L.N. 104 of 1996

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (The Kingdom of Sweden) Order, 1996

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

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (The Kingdom of Sweden) Order, 1996. Citation.

2. It is hereby declared:— Arrangements to have effect.

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

(i) the national income tax, including the tax on employees at sea and the withholding tax on dividends;

(ii) the income tax on non-residents;

(iii) the income tax on non-resident artistes and athletes; and

(iv) the municipal income tax;

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

(c) that the Convention has entered into force on the 3rd February, 1996.

SCHEDULE

CONVENTION BETWEEN MALTA AND SWEDEN 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 Sweden, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

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

(a) in Malta:

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

(b) in Sweden:

(i) the national income tax (den statliga inkomstskatten), including the tax on employees at sea (sjomansskatten) and the withholding tax on dividends (kupongskatten);

(ii) the income tax on non-residents (den sarskilda inkomstskatten for utomlands bosatta);

(iii) the income tax on non-resident artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta artister m.fl.); and

(iv) the municipal income tax (den kommunala inkomstskatten)
(hereinafter referred to as "Swedish tax").

2. 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 taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

3. Notwithstanding the other provisions of this Article, the Convention shall not apply to tax paid or payable in Malta in accordance with the provisions of subsection (13) of section 56 of the Income Tax Act (Cap. 123), 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 Convention.

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, and any area outside the territorial waters of Malta which has been or may hereafter be designated, in accordance with international law and under the law of Malta concerning the continental shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;

(b) the term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;

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

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

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

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

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

(h) the term "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 "competent authority" means:

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

(ii) in Sweden, the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Convention.

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 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 management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

(a) he shall be deemed to be a resident of the 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 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 of the State of which he is a national;

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

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

ARTICLE 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

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

4. Notwithstanding the preceding provisions of this Article, the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose shall be considered to constitute a permanent establishment 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 six months within any twelve-month period.

5. 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.

6. 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 5 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.

7. 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, 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 to be 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, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much 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 which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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.

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

ARTICLE 8

Shipping and Air Transport

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

2. With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS) the provisions of paragraph 1 shall apply only to such part of the profits as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

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 Sweden to a resident of Malta who is the beneficial owner thereof, the Swedish tax so charged shall not exceed 15 per cent of the gross amount of the dividends. However, if the beneficial owner is a company which holds at least 10 per cent of the voting power of the company paying the dividends, the dividends shall be exempt from tax in Sweden;

(b) (i) Where the dividends are paid by a company which is a resident of Malta to a resident of Sweden 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.

(ii) Notwithstanding the provisions of sub-paragraph (i) hereof, Malta tax shall not exceed 15 per cent of the dividends if such dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any tax benefit under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment.

The provisions of sub-paragraph (b) (ii) of this paragraph shall apply for the first ten years during which this Convention is effective. This period may be extended by a mutual agreement between the competent authorities.

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

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

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

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

ARTICLE 11

Interest

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

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

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

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

ARTICLE 12

Royalties

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

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

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

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

ARTICLE 13

Alienation of Property

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

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

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

With respect to income or gains derived by the air transport consortium Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such portion of the income or gains as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

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

ARTICLE 14

Independent Personal Services

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

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activity exercised in the other Contracting State may be taxed in that other State; or

(c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or fixed base situated in that Contracting State and exceeds in the fiscal year the equivalent of 25,000 United States dollars.

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

ARTICLE 15

Dependent Personal Services

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

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

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

(b) the remuneration is paid by, or on behalf of, an employer who is 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 by an enterprise of a Contracting State may be taxed in that State. Where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

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

Entertainers and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

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 shall be taxable only in that State.

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

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

(i) is a national of that State; or

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

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

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

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

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

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 22

Elimination of Double Taxation

1. In the case 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 Sweden, the Swedish tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

2. In the case of Sweden, double taxation shall be avoided as follows:

(a) Where a resident of Sweden derives income which under the laws of Malta and in accordance with the provisions of this Convention may be taxed in Malta, Sweden shall allow – subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) – as a deduction from the tax on such income, an amount equal to the Malta tax paid in respect of such income.

(b) Where a resident of Sweden derives income which, in accordance with the provisions of this Convention, shall be taxable only in Malta, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in Malta.

(c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of Malta to a company which is a resident of Sweden shall be exempt from Swedish tax according to the provisions of Swedish law governing the exemption of tax on dividends paid to Swedish companies by subsidiaries abroad.

