L.N. 130 of 1981

INCOME TAX ACT, 1948
(ACT NO. LIV OF 1948)

Double Taxation Relief (Taxes on Income) (Republic of Austria) Order, 1981

IN exercise of the powers conferred by section 68A of the Income Tax Act, 1948, the Minister of Finance, Customs and People's Financial Investments has made the following order:—

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Austria) Order, 1981. 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 Republic of Austria with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Republic of Austria:

(i) Income Tax;

(ii) Corporation Tax;

(iii) Directors Tax;

(iv) Capital Tax;

(v) Tax on Property excluding death duties;

(vi) Tax on Commercial and Industrial Enterprises, including the tax levied on the sum of wages;

(vii) Land Tax;

(viii) Tax on Agricultural and Forestry Enterprises;

(ix) Contributions from Agricultural and Forestry Enterprises to the Fund for the Equalisation of Family Burdens;

(x) Tax on the value of Vacant Plots; and

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

SCHEDULE

CONVENTION
BETWEEN
THE REPUBLIC OF MALTA
AND THE REPUBLIC OF AUSTRIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Malta and the Government of the Republic of Austria, desiring to conclude a Convention for the Avoidance of Double Taxation with respect to taxes on income and on capital, have agreed as follows:

CHAPTER I

Scope of the Convention

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

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

(3) The existing taxes to which this Convention shall apply are:

(a) in Austria:

(i) the income tax (die Eikommensteuer);

(ii) the corporation tax (die Korperschaftsteuer);

(iii) the directors tax (die Aufsichtsratsabgabe);

(iv) the capital tax (die Vermogensteuer);

(v) the tax on property excluding death duties (die Abgabe von Vermogen, die der Erbschaftsteuer entzogen sind);

(vi) the tax on commercial and industrial enterprises, including the tax levied on the sum of wages (die Gewerbesteuer einschlieBlich der Lohnsummensteuer);

(vii) the land tax (die Grundsteuer);

(viii) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);

(ix) the contributions from agricultural and forestry enterprises to the fund for the equalisation of family burdens (die Beitrage von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds fur Familienbeihilfen);

(x) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstucken);

(hereinafter referred to as "Austrian tax").

(b) in Malta:

the income tax and surtax, including prepayments of tax whether made by deduction at source or otherwise,

(hereinafter referred to as "Malta tax").

(4) This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention 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.

(5) Where the Convention 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 II

Definitions

ARTICLE 3

General Definitions

(1) In this Convention, unless the context otherwise requires:

(a) the term "Austria" means the Republic of Austria;

(b) the term "Malta" means the Republic of Malta, and, when used in a geographical sense, 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 sea-bed and sub-soil and their natural resources may be exercised;

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

(d) the term "person" comprises 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 "national" means:

(i) in respect of Austria, any individual possessing the nationality of Austria and any legal person, partnership and association deriving its status as such from the law in force in Austria;

(ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;

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

(i) the term "competent authority" means:

(i) in the case of Austria, the Federal Minister of Finance;

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

(2) In the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal Domicile

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein or capital situated 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 Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests).

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode.

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

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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 Contracting 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 in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources including an off-shore drilling site;

(g) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for more than 12 months.

(3) The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

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

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph (5) applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

CHAPTER III

Taxation of Income

ARTICLE 6

Income from Immovable Property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordancne with 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, 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, 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 professional 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 permanent establishment including executive and general administrative expenses so incurred, whether in the 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 embodied 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) 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.

(8) The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

(9) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State but:

(a) where the dividends are paid by a company resident of Austria to a resident of Malta, the Austrian tax so charged shall not exceed 15 per cent of the gross amount thereof;

(b) where the dividends are paid by a company resident of Malta to a resident of Austria:

(i) Malta tax shall not exceed that chargeable on the company paying the dividends in respect of the profits so distributed, and in any case it shall not exceed 32.5 per cent of the gross amount of the dividends;

(ii) notwithstanding the provisions of sub-paragraph (i), Malta tax shall not exceed 15 per cent of the gross amount 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 tax benefits 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;

(iii) no surtax otherwise chargeable under the law of Malta shall be levied on the dividends.

This paragraph shall not effect 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 taxation law 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 recipient 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 professional 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 to residents of the first-mentioned State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State. The provisions of this paragraph shall not prevent that other State from taxing dividends paid to residents of that State or dividends relating to a holding which is effectively connected with a permanent establishment or fixed base maintained in that other State by a resident of the first-mentioned 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 law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

(3) 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 securi-

ties and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law 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 royalties consist of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work.

(2) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting, any patent, trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

(3) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(4) 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

(1) 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) 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

(3) Gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) 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 independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 19

Government Service

(1) (a) Remuneration paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, or subdivision or local authority thereof 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 recipient is a resident of that other Contracting State who:

(i) is a national of that State; or

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

(2) The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof.

