L.N. 75 of 1994

INCOME TAX ACT
(CAP. 123)
Double Taxation Relief (Taxes on Income) (Republic of Hungary) Order, 1994

IN exercise of the powers conferred by section 80 of the Income Tax Act, the Minister of Finance has made the following order:—

Citation.

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Hungary) Order, 1994.

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

(i) the income tax on individuals;

(ii) the profit taxes;

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

SCHEDULE

AGREEMENT BETWEEN MALTA AND THE REPUBLIC OF HUNGARY FOR THE AVOIDANCE OF DOUBLE TAXATION

The Government of Malta and the Government of the Republic of Hungary desiring to conclude an Agreement for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

CHAPTER I

Scope of the Agreement

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) The existing taxes to which this Agreement shall apply are:

(a) in Hungary:

(i) the income tax on individuals; and

(ii) the profit taxes
(hereinafter referred to as "Hungarian tax");

(b) in Malta:

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

(2) This Agreement shall apply also 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 to each other any significant changes which have been made in their respective taxation laws.

(3) Notwithstanding the other provisions of this Article this Agreement shall not apply to tax paid or payable in Malta at the rate provided for in subsection (11) of section 31 of the Income Tax Act (Cap. 123).

CHAPTER II

Definitions

ARTICLE 3

General Definitions

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

(a) the term "Hungary" when used in a geographical sense means the territory of the Republic of Hungary; and

(b) the term "Malta", when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean Hungary or Malta 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) the term "nationals" means all individuals who are citizens of a Contracting State and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Contracting State;

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

(i) the term "competent authority" means:

(i) in the case of Hungary, the Minister of Finance, or his authorised representative;

(ii) in the case of Malta, the Minister responsible for finance or his authorised 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. 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 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 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 State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either 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 States or in neither of them, 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 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 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 the 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 installation or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for more than nine (9) months.

(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 maintenence 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.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

(a) substantial equipment is in that other State being used by, for or under contract with the enterprise for more than nine (9) months; and

(b) it carries on supervisory activities in that State in connection with the use of equipment referred to in subparagraph (a).

(5) Notwithstanding the provisions of paragraphs (1) and (2) where a person — other than an agent of an independent status to whom paragraph (6) applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (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.

(6) 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 if the transactions between the agent and the enterprise were not made under arm's length conditions.

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

CHAPTER III

Taxation of Income

ARTICLE 6

Income from Immovable Property

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting 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 and aircraft shall not be registered 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 thereof as is attributable to that permanent establishment.

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

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, 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) In so far 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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available to the competent authority of that State, it is not possible or not practicable to ascertain the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(6) 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.

(7) 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.

(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.

(9) 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 of an enterprise of a Contracting State from the operation of ships, aircraft or road transport vehicles in internatonal traffic shall be taxable only in that State.

(2) 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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of such liability by the exercise of a discretion or the making of an estimate by the competent authority of that State in cases which, from the information available to the competent authority of that State, it is not possible or not practicable to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(3) 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 that 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 laws of that State, but:

(a) where the dividends are paid by a company resident of Hungary to a resident of Malta who is the beneficial owner thereof, the Hungarian tax so charged shall not exceed:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends;

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

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

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 a 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 may be taxed in that other State.

(2) However, such interest may 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 ten (10) percent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2):

(a) interest arising in Malta and derived by the Government of Hungary including local authorities thereof, the Central Bank or any financial institution controlled by the Hungarian Government, or interest derived on loans guaranteed by the Hungarian Government, shall be exempt from tax in Malta;

(b) interest arising in Hungary and paid to the Malta Government, the Central Bank of Malta or the Malta Development Corporation shall be exempt from Hungarian tax.

(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.

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

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

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 ten (10) per cent of the gross amount of the royalties.

(3) The term "royalties" 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 use of, or the right to use, any industrial, commercial or scientific equipment;

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

(d) 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 (b), or any such knowledge or information as is mentioned in sub-paragraph (c);

(e) 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

(f) 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 provision of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation 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 13

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 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 together with the whole enterprise) or of such fixed base, may be taxed in the other State.

(4) Income or gains from the alienation of ships, aircraft and road transport 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 of which the enterprise is a resident.

(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 which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State); or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days during any calendar year; or

(c) if the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds the equivalent in the currency of that State of five thousand U.S. dollars (US$ 5,000) during the calendar year, notwithstanding that his stay in that State is for a period or periods amounting in the aggregate to less than 183 days during that year.

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

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 the calendar 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, aircraft or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors, or other comparable body however described, of a company which is a resident of the other Contracting State, may be taxed in that other State.

