

**CONVENTION BETWEEN THE UNITED MEXICAN STATES  
AND MALTA  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

THE UNITED MEXICAN STATES and MALTA,

**DESIRING** to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

**HAVE AGREED** as follows:

**ARTICLE 1  
PERSONS COVERED**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

## **ARTICLE 2 TAXES COVERED**

1. This Convention shall apply to taxes on income imposed on behalf of Mexico and on behalf of Malta, irrespective of the manner in which they are levied.

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

3. The existing taxes to which the Convention shall apply are in particular:

a) in Mexico:

- (i) the federal income tax; and
- (ii) the business flat rate tax;

(hereinafter referred to as "Mexican tax");

b) in Malta:

the income tax;

(hereinafter referred to as "Malta tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

### **ARTICLE 3 GENERAL DEFINITIONS**

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the term "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters, and the air space of the national territory to the extent and under conditions established by international law;
- b) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;
- c) the terms "a Contracting State" and "the other Contracting State" mean Mexico or Malta, as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the term "enterprise" applies to the carrying on of any business;

- g) 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;
- h) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "business" includes the performance of professional services and of other activities of an independent character;
- j) the term "competent authority" means:
  - (i) in Mexico, the Ministry of Finance and Public Credit;
  - (ii) in Malta, the Minister responsible for finance or his authorised representative;
- k) the term "national" in relation to a Contracting State, means:
  - (i) any individual possessing the nationality of that Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **ARTICLE 4 RESIDENT**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

4. A partnership shall be considered resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as

the income of a resident of such State, either in the hands of the partnership or in the hands of its partners.

## **ARTICLE 5 PERMANENT ESTABLISHMENT**

1. For the purposes of this Convention, 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" includes 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.

3. The term "permanent establishment" likewise encompasses:

- a) a building site or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 (six) months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods exceeding in the aggregate 183 (one hundred and eighty three) days in any 12 (twelve) month period;
- c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 (one hundred and eighty three) days in any 12 (twelve) month period.

For the purposes of computing the time limits referred to in paragraph 3, the activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be aggregated with the period during which the activities are carried on by the associated enterprise, if the activities of both enterprises are identical or substantially similar.



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 of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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 under the provisions of that paragraph.

6. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise conditions are not made or imposed that differ from those generally agreed to by independent agents.

8. 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 6**  
**INCOME FROM IMMOVABLE PROPERTY**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting 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.

## **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:

- a) that permanent establishment;
- b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment.

However, the profits derived from the sales described in subparagraph b) shall not be taxable in the other Contracting State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Convention.

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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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 contained 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

**ARTICLE 8**  
**SHIPPING AND AIR TRANSPORT**

1. Profits of a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits referred to in paragraph 1 shall not include profits from land transportation.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic by a resident of a Contracting State include profits from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee and are derived by a resident of a Contracting State engaged in the operation of ships or aircraft in international traffic.

4. For the purposes of this Article and notwithstanding the provisions of Article 12, profits of a resident of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used in international traffic shall be taxable only in that State where such use or rental is incidental to the operation of ships or aircraft in international traffic.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

**ARTICLE 9**  
**ASSOCIATED ENTERPRISES**

1. Where
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## **ARTICLE 10 DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State being the beneficial owner of the dividends shall be taxable only in the last mentioned State.

2. 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 and other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

3. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.



## **ARTICLE 11 INTEREST**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the interest from loans granted by a bank;

b) 10 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State in which the beneficial owner is a resident if:

a) the beneficial owner is a Contracting State, a political subdivision or a local authority thereof, or the Central Bank of a Contracting State;

b) the interest is paid by any of the entities mentioned in subparagraph a);

c) the interest arises in Malta and is paid in respect of a loan for a period of not less than 3 (three) years granted, guaranteed or insured by Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C., or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States; or

d) the interest arises in Mexico and is paid in respect of a loan for a period of not less than 3 (three) years granted, guaranteed or insured, by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the laws of the Contracting State in which the income arises. The term "interest" shall not include any item of income which is considered as a dividend under the provisions of paragraph 2 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **ARTICLE 12 ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

- a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process;
- b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- c) the supply of information concerning industrial, commercial or scientific experience;
- d) the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

Notwithstanding the provisions of Article 13, the term "royalties" also includes payments derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a Contracting State a permanent establishment and such royalties are borne by such permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the

amount of the royalties exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **ARTICLE 13 CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

3. In addition to gains taxable in accordance with the provisions of the preceding paragraphs, gains derived by a resident of a Contracting State from the alienation of shares, participation or other rights in the capital of a company or other legal person that is a resident of the other Contracting State may be taxed in that other State if the recipient of the gain, at any time during the 12 (twelve) month period preceding such alienation, together with all persons who are related to the recipient, had a participation of at least 25 per cent in the capital of that company or other legal person.

