L.N. 134 of 1981

INCOME TAX ACT, 1948

(ACT NO. LIV OF 1948)

Double Taxation Relief (Taxes on Income) (Republic of France) 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:

Citation.

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of France) Order, 1981.

Arrangements to have effect.

2. It is hereby declared—

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

(i) the income tax;

(ii) the corporation tax; including any withholding tax, prepayment (precompte) or advanced payment with respect to the aforesaid taxes;

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

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Malta and the Government of the French Republic 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) This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are:

(a) in the case of France:

(i) the income tax;

(ii) the corporation tax; including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French tax");

(b) in the case of 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) The 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 substantial changes which have been made in their respective taxation laws.

CHAPTER II

Definitions

ARTICLE 3

General Definitions

(1) In this Agreement:

(a) the term "France" means the European and overseas departments (Guadeloupe, Guyane, Martinque and Reunion) of the French Republic, and any area outside the territorial sea of those departments which is, in accordance with international law, an area within which France may exercise rights with respect to the sea-bed and subsoil and their natural resources;

(b) the term "Malta" means the Republic of Malta and includes in addition to the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, together with 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 subsoil and their natural resources may be exercised;

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

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

(e) 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;

(f) the term "nationals" means:

(i) in respect of France, all individuals possessing the nationality of France;

(ii) in respect of Malta, all citizens 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;

(iii) all legal persons, partnerships and associations as such from the law in force in a Contracting State;

(g) the term "international traffic" means any transport by 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;

(h) the term "competent authority" means:

(i) in the case of France, the Minister of Economy and Finance or his authorised representative;

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

(2) As regards the application of the Agreement 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 subject to the Agreement.

ARTICLE 4

Fiscal Domicile

(1) For the purpose of this Agreement, 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. But this 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 not a 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 a habitual abode;

(c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be 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 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 Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

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

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

(3) A building site or construction or installation project or supervisory activities in connection therewith, shall constitute a permanent establishment provided that such site, project or activities last for more than twelve months

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include;

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

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

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

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for 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, if it has 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) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2), if 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 (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment by virtue of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

(7) The fact that a company which is 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 itself constitute either company a permanent establishmentof 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 accordance with the taxation laws 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 landed 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) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall

preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles 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) 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

Shipping and Air Transport

(1) Profits from the operation of ships and 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, then it shall be deemed to be situated in the Contracting State in which the home harbour is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship 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 operating agency.

ARTICLE 9

Associated Enterprises

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 the company resident of France to a resident of Malta who is the beneficial owner thereof, the French tax so charged shall not exceed:

(i) 5 per cent of the gross amount of the dividends if the recipient is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;

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

(b) where the dividends are paid by a company resident of Malta to a resident of France who is the beneficial owner thereof:

(i) Malta tax shall not exceed that chargeable on the company paying the dividends in respect of the profits so distributed;

(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 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.

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 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 respest 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) (a) A resident of Malta who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a fiscal credit (avoir fiscal), shall be entitled to a payment from the French Treasury equal to such credit (avoir fiscal) subject to the deduction of the tax provided for in sub-paragraph (a)(ii) of paragraph (2) of this Article;

(b) the provisions of sub-paragraph (a) of this paragraph shall apply only to a resident of Malta, being either:

(i) an individual; or

(ii) a company to which the provisions of sub-paragraph (a)(i) of paragraph (2) do not apply;

(c) the provisons of sub-paragraph (a) of this paragraph shall not apply if the recipient of the payment from the French Treasury provided for under sub-paragraph (a) of this paragraph is not subject to Malta tax in respect of that payment;

(d) Payments from the French Treasury provided for under sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Agreement.

(6) (a) Where the prepayment (precompte) is levied in respect of dividends paid by a company which is a resident of France to a resident of Malta who is not entitled to the payment from the French Treasury referred to in paragraph (5) of this Article with respect to such dividends, that resident of Malta shall be entitled to the refund of the prepayment, subject to the deduction of tax with respect to the refunded amount in accordance with paragraph (2) of this Article;

(b) amounts refunded under the provisions of sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Agreement.

(7) Where a company resident of Malta has in France a permanent establishment, the profits of this permanent establishment shall, after having borne the French corporation tax, be liable to a tax the rate of which shall not exceed 10 per cent, according to the law of France.

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 if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), any such interest as is mentioned in paragraph (1) shall be taxable only in the Contracting State of which the beneficiary is a resident, if such interest is payable on loans granted or guaranteed by the State or a statutory body thereof.

(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 bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) 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.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a statutory body thereof 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.

(7) 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 payment shall remain taxable according to the law 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 be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the amount of the royalties.

(3) Notwithstanding the provisions of paragraph (2), payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including works recorded for broadcasting or television, shall be taxable only in the Contracting State of which the beneficiary is a resident, if such resident is the beneficial owner of the payments.

