L.N. 62 of 1988

INCOME TAX ACT, 1948

(ACT NO. LIV OF 1948)

Double Taxation Relief (Taxes on Income) (People's Republic of Bulgaria) Order, 1988

IN exercise of the powers conferred by section 68A of the Income Tax Act, 1948, the Minister of Finance has made the following order:—

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (People's Republic of Bulgaria) Order, 1988. Citation.

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

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

(i) tax on total income;
(ii) tax on income of single males and females, widows, widowers, divorced persons and families without children;
(iii) tax on profits;

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

SCHEDULE

AGREEMENT

BETWEEN THE REPUBLIC OF MALTA AND THE PEOPLE'S REPUBLIC OF BULGARIA FOR AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Republic of Malta and the People's Republic of Bulgaria led by the desire to encourage and deepen the economic relations and the economic cooperation of mutual benefit between the two countries, for avoidance of double taxation with respect to taxes on income have agreed as follows:

ARTICLE 1

Personal Scope

(1) This agreement shall apply to persons who are residents of one or both of the Contracting States.

(2) As residents of a Contracting State shall be deemed:

(a) in the case of the Republic of Malta, any person who under the laws of Malta is liable to tax therein by reason of his residence, registration or any other criterion of a similar nature;

(b) in the case of the People's Republic of Bulgaria, individuals who are nationals of the People's Republic of Bulgaria as well as legal persons who have their headquarters in the People's Republic of Bulgaria or are registered therein.

(3) Where by reason of the provisions of paragraph (2) an individual is a resident of both Contracting States, then he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).

(4) If the State in which a person has his centre of vital interests cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(5) Where by reason of the provisions of paragraph (2) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 2

Taxes Covered by the Agreement

(1) The present Agreement applies to the following taxes:

(a) in Malta:

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

(b) in the People's Republic of Bulgaria:

(i) tax on total income;

(ii) tax on income of single males and females, widows, widowers, divorced persons and families without children;

(iii) tax on profits.

(2) The Agreement shall apply to all identical or substantially similar taxes which are imposed after the signing of the Agreement in addition to or in the place of the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws. Should there be a dispute as to whether there has been a significant change in the

taxation laws requiring incorporation in the Agreement then the competent authorities shall discuss further in order to arrive at an agreement.

ARTICLE 3

General Definitions

In the context of this Agreement:

(1) (a) the term "Malta" means the Republic of Malta; and

(b) when used in a geographical sense, the term "Malta" means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago, including the territorial waters thereof and any area outside the territorial 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.

(2) The term People's Republic of Bulgaria means the sovereign territory of the state, bowels of the earth, territorial sea and maritime zones outside the territorial sea over which the People's Republic of Bulgaria in accordance with its legislation and the international law exercises sovereign rights.

(3) The term "international transport" means any transport operated by a resident other than an individual of the Contracting State, except when the transport is operated solely between places in the other Contracting State.

(4) The term person:

(a) in the case of Malta means an individual, an enterprise or any other entity which is treated as a body corporate for tax purposes and any other body of persons;

(b) in the case of Bulgaria includes a physical or juridical person as well as any other entity which is treated as a juridical person for tax purposes.

(5) The term "national" means:

(a) in respect of Malta, any citizen of Malta and any legal person, partnership or association deriving its status as such from the law in force in Malta;

(b) in respect of the People's Republic of Bulgaria any person who receives a patent of citizenship according to Bulgarian legislation.

(6) The term "competent authority" means:

(a) in the case of the Republic of Malta:

The Minister responsible for finance or his authorised representative.

(b) in the case of the People's Republic of Bulgaria:

The Minister of Finance or his authorised representative.

(7) Upon the application of this Agreement any term not otherwise defined unless the context otherwise requires, shall have the meaning which it has under the national tax legislation of the Contracting State where the taxation is performed.

ARTICLE 4

Business Profits

(1) The business profits of a resident of one Contracting State are taxable by the other Contracting State only when the business is carried on through a "place of business" situated therein. In this case only so much of the profits may be taxed in the other Contracting State as is attributable to that place of business.

(2) Where a resident of one Contracting State carried on business in the other Contracting State through a "place of business" organised therein, there shall be attributed the profits under paragraph (3) which he might be expected to make if he exercises the same or similar activity under the same or similar condition as a separate enterprise dealing wholly independently in its relations with the enterprise of which it is a place of business.

