

## **KENYA - SWEDEN INCOME AND CAPITAL TAX TREATY**

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### **CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

#### **Article I**

1. Subject to paragraph 5 of Article XXIII, the taxes which are the subject of the present Convention are:
  - (a) in Sweden:
    - (i) the State income tax, including sailors tax and coupon tax;
    - (ii) the tax on the undistributed profits of companies;
    - (iii) the tax on public entertainers;
    - (iv) the communal income tax;
    - (v) the State capital tax (hereinafter referred to as "Swedish tax");
  - (b) in Kenya:
    - (i) the income tax;
    - (ii) the graduated personal tax (hereinafter referred to as "Kenyan tax").
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Kenya or Sweden subsequently to the date of signature of the present Convention.

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

#### **Article II**

1. In the present Convention unless the context otherwise requires:

- (a) the term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf, as an area over which Kenya may exercise sovereign rights with respect to the exploration for an exploitation of natural resources;
- (b) the term "Sweden" means the Kingdom of Sweden, and includes any area adjacent to the territorial waters of Sweden within which, under the laws of Sweden and in accordance with international law, the rights of Sweden with respect to the exploration and exploitation of the natural resources on the sea bed or in its sub-soil may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Kenya or Sweden as the context requires;
- (d) the term "tax" means Kenyan tax or Swedish tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term "person" means an individual, a company and any other body of persons treated as an entity for tax purposes;
- (f) the term "company" means any body corporate, or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "Kenyan enterprise" and "Swedish enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Kenya and an industrial or commercial enterprise or undertaking carried on by a resident of Sweden, and the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean a Kenyan enterprise or a Swedish enterprise, as the context requires;
- (h) the term "competent authority" means:
  - (i) in the case of Kenya the Minister for Finance or his authorised representative;
  - (ii) in the case of Sweden the Minister of Finance or his authorised representative.

2. In the application of the provisions of the present 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 in force in that Contracting State in relation to the taxes which are the subject of the present Convention.

### **Article III**

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.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:
  - (i) he shall be deemed to be a resident of the Contracting State in which he has a home available to him. If he has a 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);
  - (ii) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a 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;
  - (iii) 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;
  - (iv) 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 of this Article 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 IV**

1. The profits of a Kenyan enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden, but only on so much of them as is attributable to that permanent establishment.
2. The profits of a Swedish enterprise shall not be subject to Kenyan tax unless the enterprise carries on a trade or business in Kenya through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Kenya, but only on so much of them as is attributable to that permanent establishment.
3. Where an enterprise of a Contracting State carries on a trade or business in the other Contracting State through a permanent establishment situated therein,

there shall be attributed to that permanent establishment the profits which it might be expected to derive in that other State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment and the profits so attributed shall be deemed to be income derived from sources in that other State.

4. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise otherwise than through the permanent establishment of the same or similar kind as those sold by the permanent establishment, or renders otherwise than through the permanent establishment services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.
5. 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, but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an independent enterprise of that State.
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. No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.
8. 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 V**

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:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project which exists for more than six months;
- (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project.

3. The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purposes of storage or display 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 purposes of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purposes of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of fixed place of business solely for the purposes 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 6 applies -- shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) 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 purchaser of goods or merchandise for the enterprise;
- or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of that enterprise.

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 or insures risks in that other State through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, where the activities of such an agent are devoted wholly or mainly to that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph, but in such cases the provisions of paragraph 4 would apply.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State, (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### **Article VI**

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of any 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 VII**

1. Profits derived by an enterprise of a Contracting State from the operation of 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. Profits derived by an enterprise of a Contracting State from the operation of

ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State.

Provided that where such an enterprise derives profits from such operation in the other Contracting State:

- (a) such profits shall be deemed to be an amount not exceeding 5% of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
  - (b) the tax chargeable in that other State shall be reduced by 50%.
3. The provisions of paragraph 1 of this Article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

#### **Article VIII**

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 laws of that State, but the tax so charged shall not exceed:
  - (a) 15% of the gross amount of the dividends if the recipient is a company which owns at least 25% of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
  - (b) 25% of the gross amount of the dividends in all other cases.
3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident, but does not include any interest or royalties to which Articles IX and X of this Convention apply.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case the provisions

of Article IV 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 persons who are not residents of that other 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.
6. Dividends paid by a company being a resident of Kenya to a company which is a resident of Sweden shall be exempt from tax in Sweden to the extent that the dividends would have been exempt under Swedish law if both companies had been residents of Sweden. This exemption shall not apply unless the profits out of which the dividends are paid have been subjected in Kenya to the normal income tax which applies at the date of signature of this Convention or an income tax comparable thereto, or the principal part of the profits of the company paying the dividends arises, directly or indirectly, from business activities other than the management of securities and other similar property and such activities are carried on within Kenya by the company paying the dividends or by a company in which it owns at least 25% of the voting power.