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

(5) The provisions of paragraphs (1), (2) and (3) 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.

(6) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a statutory body thereof 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 with which the right or property in respect of which the royalties are paid is effectively connected, 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.

(7) 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 Agreement.

ARTICLE 13

Capital Gains

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6 or from the alienation of shares or comparable interest in a real property cooperative or in a company the assets of which consist principally of immovable property, 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 pertaining to the operation of ships and aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) Gains from the alienation of shares forming part of a substantial interest in the capital of a company which is a resident of a Contracting State may be taxed in that State and according to the law of that State. For the purposes of this paragraph, a substantial interest shall be deemed to exist when the alienator, alone or together with associated or related persons, holds directly or indirectly shares which together give right to 25 per cent or more of the company profits.

(4) Gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3), 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. 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.

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

ARTICLE 15

Dependent Personal Services

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ 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 entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Where income in respect of personal activities as such of an entertainer or athlete accrues not to that 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.

(3) Notwithstanding the provisions of paragraph (1), remuneration or profits, and wages, salaries and other similar income derived by entertainers and athletes from their personal activities as such in a Contracting State shall be taxable only in the other Contracting State if their visit to the first Contracting State is supported substantially from the public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof.

(4) Notwithstanding the provisions of paragraph (2), where income in respect of personal activities as such of entertainers and athletes in a Contracting State accrues not to that entertainer or athlete himself but to another person, notwithstanding the provisions of Articles 7, 14 and 15, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof, or if this person is a non-profit organisation of that other State.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration, and annuities 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.

(3) As used in this Article:

(a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment, or by way of compensation for injuries received in connection with past employment;

(b) the term "annuity" means a stated sum paid periodically during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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 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) (a) Any pension paid by, or out of funds created 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 pension shall be taxable only in the other Contracting State if the recipient is a national of and a resident 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 any business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

ARTICLE 20

Students

(1) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments are made to him from sources outside that State.

(2) Remuneration which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training derives from services rendered in that State shall not be taxed in that State provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

ARTICLE 21

Teachers and Researchers

(1) A teacher or researcher who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the

first-mentioned Contracting State for the purpose of teaching or engaging in research shall be exempt from tax in that State for a period not exceeding two years on remuneration in respect of such activities.

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

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 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 23

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 24

Elimination of Double Taxation

(1) In the case of France, double taxation shall be avoided as follows:

(a) Income other than that referred to in sub-paragraph (b) below shall be exempt from the French taxes referred to in sub-paragraph (a) of paragraph (3) of Article 2 if the income is taxable in Malta under this Agreement.

(b) (i) Income referred to in Articles 10, 11, 12, 14, 16 and 17, received from Malta may be taxed in France on the gross amount. The Malta tax levied on such income entitles residents in France to a tax credit corresponding to the amount of Malta tax levied but which shall not exceed the amount of French tax levied on such income. Such credit shall be allowed against taxes referred to in sub-paragraph (a) of paragraph (3) of Article 2, in the bases of which such income is included;

(ii) in the case of income referred to in Articles 10, 11 and 12 received from Malta by a resident of France, Malta tax shall be deemed to have been paid as follows:

(aa) dividends, at the rate of 15 per cent as provided in paragraph (2)(b)(ii) of Article 10;

(bb) Interest at the rate of 10 per cent as provided in paragraph (2) of Article 11; and

(cc) royalties, other than those referred to in paragraph (3) of Article 12, at the rate of 10 per cent as provided in paragraph (2) of the said Article.

(c) Dividends distributed by a company which is a resident of Malta to a company which is a resident of France shall be exempt from French tax to the extent that the dividends would have been exempt from tax under French law if both companies had been residents of France.

(d) Notwithstanding the provisions of sub-paragraph (a), French tax is computed on income chargeable in France by virtue of this Agreement at the rate appropriate to the total of the income chargeable in accordance with the French law.

(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 France, or elements of capital situated in France, the French tax on such income or elements of capital, as the case may be, shall be allowed as a credit against the relative Malta tax payable thereon.

(3) 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 VI

Special Provisions

ARTICLE 25

Non-Discrimination

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

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

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of Article 9, paragraph (7) of Article 11, or paragraph (7) 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 condition 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 Contracting 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 26

Mutual Agreement Procedure

(1) Where a resident of a Contracting State, considers that the acti
both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, 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 resident or, if his case comes under paragraph (1) of Article 25, 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 action giving rise to taxation not in accordance with 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 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 double taxation not in accordance with the Agreement. 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 arising as to the application of the Agreement.