(3) In determining the profits of a place of business, there shall be allowed as deductions expenses which are incurred for the purposes of exercising its activity including executive and general administrative expenses so incurred whether in the State in which the place of business is situated or elsewhere.

(4) No profits shall be attributed to the place of business by reason of the mere purchase by that place of business of goods or merchandise for the enterprise.

(5) The provisions of this Article will not affect the provisions for taxation stipulated in the other Articles of this Agreement.

(6) The provisions of this Article will also apply to a resident of the one Contracting State who carries on his business in the other Contracting State separately or together with the other person, particularly with a person from the other Contracting State.

(7) Each Contracting State may tax profits from the business of insurance in accordance with the provisions of its law regarding the taxation of such profits and the operation of such provisions shall not be affected by the provisions of this Article.

ARTICLE 5

Place of Business

(1) For the purpose of this Agreement, the term "place of business" means a fixed place of business, where a resident of the one Contracting State carries on his business in the other Contracting State separately or together with other persons, wholly or partly.

(2) The term "place of business" includes especially:

(a) a branch;

(b) a workshop or department;

(c) an office including any commercial, touristic, transport, design or any other office;

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

(e) a construction or installation project or supervisory activities in connection therewith, where such project or activity continues for more than 18 months;

(f) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel, where activities of this nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve month period.

(3) (a) (i) The participation of a resident of the Republic of Malta in a partnership for joint business activity, joint management and distribution of the profits and losses from it and formed according to Decree No. 535 - 80 of the State Council of the People's Republic of Bulgaria, is to be considered as a place of business in Bulgaria.

(ii) The participation of a resident of the People's Republic of Bulgaria in a commercial partnership set up in accordance with Maltese legislation shall be considered as a place of business in Malta.

(b) The participation of a resident of a Contracting State in a company of the other Contracting State shall, notwithstanding the provisions of sub-paragraph (a) of this paragraph, be regulated by Article 9 of this Agreement where dividends are distributed by such a company to a resident of the first-mentioned Contracting State.

(4) Notwithstanding the preceding provisions of this Article, the term "place of business" shall be deemed not to include:

(a) a permanent place solely for the purpose of purchasing goods;

(b) the maintenance of materials or goods belonging to the enterprise, solely for the purpose of storage, display or delivery and for performing operations connected with it;

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

(d) the maintenance of a fixed place solely for the purpose of collecting information for the enterprise;

(e) the maintenance of a stock of goods exposed by the enterprise in a fair or an exhibition which is to be sold after the conclusion;

(f) the maintenance of a permanent place solely for the purpose of an activity which has a preparatory or auxiliary character for the enterprise;

(g) the maintenance of a permanent place solely for the purpose of carrying on any combination of the activities mentioned above under paragraph (a) to paragraph (e) on the condition that the total result of this combination has a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2), where a person - other than an agent of an independent status to whom paragraph (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 place of business in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such persons are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business would not make this fixed place of business a place of business under the provisions of that paragraph.

(6) An enterprise that is a resident of one of the Contracting States shall not be deemed to have a place of business 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 independent status, provided that such persons are acting in the ordinary course of their business.

ARTICLE 6

International Transport

(1) Profits from the operation of ships, aircraft or road vehicles in international transport shall be taxable only in the Contracting State in which the owner of the enterprise is a resident.

(2) Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) If the place of effective management of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such harbour, in the Contracting State of which the operator of the ship or boat is a resident.

(4) The provisions of paragraphs (1) and (2) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 7

Salaries and Wages

(1) Salaries, wages and other similar remunerations 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) Salaries, wages and other similar remunerations paid to a resident of a Contracting State by that State or by an enterprise resident in that State in respect of a temporary assignment in the other Contracting State shall be taxable only in the first mentioned State unless they are borne by a fixed place of business situated in that other State.

(3) The provisions of paragraph (2) shall also apply to salaries, wages and other similar remunerations paid to specialists and workers in respect of a temporary assignment under a contract between Maltese physical or juridical persons and Bulgarian juridical persons in the fulfilment of an agreed programme in the field of scientific or technical exploration, scientific exchange and other similar activities.

(4) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international transport may be taxed in the Contracting State in which the owner of the enterprise is a resident.