ARTICLE 17

Artistes and Athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or musician or as an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, if that person is directly or indirectly controlled by the entertainer or athlete.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or athlete is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

ARTICLE 18

Pensions

(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.

(2) Notwithstanding the provisions of paragraph (1), pensions 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 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 purposes 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.

(4) Where remuneration is paid under a development assistance programme of a Contracting State, out of funds exclusively supplied by that State to a specialist or volunteer seconded to the other Contracting State with the consent of that other State, such remuneration shall be deemed to have been paid by the first-mentioned State and shall be taxable only in that State.

ARTICLE 20

Teachers

(1) Remuneration which a professor or teacher who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution received for such work shall not be taxed in that State, provided that such remuneration is derived by him outside that State.

(2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

Students and Trainees

An individual who is resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State.

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious, or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

(b) the amount of such grant, allowance or award; and

(c) any remuneration not exceeding the equivalent in the currency of that other State of two thousand U.S. dollars (US$ 2,000) in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purpose of his maintenance.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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.

CHAPTER IV

Elimination of Double Taxation

ARTICLE 23

Elimination of Double Taxation

(1) In the case of Hungary double taxation shall be eliminated as follows:

(a) where a resident of Hungary derives income which, in accordance with the provisions of this Agreement may be taxed in Malta, Hungary shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax;

(b) where a resident of Hungary derives items of income which, in accordance with the provisions of Article 10, may be taxed in Malta, Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Malta. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Malta; and

(c) where in accordance with any provision of this Agreement income derived by a resident of Hungary is exempt from tax in Hungary, Hungary may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

(2) In the case of Malta, double taxation shall be eliminated 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 Agreement, there is included in a Malta assessment income from sources within Hungary the Hungarian tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

(3) For the purpose of allowance as a credit the tax payable in Hungary 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.

(4) Where the Agreement provides that income 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 so much of the income as is remitted to or received in the other State.

CHAPTER V

Special Provisions

ARTICLE 24

Non-discrimination

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

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

(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 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 resident 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.

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

ARTICLE 25

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(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 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.

ARTICLE 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 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 Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

ARTICLE 27

Diplomatic and Consular Officials

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

CHAPTER VI

Final Provisions

ARTICLE 28

Entry into Force

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

(2) The Agreement shall enter into force thirty days after the date of the notifications referred to in paragraph (1) and its provisions shall have effect:

(a) in Hungary:

(i) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force; and

(ii) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force;

(b) in Malta:

in respect of taxes for any year of assessment beginning on or after 1 January in the second calendar year following the year in which this Agreement enters into force.

ARTICLE 29

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:

(a) in Hungary:

(i) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which the notice is given; and

(ii) in respect of other taxes on income, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

(b) in Malta:

in respect of taxes for any year of assessment beginning on or after 1 January in the second calendar year following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Budapest this 6th day of August, 1991, in the English language.

Joseph Cassar
FOR THE GOVERNMENT OF MALTA

Török Béla
FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY

PROTOCOL

At the signing today of the Agreement between the Government of Malta and the Government of the Republic of Hungary for the avoidance of double taxation with respect to taxes on income the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

(1) Concerning paragraph (3) of Article 2, subsection (11) of section 31 of the Income Tax Act (Cap. 123) provides that the tax upon the chargeable income of any person engaged in the production of petroleum produced in Malta shall be at the rate of fifty cents on every lira of such part of his chargeable income as is derived therefrom. Under the law in force in Malta, no double taxation arrangement shall have effect in so far as it applies to tax paid or payable in respect of gains or profits chargeable at the rate provided for in subsection (11) of section 31 of the Act.

(2) Concerning Article 5 it is understood that the term "place of business" includes also a place of production.

(3) Concerning Article 7 where a building site, construction, installation or assembly project constitutes a permanent establishment, only those profits can be attributed to that permanent establishment which derive from the activity of the building site, construction, installation or assembly project.

No profit can be attributed to the permanent establishment by reason of delivery of goods or merchandise, machinery or equipment notwithstanding that the delivery was carried out by the enterprise or by a third person.

(4) Concerning Article 8 operation in international traffic of ships or aircraft or road transport vehicles includes the activity of agencies of international transport enterprises and other auxiliary activities of these enterprises namely transport by bus between a town and the airport in so far as these above-mentioned activities are closely connected with international transport.

(5) Concerning paragraph (2) (b) of Article 10 it is understood that in case there will be a change in the imputation system presently applied in Malta the competent authorities of the Contracting States will consult each other in order to agree on the taxation of dividends in view of avoiding double taxation.

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

DONE in duplicate at Budapest this 6th day of August, 1991, in the English language.

Joseph Cassar
FOR THE GOVERNMENT OF MALTA

Török Béla
FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY

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