

1996 Income and Capital Tax Convention (English Translation)

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CONVENTION BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE REPUBLIC OF TUNISIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

[TRANSLATION]

The Government of the Grand Duchy of Luxembourg and the Government of the Republic of Tunisia, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital,

Have agreed as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and capital imposed on behalf of a Contracting State, a political subdivision or a local authority thereof, irrespective of the manner in which they are levied.

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

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

a) as regards Tunisia:

- l'impôt sur le revenu des personnes physiques (personal income tax);
- l'impôt sur les sociétés (company tax);
- la taxe sur les établissements à caractère industriel, commercial ou professionnel (tax on manufacturing sites, businesses or professional firms);
- la taxe hôtelière (hotel tax);
- la taxe de formation professionnelle (vocational training tax);
- le fonds de promotion des logements pour les salariés (employee housing fund); (hereinafter referred to as the "Tunisian tax");

b) as regards Luxembourg:

- l'impôt sur le revenu des personnes physiques (income tax on individuals);
- l'impôt sur le revenu des collectivités (the corporation tax);
- l'impôt special sur les tantièmes (special tax on director's fees);
- l'impôt sur la fortune (capital tax);
- l'impôt commercial communal d'après les bénéfices et capital d'exploitation (communal trade tax on profits and operating capital); (hereinafter referred to as the "Luxembourg tax")

4. The Convention shall apply also to any identical or similar taxes and to capital taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall inform each other of any changes made in their respective tax laws.

Article 3 General Definitions

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

a) the terms "a Contracting State" and "the other Contracting State" mean Tunisia or Luxembourg, depending on the context;

b) the term "Tunisia" means the territory of the Republic of Tunisia and the zones adjacent to the territorial waters of Tunisia over which, in accordance with international law, Tunisia may exercise rights pertaining to the ocean floor, the marine substrate and the natural resources thereof;

c) the term "Luxembourg" means the territory of the Grand Duchy of Luxembourg;

d) the term "persons" includes an individual, a company, a partnership and any other body of persons;

- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise operated by a resident of a Contracting State and an enterprise operated by a resident of the other Contracting State;
- g) the term "national" means any individual who possesses the nationality of a Contracting State and any legal person, partnership or association constituted under the laws in force in a Contracting State .
- h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.
- i) the term "competent authority" means:
- in Tunisia: the Minister of Finance or a duly authorized representative;
 - in Luxembourg, the Minister of Finance or a duly authorized representative;
2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of said State concerning the taxes to which the Convention applies.

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.
2. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as "center of vital interests");
 - b) if the Contracting State in which such person has his center 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 of the Contracting State in which he has an habitual abode;
 - c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is regarded as a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business 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.
 - f) a mine, a quarry or any other place of extraction of natural resources,
 - g). a building site or temporary installation operation or supervisory activities carried on therein, where such building site, temporary installation operation or supervisory activities last longer than six months, or where such installation operations or supervisory activities following the sale of machines or equipment last longer than three months and the installation or supervisory costs exceed ten percent of the price of such machines or equipment.
3. Notwithstanding the foregoing provisions, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, delivery 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 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 advertising;
- 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 sub-paragraphs 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.

4. Notwithstanding the provisions of paragraphs 1 and 2, when a person who is acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status referred to in paragraph 6 hereinafter - such enterprise shall be deemed to have a permanent establishment in the first-mentioned State if:

- a) he has and habitually exercises in that State the authority to negotiate and conclude contracts for or on behalf of the enterprise;
- b) habitually takes orders in the first-mentioned State exclusively or almost exclusively for the enterprise itself or for the enterprise and for other enterprises which are controlled by it or which have a controlling interest in such enterprise or which are placed under joint control.

5. An insurance enterprise of a Contracting State, shall, except in regard to re-insurance, 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 which are incurred therein through an employee or through a representative who is not included in the category of persons mentioned in paragraph 6 hereinafter.

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

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 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State in respect of immovable property (including income from agriculture and forestry) situated in the other Contracting State shall be taxable in that other State.