In particular, the competent authorities of the Contracting States may consult together to endeavour to agree;

(a) to the same attribution in both Contracting States of the profits attributable to a permanent establishment situated in a Contracting State of an enterprise of the other Contracting State;

(b) to the same allocation of income between a resident of a Contracting State and any associated person referred to in Article 9.

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

(5) The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Agreement and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain the tax reliefs or exemptions provided for by this Agreement.

ARTICLE 27

Exchange of Information

(1) The comptent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is not contrary to this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under domestic laws of that State and shall be disclosed only to persons or authorities (including a court or administrative body) involved in the assessment or collection of the enforcement of prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes. These persons or authorities 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 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 contrary to public policy (ordre public).

ARTICLE 28

Diplomatic and Consular Officials

(1) Nothing in this Agreement shall effect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic or consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if:

(a) in accordance with international law, he is not taxable in the receiving State on income from sources outside that State; and

(b) he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

(3) This Agreement shall not apply to international organisations, to organs and officials thereof and to persons who are members of a diplomatic or consular or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and capital.

ARTICLE 29

Territorial Extension

(1) This Agreement may be extended, either in its entirety or with any necessary modifications, to the overseas territories of the French Republic which imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

(2) Unless otherwise agreed by both Contracting States, the termination of the Agreement by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Agreement to any territory to which it has been extended under this Article.

CHAPTER VII

Final Provisions

ARTICLE 30

Entry into Force

(1) Each Contracting State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the month in which the later of these notifications has been given.

(2) Its provisions shall apply for the first time:

(a) as regards taxes withheld at source, to amounts payable on or after the date of entry into force of this Agreement;

(b) as regards other taxes on income, to income derived during the calendar year in which the Agreement entered into force, or relating to the accounting period ending during this year.

ARTICLE 31

Termination

(1) This Agreement shall remain in force indefinitely. However, after 1981, each Contracting State may terminate the Agreement by giving at least six months written notice through diplomatic channels.

(2) In such an event, its provisions shall apply for the last time:

(a) as regards taxes withheld at source, the sums payable before or on the 31st December of the calendar year during which the termination has been notified;

(b) as regards other taxes on income, to income derived during the calendar year during which the termination has been notified or relating to the accounting period ending during such year.

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

DONE at Floriana this 23rd day of April 1976, in duplicate, in the French and English languages, both texts being equally authentic.

For the Government of the
Republic of Malta

CECIL BAKER

Commissioner of Inland Revenue

For the Government of the
French Republic

PIERRE KERLAN

Directeur-Adjoint
Ministere de l'Economie et des Finances
(Direction generale des Impots)

PROTOCOL

At the time of signature of the Agreement between the Government of the Republic of Malta and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions.

I. In respect of Article 5, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums and insures risks therein.

II. In respect of paragraphs (1) and (2) of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

III. In respect of paragraph (1) of Article 7, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply. Similarly, payments received as a consideration for studies or surveys of a scientific, geological or technical nature, or for consultant or supervisory services shall be deemed to be payments to which the provisions of Article 7 apply.

IV. In respect of Article 8:

(a) where profits derived from the operation of a ship in international traffic by an enterprise whose place of effective management is situated in Malta are exempt from tax under the provisions of section 86 of the Merchant Shipping Act, 1973, or under any identical or similar provisions, such profits may be taxed in France unless it is proved to the satisfaction of the competent authority of France that not more than 25 per cent of the capital of the company owning the relative ship is controlled, directly or indirectly, by persons not residents of Malta;

(b) where a person who is a resident of France participates directly or indirectly in the management, control or capital of such an enterprise, such person shall be taxable in France in respect of that part of the profits, derived by such enterprise and exempt from tax in Malta as aforesaid, which is appropriate to the participation of such person in the enterprise.

V. In respect of Articles 11 and 12, where any interest or royalties derived from Malta are received by a resident of France, tax in Malta is charged on the amount of the interest or royalties as reduced by all expenses properly attributable thereto. If the tax so charged is in excess of 10 per cent of the gross amount of the interests or royalties (that is before the deduction of the aforesaid expense), the tax is reduced so as not to exceed 10 per cent of the gross interests or royalties.

VI. In respect of paragraph (4) of Article 25, nothing in this paragraph shall be construed as preventing France from applying the provisions of Article 212 of the "Code general des Impots" as regards interest paid by a French company to a foreign mother company.

IN WITNESS WHEREOF, the undersigned have signed the present Protocol which shall have the same force and validity as if it were inserted word by word in the Agreement.

DONE at Floriana this 23rd day of April 1976, in duplicate, in the French and English languages, both texts being equally authentic.

For the Government of the
Republic of Malta

CECIL BAKER

Commissioner of Inland Revenue

For the Government of the
French Republic

PIERRE KERLAN

Directeur-Adjoint
Ministere de l'Economie et des Finances
(Direction generale des Impots)

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