#### **Article IX**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed 15% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax in the first-mentioned Contracting State. The competent authorities of the Contracting States may determine by mutual agreement any other governmental institution to which this paragraph shall apply.
4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.



5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case the provisions of Article IV shall apply.
6. Interest shall be deemed to arise in a Contracting State when a payer is that Contracting 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 that 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 Convention.

#### **Article X**

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 the tax so charged shall not exceed 20% of the gross amount of the royalties.
3. The term "royalty" as used in this Article means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, cinematograph films or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine, quarry or oil well or of any other extraction of natural resources.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment

with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article IV shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting 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.
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 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 payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### **Article XI**

1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. Notwithstanding the provisions of paragraphs 1 and 2 of Article XV, such management or professional fees may, however, be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed 20% of the gross amount of the management or professional fees.
3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, professional or consultancy nature.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the services giving rise to the management or professional fees are effectively connected. In such a case the provisions of Article IV shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, 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 management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

#### **Article XII**

1. Income of whatever nature derived from real property (other than income from mortgages or bonds secured by real property) within a Contracting State by a resident of the other Contracting State may be taxed in the Contracting State in which such property is situated.
2. Any royalty or other amount paid in respect of the operation of a mine, oil well or quarry or of any other extraction of natural resources within a Contracting State to a resident of the other Contracting State may be taxed in the Contracting State in which such a mine, oil well, quarry or other natural resources are situated.
3. The term "real property" shall be defined in accordance 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 real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real 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 real property.

#### **Article XIII**

1. Gains from the sale, transfer or exchange of real property may be taxed in the Contracting State in which such property is situated.
2. Gains derived from the sale, transfer or exchange of any capital assets other than real property by a resident of a Contracting State who does not carry on a trade or business in the other Contracting State through a permanent establishment situated therein shall be exempt from tax in that other State.
3. The provisions of paragraph 2 of this Article shall not affect the right of Kenya to levy according to its own law a tax on gains derived from the sale,

transfer or exchange of any shares in any company incorporated in Kenya by a person who is a resident of Sweden and has been a resident of Kenya at any time during the ten years preceding the sale, transfer or exchange.

#### **Article XIV**

1. Remuneration, including pensions, paid by, or out of funds created by, the Government of Kenya to any individual in respect of services rendered to the Government of Kenya in the discharge of governmental functions shall be exempt from Swedish tax, if the individual is not a national of Sweden.
2. Remuneration paid by the Government of Sweden or pensions paid by, or out of funds created by, the Government of Sweden to any individual in respect of services rendered to the Government of Sweden in the discharge of governmental functions shall be exempt from Kenyan tax, if the individual is not ordinarily resident in Kenya or is ordinarily resident in Kenya solely for the purpose of rendering those services, and in either case is subject to tax thereon in Sweden.
3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purposes of profit.
4. For the purpose of this Article, the term "Government" shall include any local authority of either Contracting State.

#### **Article XV**

1. Subject to Articles XI, XIV, XVI, XVII, XIX and XX an individual who is a resident of Kenya shall be exempt from Swedish tax on profits or remuneration in respect of personal (including professional) services performed within Sweden in any taxation year if:
  - (a) he is present within Sweden for a period or periods not exceeding in the aggregate 183 days during that year; and
  - (b) the services are performed for or on behalf of a resident of Kenya; and
  - (c) the profits or remuneration are not borne by a permanent establishment which the employer has in Sweden.
2. Subject to Articles XI, XIV, XVI, XVII, XIX and XX an individual who is a resident of Sweden shall be exempt from Kenyan tax on profits or remuneration in respect of personal (including professional) services performed within Kenya in any taxation year if:

- (a) he is present within Kenya for a period or periods not exceeding in the aggregate 183 days during that year; and
  - (b) the services are performed for or on behalf of a resident of Sweden; and
  - (c) the profits or remuneration are not borne by a permanent establishment which the employer has in Kenya.
3. For the purposes of this Convention, profits or remuneration for personal (including professional) services performed in a Contracting State, shall be deemed to be income from sources within that State, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of a Contracting State, shall be deemed to be performed in that State.

#### **Article XVI**

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **Article XVII**

1. Notwithstanding the provisions of Article XV income derived by public entertainers, such as theatre, motion picture, radio and television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.
2. Notwithstanding anything contained in this Convention where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

#### **Article XVIII**

1. Subject to Article XIV, any pension and annuity derived by an individual who is a resident of a Contracting State from sources within the other Contracting State may be taxed in that other State.

2. The term "pension" as used in this Article means a periodic payment made in consideration of services rendered in the past, by way of compensation for injuries received or under the provisions of a public social security system.

The term "annuity" means a stated sum payable periodically at stated times, 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 XIX**

A student or business apprentice who is present in a Contracting State for the purposes of his education or training and who is, or was immediately before his stay in that State, a resident of the other Contracting State, shall be exempt from tax in the first- mentioned Contracting State on:

- (i) payments made to him by persons residing outside that first- mentioned State for the purposes of his maintenance, education or training; and
- (ii) remuneration for personal services performed in that first- mentioned State provided the remuneration does not exceed 9500 Swedish Crowns or its equivalent in Kenyan currency for any taxable year.