(3) The provisions of paragraph (1) (a) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, those political subdivisions or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

ARTICLE 20

Teachers, Students and Trainees

(1) Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting 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 receives for such work shall not be taxed in that other State, provided that such remuneration is derived by him from outside that other State.

(2) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

(a) on all remittances from abroad for purposes of his maintenance, education or training; and

(b) for any remuneration for an employment exercised in the other Contracting State for a period not exceeding 183 days in the calendar year for the purposes of his practical training.

(3) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his arrival in that other State in connection with that visit, be exempt from tax in that other State:

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

(b) on all remittances from abroad for the purposes of his maintenance, education or training.

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Government Service

(1) (a) Remuneration paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, or subdivision or local authority thereof 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 recipient is a resident of that other Contracting State who:

(i) is a national of that State; or

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

(2) The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof.

(3) The provisions of paragraph (1) (a) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, those political subdivisions or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

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(2) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

(a) on all remittances from abroad for purposes of his maintenance, education or training; and

(b) for any remuneration for an employment exercised in the other Contracting State for a period not exceeding 183 days in the calendar year for the purposes of his practical training.

(3) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his arrival in that other State in connection with that visit, be exempt from tax in that other State:

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

(b) on all remittances from abroad for the purposes of his maintenance, education or training.

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 if the recipient of the 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

CHAPTER IV

Taxation of Capital

ARTICLE 22

Capital

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

Elimination of Double Taxation

ARTICLE 23

Elimination of Double Taxation

(1) Where a resident of a Contracting State derives income or owns capital which may be taxed in the other Contracting State in accordance with the provisions of this Convention, the first-mentioned State shall, subject to the provisions of paragraph (2) hereof, exempt such income or capital from tax but may, in calculating tax on the other income or capital of that person, apply the tax which would have been applicable if the exempted income or capital had not been so exempted.

(2) Where a resident of a Contracting State derives income which may be taxed in the other Contracting State in accordance with the provisions of paragraph (2) of each one of Articles 10, 11 and 12 of this Convention, the first-mentioned State shall

allow as a deduction from its tax on the income of that person an amount equal to the tax paid thereon in the other State. In Austria such deduction shall not, however, exceed that part of its tax as computed before the deduction is given which is appropriate to the income derived from Malta and in the case of Malta, the deduction shall be computed in accordance with the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax.

(3) Where a dividend is distributed by a company which is a resident of Malta to a company which is a resident of Austria, such dividend shall be exempt from the corporation tax and from the business tax in Austria if the Austrian Company receiving the dividend controls not less than 25 per cent of the voting power of the Malta company.

(4) For the purposes of paragraph (2), Malta tax shall be deemed to have been charged as follows:

(a) in the case of interest, at the rate of 5 per cent;

(b) in the case of royalties, at the rate of 10 per cent;

(c) in the case of dividends referred to in paragraph (2) (b) (ii) of Article 10, at the rate chargeable under paragraph (2) (b) (i) thereof,

of the gross amount of the income in each case.

CHAPTER VI

Special Provisions

ARTICLE 24

Non-discrimination

(1) Notwithstanding the provisions of Article 1, the nationals of a Contracting State whether or not they are residents of one of the Contracting States, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation of 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 or any other personal circumstances which it grants to its own residents.

(3) Except where the provisions of Article 9, paragraph (6) of Article 11, or paragraph (5) 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.

Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible as if they had been contracted 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 Con-

tracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(5) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 25

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 this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, in any case referred to in paragraph (1) of Article 24, to that of the Contracting State of which he is a national. This case must be presented within three years of the first notification of the actions which give rise to taxation not in accordance with 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 an appropriate 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 not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

(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 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities including courts other than those concerned with the assessment or collection of the taxes which are the subject of the Convention, or with the prosecution of offences in relation thereto.

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

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

(b) to supply particulars which are 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.

ARTICLE 27

Diplomatic and Consular Officials

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

CHAPTER VII

Final Provisions

ARTICLE 28

Entry into Force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.

(2) The Convention shall enter into force 60 days after the exchange of instruments of ratification, and its provisions shall have effect —

(a) in respect of taxes on income derived on or after the first day of January, 1977;

(b) in respect of taxes on capital levied as from the first day of January, 1977.

ARTICLE 29

Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of three years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to be effective:

(a) in respect of taxes on income derived on or after the first day of January next following the year during which notice of termination has been given;

(b) in respect of taxes on capital levied as from the first day of January next following the year during which notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Bonn on the 29th day of May, 1978, in duplicate in the German and English languages, both texts being equally authentic.

E. ATTARD BEZZINA
For the Republic of Malta

FRANZ PEIN
For the Republic of Austria

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