4. 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

5. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

## **ARTICLE 14 INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17 and 18, 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 Contracting State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 (one hundred and eighty three) days in any 12 (twelve) month period commencing or ending in the fiscal 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by a resident of a Contracting State in international traffic, may be taxed in that State.

**ARTICLE 15**  
**DIRECTORS' FEES**

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

**ARTICLE 16**  
**ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsperson shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first mentioned State or a political subdivision or local authority thereof.



**ARTICLE 17  
PENSIONS**

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

**ARTICLE 18**  
**GOVERNMENT SERVICE**

1.
  - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2.
  - a) Notwithstanding the provisions of paragraph 1, any pension and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such pension and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions and other similar remuneration, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **ARTICLE 19 STUDENTS**

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 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 arise from sources outside that State.

**ARTICLE 20**  
**OTHER INCOME**

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

**ARTICLE 21**  
**ELIMINATION OF DOUBLE TAXATION**

1. In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:

- a) the Malta tax paid on income arising in Malta, in an amount not exceeding the tax payable in Mexico on such income; and
- b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Malta and from which the first-mentioned company receives dividends, the Malta tax paid by the distributing company with respect to the profits out of which the dividends are paid.

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 Convention, there is included in a Malta assessment income from sources within Mexico, the Mexican tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

3. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## **ARTICLE 22 NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. 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 paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

## **ARTICLE 23**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. The case must be presented within 3 (three) years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention, provided that the competent authority of the other Contracting State is notified of the case within 4 (four) and a half years from the due date or the date of filing of the return in that other State, whichever is later. In such case, any agreement reached shall be implemented within 10 (ten) years from the due date or the date of filing of the return in that other State, whichever is later, or a longer period if permitted by the domestic law of that other State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Notwithstanding any other treaties of which the Contracting States are or may become parties, any dispute over a measure taken by a Contracting State involving a tax covered by Article 2 or, in the case of non-discrimination, any taxation measure taken by a Contracting State, including a dispute whether this Convention applies, shall be settled only under the Convention, unless the competent authorities of the Contracting States agree otherwise.

## **ARTICLE 24 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation to:

- a) carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.



5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

## **ARTICLE 25 ASSISTANCE IN COLLECTION**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State

has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

**ARTICLE 26**  
**MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

## **ARTICLE 27 ENTRY INTO FORCE**

1. The Contracting States shall notify each other, through diplomatic channels, the completion of the procedures required by their domestic law for the entry into force of this Convention.

2. This Convention shall enter into force 30 (thirty) days after the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a) in Malta:

in respect of taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the Convention enters into force;

b) in Mexico:

- (i) in respect of taxes withheld at source, to income paid or credited on or after the first day of January in the calendar year next following that in which the Convention enters into force;
- (ii) in respect of other taxes, for any taxable year beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

## **ARTICLE 28 TERMINATION**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least 6 (six) months before the end of any calendar year beginning after the expiration of a period of 5 (five) years from the date of its entry into force. In such event, the Convention shall cease to have effect:

a) in Malta :

in respect of taxes on income derived during any calendar year or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the notice is given.

b) in Mexico:

- (i) in respect of taxes withheld at source, to income paid or credited on or after the first day of January in the calendar year next following that in which the notice is given;
- (ii) in respect of other taxes, for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Rome, this 17<sup>th</sup> day of December \_\_\_\_\_ of two thousand and twelve, in the Spanish and English languages, both texts being equally authentic.

**FOR THE  
UNITED MEXICAN STATES**

**FOR MALTA**

**Miguel Ruíz-Cabañas Izquierdo**

**Carmel Inguanez**

## PROTOCOL

At the moment of signing the Convention this day concluded between the United Mexican States and Malta 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 which shall be an integral part of the Convention.

1. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 4 of Article 4 and subparagraph f), paragraph 4 of Article 5 of the Convention.