(d) For the purposes of sub-paragraph (a) of this paragraph the term "Malta tax paid" shall be deemed to include the Malta tax which would have been paid but for any time-limited exemption or reduction of tax granted under incentive provisions contained in the Malta law designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities or from agriculture, fishing or tourism (including restaurants and hotels) provided that the activities have been carried out within Malta. For the purposes of sub-paragraph (c) of this paragraph a tax of 15 per cent calculated on a Swedish tax base shall be considered to have been paid for such activities under those conditions mentioned in the previous sentence.

The competent authorities may agree to extend the application of this provision also to other activities.

(e) The provisions of sub-paragraph (d) of this paragraph shall apply for the first ten years during which this convention is effective. This period may be extended by a mutual agreement between the competent authorities.

3. Where the Convention provides that income (including capital gains) arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first-mentioned State shall apply only to such portion of the income as remitted to or received in the other State.

ARTICLE 23

Non-Discrimination

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

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

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

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 the first-mentioned State are or may be subjected.

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

ARTICLE 24

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 23, 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

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 26

Limitation of Relief

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

(a) a law of either one of the Contracting States which has been identified in an Exchange of Notes between the Contracting States; or

(b) any substantially similar law subsequently enacted.

ARTICLE 27

Diplomatic Agents and Consular Officers

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

ARTICLE 28

Entry into Force

1. The Contracting States shall notify each other that the constitutional 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 Sweden, on income derived on or after the first day of January immediately following the date on which the Convention enters into force; and

(b) in Malta, 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.

3. Upon the coming into effect of this Convention, the Agreement and accompanying Protocol between Malta and Sweden for the avoidance of double taxation with respect to taxes on income, signed at Stockholm on May 30, 1975, as modified by a Protocol signed at Valletta on June 25, 1986, shall terminate. The provisions of the 1975 Agreement, as modified, shall cease to have effect from the date on which the corresponding provisions of this Convention shall, for the first time, have effect according to the provisions of paragraph 2 of this Article. With regard to the provisions of Articles 5 and 14 of the 1975 Agreement, where any greater relief from tax would have been offered by the application of those provisions, any such provision as aforesaid shall continue to have effect:

(a) in Sweden, on income derived on or before the last day of the second calendar year next following that in which this Convention came into effect; and

(b) in Malta, on income derived on or before the last day of the second calendar year or accounting period, as the case may be, next following the calendar year in which this Convention came into effect.

ARTICLE 29

Termination

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

(a) in Sweden, on income derived on or after the first day of January of the calendar year next following the date on which the notice is given; and

(b) in Malta, 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 thereto have signed this Convention.

DONE at Washington D.C. this 9th day of October, 1995, in duplicate in the English language.

JOHN DALLI
For the Government of Malta

GÖRAN PERSSON
For the Government of Sweden

PROTOCOL

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

Notwithstanding the provisions of paragraph 5 of Article 13, gains from the alienation of shares or other corporate rights derived by an individual who has been resident of a Contracting State and who has become a resident of the other Contracting State, may be taxed the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the five years next following the date on which the individual has ceased to be a resident of the first mentioned State.

In witness whereof the undersigned being duly authorised thereto have signed this Protocol.

Done at Washington, this 9th day of October 1995, in duplicate in the English language.

GÖRAN PERSSON
For the Government of Sweden

JOHN DALLI
For the Government of Malta

B 1072

MINISTRY OF FINANCE
The Minister of Finance
GÖRAN PERSSON

His Excellency
Mr. John Dalli
Minister of Finance

9 October, 1995

Your Excellency,

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

With reference to Article 26, the provisions of this Convention shall not apply:

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

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

(iii) to persons entitled to any special tax benefit under any substantially similar law.

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

Permit me, Excellency, to renew to you the assurances of my highest consideration.

Mr. GÖRAN PERSSON

MINISTRY OF FINANCE
MALTA
The Minister

His Excellency
Göran Persson
Minister of Finance
Sweden

9th October, 1995

Excellency,

I have the honour to acknowledge the receipt of your note of today's date which reads as follows:

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

With reference to Article 26, the provisions of this Convention shall not apply:

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

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

(iii) to persons entitled to any special tax benefit under any substantially similar law.

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

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

Please accept, Excellency, the assurances of my highest consideration.

JOHN DALLI
Minister of Finance

Ippubblikat mid-Dipartiment ta' l-Informazzjoni — Kastilja — *Published by the Department of Information — Kastilja*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz 24c — *Price 24c*