(5) The provisions of the above mentioned paragraphs do not refer to the remuneration of students and trainees which are subject to Article 13 of the Agreement.

ARTICLE 8

Pensions

Pensions and other similar remunerations which a resident of a Contracting State derives from sources in the other Contracting State shall be subject to taxation only in that other State.

ARTICLE 9

Dividends

(1) Dividends derived from a juridical person, who is a resident of a Contracting State by a resident of the other Contracting State are taxable only in that other State.

(2) Notwithstanding the provisions of paragraph (1) where the dividends are paid by a company which is a resident of Malta to a resident of the People's Republic of Bulgaria who is the beneficial owner thereof, Malta tax may be imposed on the gross amount of such dividends, but the tax so charged shall not exceed the lesser of:

(a) 30 per cent of the gross amount of the dividends; or

(b) the tax chargeable on the profits out of which the dividends are paid, in accordance with the Aids to Industries Ordinance of 1959.

(3) The term "dividends" means income from shares or other income which according to the national legislation of the Contracting State has been equalised to the income from shares.

(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 place of business situated therein, or exercises in that other State a liberal profession or another independent activity from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such place of business or fixed base. In such a case the provisions of Article 4 or Article 12, 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 place of business 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 10

Interest

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

(2) Paragraph (1) shall not apply when a resident of a Contracting State carries on business in the other Contracting State, in which the interest arises, through a place of business situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such place of business. In such a case the provisions of Article 4 shall apply.

ARTICLE 11

Income from Royalties and Licenses

(1) Income from royalties and licenses arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However such income may also be taxed in the Contracting State where it arises, according to its national legislation, but the tax must not exceed ten per cent of the gross amount of the royalties or licenses.

(3) The term "income from royalties and licenses" means payments received from the use of or the right to use:

(a) copyright of scientific, literary and artistic work;

(b) any patents (certificate of inventions) and innovations;

(c) industrial designs;

(d) trade marks;

(e) machine programmes;

(f) matrix of records and other articles for reproduction of sound;

(g) gramophone records, tapes and cinematographic films; and

(h) industrial experience and know-how.

(4) The provisions of this Article shall also apply to the income from:

(a) the use or the right to use industrial, commercial or scientific equipment, as well as of technical services connected therewith;

(b) the reproduction of sound or video recording or gramophone records, tapes, films or other similar objects.

(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 place of business or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such place of business or fixed base, then such royalties shall be deemed to arise in the State in which the place of business or fixed base is situated.

ARTICLE 12

Fees

(1) Fees derived by a resident of a Contracting State as a result of exercising a liberal profession or another independent activity in the other Contracting State are taxable in the first-mentioned State, unless the person has a fixed base available to him in the other Contracting State for the purpose of performing his activities. If he has such fixed base, the income may be taxed in that other State but only so much of it as is attributable to that fixed base.

(2) The term "liberal profession" includes particularly independent scientific, literary, artistic, educational or teaching activity as well as independent activity of physicians, dentists, lawyers, engineers, architects and certified public accountants.

(3) Notwithstanding the provisions of Article 7 and paragraph (1) of this Article, fees derived by a resident of a Contracting State as an entertainer (such as theatre, motion picture, radio or television artist), or as a musician, or as an athlete from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

ARTICLE 13

Students or any other Trainees

(1) Payments received by a student or any other trainee, who is a resident of a Contracting State and stays in the other Contracting State solely for the purpose of his education or training, shall not be taxed in that State, provided that such payments arise from sources outside that State.

(2) The provision of the preceding paragraph applies also to payments which the student or the trainee, who is a resident of a Contracting State, receives in the other Contracting State for performing any work in that other State, if it is connected with his education or qualification or if that payment is necessary to supplement his cost of living.

ARTICLE 14

Income from Immovable Property

(1) Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State is to be taxed in that other State.

(2) The term "immovable property" shall have the meaning it has under the law of the Contracting State in which the property in question is situated.

ARTICLE 15

Gains from Sale of Property

(1) Gains derived by a resident of a Contracting State from sale of immovable property which is situated in the other Contracting State shall be taxable only in that other State.

(2) Gains derived from sale of movable property forming part of the property of a place of business which a resident of a Contracting State has in the other Contracting State, including such gains derived from the sale of such place of business, shall be taxable only in that other State.