The benefits under sub-paragraph (ii) shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken but shall in no event exceed a period of three consecutive years.

#### **Article XX**

1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purposes of teaching or conducting research at a university, college, school or other education institution in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.
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 XXI**

Where taxes on capital are imposed by one or both of the Contracting States the following provisions shall apply:

- (a) capital represented by real property may be taxed in the Contracting State in which such property is situated;
- (b) subject to the provisions of paragraph (a) of this Article, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, may be taxed in the Contracting State in which the permanent establishment is situated;
- (c) ships and aircraft as well as assets, other than real property, pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident;
- (d) all other elements of capital of a resident of a Contracting State shall be taxable only in that State.

#### **Article XXII**

1. Subject to the provisions of the law of Kenya regarding the allowance as a credit against Kenyan tax of tax payable in a territory outside Kenya, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sweden shall be allowed as a credit against any Kenyan tax payable in respect of that income. The credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Sweden.
2. Where income from sources within Kenya or capital situated therein under the laws of Kenya and in accordance with this Convention may be taxed in Kenya, Sweden shall allow the Kenyan tax paid in respect of such income or capital as a credit against any Swedish tax payable in respect of that income or capital. The credit in either case shall not, however, exceed that part of the Swedish income tax or capital tax, respectively, as computed before the credit is given, which is appropriate to the income or capital which may be taxed in Kenya.
3. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.
4. For the purposes of paragraph 2 of this Article in relation to income tax the term "Kenyan tax paid":
  - (a) shall be understood to mean payments made in respect of the tax allocated to Kenya in any assessment in accordance with Section 88(2) of the East African Income Tax Management Act;

- (b) shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for:
- (i) any investment deduction granted under paragraph 27 of the Second Schedule to the East African Income Tax Management Act; or
  - (ii) the lower corporation rate of income tax provided by paragraph 2 of the Second Schedule to the Income Tax (Allowances and Rates) (No. 2), Act, 1971; or
  - (iii) any other provision which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.

The provisions of sub-paragraphs (b)(i) and (ii) shall apply for the first ten years for which this Convention is effective, but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended. [ 1 ]

[ 1 ] By letters dated 23 March 1987 and 11 May 1987, Sweden and Kenya agreed to extend the provisions of sub-paragraph (b)(ii) of paragraph 4 of Article XXII of the Convention for a period of 14 years from the expiry of the initial period of 10 years mentioned in the last sub-paragraph of the said paragraph 4.

### **Article XXIII**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The term "nationals" means:
  - (a) all individuals who are citizens of a Contracting State; and
  - (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.
3. 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 paragraph 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.

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 XXIV**

1. Any taxpayer who shows that the action of the taxation authorities of one or both of the Contracting States has resulted or will result in taxation which is contrary to the provisions of this Convention, may lodge a claim with the competent authority of the Contracting State of which he is a resident. Should the claim be upheld, that competent authority may come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of such taxation.
2. The competent authorities of the Contracting States may likewise come to an agreement for the purpose of overcoming double taxation in cases not otherwise provided for by this Convention, as well as in cases where the interpretation or the application of this Convention gives rise to difficulties or doubts.
3. The competent authorities of the Contracting States may also communicate directly with each other in order to propose changes in any of the Articles of this Convention.

#### **Article XXV**

The competent authorities of the Contracting States shall arrange for the exchange of such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of or the hearing of appeals in relation to the taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or

professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

#### **Article XXVI**

1. This Convention shall come into force on the date on which the last of all such things shall have been done in Kenya and Sweden as are necessary to give the Convention the force of law in Kenya and Sweden respectively. In the case of Sweden the Convention shall be ratified.
2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this Article. Such notifications shall be exchanged at Nairobi as soon as possible.
3. This Convention shall enter into force upon the exchange of such notifications and shall have effect:
  - (a) in Sweden:
    - (i) in respect of coupon tax on dividends which are payable on or after 1st January 1973;
    - (ii) in respect of sailors tax and tax on public entertainers on income which is derived on or after 1st January 1973;
    - (iii) in respect of other taxes on income which is assessed in the year 1974 and subsequent years; and
    - (iv) in respect of capital which is assessed in the year 1974 and subsequent years;
  - (b) in Kenya: --in respect of Kenya tax for any year, year of income or year of assessment beginning on or after January 1973.

#### **Article XXVII**

The present Convention shall continue in effect 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 five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, the present Convention shall cease to be effective in respect of income arising on or after 1st January next State capital tax, in respect of tax assessed in or after the second calendar year next following that in which such notice is given.

In witness whereof the undersigned being duly authorised thereto have signed the present Convention and have affixed thereto their seals.

Done at Nairobi, on this twenty-eighth day of June 1973, in duplicate in the English language.



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