, a teacher or a researcher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

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 22

Students and Trainees

Payments which a student or a 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 not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State shall be taxable only in that State.

2. The provisions of paragraph 1 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 15, as the case may be, shall apply.

ARTICLE 24

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. In the case of Romania, where a resident of Romania derives income or items of income referred to in Articles 10, 11,12 and 13, or profits, or gains or income from the alienation of property which under the law of Malta and in accordance with this Agreement may be taxed in Malta, Romania shall allow as a credit against its tax on the income, items of income, profits, gains or on income from the alienation of property an amount equal to the tax paid in Malta.

The amount of credit, however, shall not exceed the amount of Romanian tax on that income, items of income, profits or gains, or on income from the alienation of property computed in accordance with the taxation laws and regulations of Romania.

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

3. For the purposes of allowance as a credit, the tax payable in Romania 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 25

Non-Discrimination

1. The nationals of a Contracting State, whether or not residents of the mentioned 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 6 of Article 13 apply, interest, commission, 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.

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

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

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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

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

ARTICLE 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to 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 or the prevention of fiscal evasion in relation to, the taxes covered by the Agreement. Such authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

ARTICLE 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement 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.

Entry into Force

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

2. This Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect 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 Agreement enters into force.

ARTICLE 30

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect in respect of taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the notice is given.

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

DONE at Bucharest on the 30th November, 1995, in two original copies in the Romanian and English languages, both texts being equally authentic. In case there is any divergence of interpretation of the provisions of this Agreement, the English text shall prevail.

JOHN DALLI
FOR THE GOVERNMENT OF MALTA

FLORIN GEORGESCU
FOR THE GOVERNMENT OF ROMANIA

PROTOCOL

At the moment of signing the Agreement between the Government of Romania and the Government of Malta 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 Agreement:

With reference to Article 2, section 76 of the Income Tax Act in Malta provides that no double taxation agreement concluded by Malta shall apply to tax paid or payable in Malta in accordance with the provisions of subsection (13) of section 56 of the Income Tax Act concerning the chargeable income of any person engaged in the production of petroleum produced in Malta or any substantially similar provision which is imposed after the date of signature of this Agreement.

With reference to Article 7, each Contracting State shall tax the profits from the business of insurance in accordance with the provisions of its own law.

With reference to Article 10, 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.

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

DONE in duplicate at Bucharest this 30th day of November, 1995, in the Romanian and English languages, all texts being equally authentic. In case there is any divergence of interpretation of the provisions of this Protocol, the English text shall prevail.

JOHN DALLI
FOR THE GOVERNMENT OF MALTA

FLORIN GEORGESCU
FOR THE GOVERNMENT OF ROMANIA

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