(3) Gains from the sale of ships, aircraft or road vehicles operated in international transport and from a movable property serving for exploitation of these ships, aircraft or road vehicles shall be taxable only in the Contracting State in which the owner of the transport enterprise is considered a resident.

(4) Gains from sale of any property other than that mentioned in paragraphs (1), (2) and (3) of this Article may be taxed in the Contracting State of which the seller is a resident.

ARTICLE 16

Income Not Expressly Mentioned

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

ARTICLE 17

Elimination of Double Taxation

I. In the case of Bulgaria, double taxation shall be eliminated as follows:

(1) Where a resident of the People's Republic of Bulgaria derives income from Malta, not being income from dividends, paid by a resident of Malta to a resident of the People's Republic of Bulgaria, and if this income has been taxed in Malta, then the People's Republic of Bulgaria shall exempt it from taxation.

(2) Notwithstanding the provisions of paragraph (1), this income may be taken into account in calculating the percentage of taxation on the remaining income of such resident.

(3) The tax paid in respect of the income from royalties and licenses according to Article 11, paragraph (2) shall be deducted from the tax levied in the People's Republic of Bulgaria.

(4) For the purposes of paragraph (1), where, by reason of special incentive measures designed to promote economic development in Malta, Malta tax has been wholly relieved or reduced for a limited period of time then the amount of tax paid in Malta shall be deemed to be the amount that would have been payable had no such relief been given or no such reduction allowed.

II. In the case of Malta, double taxation shall be eliminated as follows:

(5) 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 the People's Republic of Bulgaria, the Bulgarian tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

(6) Taxes paid by residents of Malta in respect of profits from their participation in partnership for joint business activity, joint management and distribution of the profits and losses from it and formed according to Decree No. 535 - 80 of the State Council of the People's Republic of Bulgaria, shall be deducted against the respective Malta tax in an amount that would have been payable had not such reliefs been given with this Decree.

(7) 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.

ARTICLE 18

Non-discrimination

(1) Nationals of a Contracting State or juridical persons under Article 1 of the Agreement 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) A place of business situated in one Contracting State and belonging to a resident of the other Contracting State shall not be subjected in the first-mentioned State to any taxation which is other or more burdensome than the taxation to which are subjected places of business situated in the first-mentioned State and organised by persons who are residents of either State. 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 or any other personal circumstances which it grants to its own residents.

(3) Notwithstanding the provisions of Article 2, this Article covers taxes of every kind and description.

ARTICLE 19

Diplomatic Agents and Consular Officials

This Agreement shall not affect the fiscal privileges of members of diplomatic and consular missions under the general rules of international law or under the provisions of special agreements.

ARTICLE 20

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the present Agreement concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement and to the domestic laws of the Contracting States. Any information or materials 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 used only for the purposes of this Agreement.

(2) Paragraph (1) shall not be construed so as to impose on either Contracting State the obligation:

(a) to carry out administrative measures at variance with laws and administrative practice prevailing in either Contracting State;

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

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

ARTICLE 21

Mutual Agreement Procedure

(1) Where a resident of a Contracting State 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 present 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. If the competent authority is itself unable to arrive at a satisfactory solution, it will endeavour to resolve the case by an agreement with the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. Any agreement shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(2) 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.

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

ARTICLE 22

Entry into Force

(1) This Agreement shall be ratified; the ratification instruments will be exchanged as soon as possible at Valletta.

(2) This Agreement shall enter into force on the first date of the third month following the month in which the ratification instruments have been exchanged and its provisions shall have effect in respect of all taxes levied on income or gains arising after December 31 of the calendar year in which the ratification instruments have been exchanged.

ARTICLE 23

Termination

This Agreement shall remain in force until denounced by one of the Contracting states. Either Contracting State may denounce this Agreement through diplomatic channels, by giving notice of termination not later than six months before the end of any calendar year beginning after the expiration of three years from the date of its entry into force. In such event, this Agreement will be applied for the last time in respect to taxes levied on income or gains arising during the calendar year in which the notice is given.

Done at Sofia on the 23rd day of July, 1986, in two copies in the English and Bulgarian languages both texts being equally authentic.

WISTIN ABELA
For the Republic
of Malta

B. BELCHEV
For the People's
Republic of Bulgaria

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