2. Ad paragraph 3 of Article 13

I. For purposes of paragraph 3 of Article 13, gains from the alienation of shares of a company resident in one of the States shall be taxable only in the other State, if:

A. the alienation of shares takes place between members of the same group of companies to the extent that the remuneration received by the transferor consists of shares or other rights in the capital of the transferee or of another company that owns directly or indirectly 80 per cent or more of the voting rights and value of the transferee and that is resident of one of the States or of a country with which Mexico has a broad exchange of information agreement in terms of the Administrative Tax Regulations (Resolución Miscelánea Fiscal), but only if the following conditions are met:

a) the transferee is a company resident of one of the States or of a country with which Mexico has a broad exchange of information agreement in terms of the Administrative Tax Regulations (Resolución Miscelánea Fiscal);

b) before and immediately after the transfer, the transferor or the transferee owns, directly or indirectly, 80 per cent or more of the voting rights and value of the other, or a company resident in one of the States or of a country with which Mexico has a broad exchange of information agreement in terms of the Administrative Tax Regulations (Resolución Miscelánea Fiscal) owns directly or

indirectly (through companies resident in one of those States) 80 per cent or more of the voting rights and value of each of them; and

- c) for the purpose of determining the gain on any subsequent disposition,
  - (i) the initial cost of the shares for the transferee is determined based on the cost it had for the transferor, increased by any cash or other remuneration other than shares or other rights paid; or
  - (ii) the gain is measured by another method that gives substantially the same result.

Notwithstanding the foregoing, if cash or other remuneration other than shares or other rights is received, the amount of the gain (limited to the amount of cash or other remuneration other than shares or other rights received), may be taxed by the State of which the company of which the shares are alienated is a resident.

B. the gains have been derived by an insurance company or a pension fund. The term “pension fund” means, any person, entity or trust, including in the case of Mexico, the “Afores y Siefiores”, established in a Contracting State:

- 1° that administers pension schemes or provides retirement benefits; or
- 2° that earns income on behalf of one or more persons operated to administer pension schemes or provide retirement benefits; and

provided it is either:

- 1° in the case of Mexico, regulated by one or more of the following authorities, the National Commission for the Pension System (“CONSAR”), National Insurance and Surety Commission (“CNSF”), National Commission of Banking and Securities (“CNBV”) or the Ministry of Finance and Public Credit; or
- 2° in the case of Malta, regulated by the Malta Financial Services Authority.

C. the alienation takes place through a recognized Stock Exchange. However, when a resident of one of the States held, directly or indirectly, 10 per cent or more of the shares of a company resident in the other State, and:

- a) in a period of 24 (twenty four) months such resident alienates 10 per cent or more of the shares through one or several simultaneous or successive transactions through a recognized Stock Exchange; or



b) the alienation is carried out within the recognized stock exchange through any kind of transaction that prevents such resident to accept other offers than those received before and during the period in which the alienation takes place, the gain derived from that alienation may be taxed in the State of which the company of which the shares are alienated is a resident.

II. The term “recognized Stock Exchange” as mentioned in subparagraph C of paragraph I of this Article, means the Mexican Stock Exchange (Bolsa Mexicana de Valores) and the Malta Stock Exchange.

3.

I. The provisions of Articles 11 and 12 of the Convention shall not apply in respect of any interest or royalties paid in the course of a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Convention receives an item of income arising in the other Contracting State but the resident pays, directly or indirectly, at least 50 per cent of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under an agreement for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under the Convention to a resident of a Contracting State and the main purpose of such structuring is obtaining benefits under the Convention.

II. No provision of the Convention, except for the Article 24 "Exchange of information", shall apply to:

- a) an item of income that is exempt from tax in a Contracting State of which the beneficial owner of the income is a resident or is taxable in that State in the hands of that resident at a rate lower than the rate applicable to the same item of income derived by other residents of that State that do not benefit from such exemption or rate; or
- b) an item of income beneficially owned by a resident of a Contracting State that benefits from a deduction, rebate or other concession or benefit that is provided directly or

indirectly in relation to that item of income, other than a credit for foreign tax paid, and is not available to other residents of that State.

III. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the preceding paragraphs, the competent authorities of the Contracting States shall consult each other. Likewise, the competent authorities of the Contracting States may consult each other with regard to the application of this Article.

IV. The provisions of this Convention shall not prevent a Contracting State from applying its provisions regarding thin capitalisation and controlled foreign corporation (in the case of Mexico, preferential tax regimes).

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

DONE in duplicate at Rome, this 17<sup>th</sup> day of December of two thousand and twelve, in the Spanish and English languages, both texts being equally authentic.

**FOR THE  
UNITED MEXICAN STATES**

**FOR MALTA**

**Miguel Ruiz-Cabañas Izquierdo**

**Carmel Inguanez**