2. The term "immovable property" shall have the meaning attributed to it by the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, 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 underground 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 income from the immovable property of an enterprise as well as income from immovable property used in the performance of independent personal services.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. 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 State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the 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.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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 profits of the enterprise to its various parts, nothing in paragraph 2 of this Article 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. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be calculated using the same method year by year unless there is good and sufficient reason to the contrary.

6. No profit shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods and services for the enterprise; likewise, no deduction shall be allowed for any expenses thus incurred.

7. The provisions of the foregoing paragraphs as well as those in Article 5 shall also apply to partnerships and other bodies of persons where such profits are taxable when they accrue to partners or members.

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 8 Shipping and Air Transport

1. Profits arising from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

2. Profits arising from the operation of ships or aircraft between points situated in a Contracting State may be taxed only in that State.

3. The provisions of paragraph 1 shall also apply to profits derived from 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 taxed 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 the 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 may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and under the laws of that State, but if the person receiving the dividends is the beneficial owner thereof, the tax so charged may not exceed ten percent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company on the profits in respect of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, from *jouissance* shares, founder's shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 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, according to the laws of that State, but if the person receiving the interest is the beneficial owner thereof, then the tax thus charged may not exceed:

a) 7.5 percent of the gross amount of the interest if the loan in respect of which the interest is paid is guaranteed or financed by the other State or by a financial institution which is a resident of that other State and the loan is granted for a period of at least five years;

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

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed

base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 interest, 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 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 under the laws of each Contracting State and the other provisions of this Convention.

Article 12 Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and under the laws of that State, but if the person receiving the royalties is the beneficial owner thereof, the tax thus charged may not exceed 12 percent 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 the use of, or the right to use, any copyright on literary, artistic or scientific works, not including cinematographic films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use any industrial, commercial, harbor, agricultural or scientific equipment or for information concerning experience acquired in the area of business, industry or science, with the exception of payments for chartering ships or aircraft operated in international traffic, or for technical or economic research or for providing technical assistance performed in the State in which such royalties arise.

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 in which the royalties arise, carries on business through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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, having regard to the service for which they are paid, exceeds 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 covered in Article 6 and situated in the other Contracting State, shall be taxable in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following cases:
 - a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the fiscal year concerned.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of a salaried 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 a salaried employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of a salaried employment exercised aboard a ship or aircraft in international traffic shall be taxable solely in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Director's Fees

Director's 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 the supervisory board or a similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 Entertainers and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by an entertainer, such as a theater, motion picture, radio or television artiste, or a musician or as an athlete, from his personal activities as such may be taxed in the Contracting State in which such activities are exercised;
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 Pensions

1. Subject to the provisions of paragraph 2 of Article 19, 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.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under the social security laws of a Contracting State to a resident of the other Contracting State shall be taxable in the first-mentioned State, but the tax may not exceed 15 percent of the amount liable to taxation.

Article 19 Government Service

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

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions 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 20 Students and Business Apprentices

1. A resident of a Contracting State who is present in the other Contracting State exclusively:

a) as a student enrolled in a university, college or school in that other State;
b) as a business apprentice;
c) or as the recipient of a scholarship, grant or compensation paid by a religious, charitable, scientific or educational institution mainly for the purpose of education or research, shall be exempt from taxation in that other State in respect of any payments received by him from abroad for the purpose of his maintenance, education or training, in respect of scholarship received by him or any payments received by him in respect of a non-independent paid activity carried out in that other State for the purpose of acquiring practical training.

2. An individual of a Contracting State who is present in the other Contracting State for a period not to exceed two years as a representative of an enterprise of the first-mentioned State or of any or the organizations covered in paragraph 1, section c) of this Article, or under any agreement entered into with said enterprise or said organization, solely for the purpose of acquiring technical or professional experience or business experience from a person other than said enterprise or said organization, shall be exempt from taxation in that other State in respect of payments received by him during said period.

Article 21 Other Income

1. Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22 Capital

1. Capital represented by immovable property covered by Article 6 which is owned by a resident of a Contracting State and which is situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 23 Methods for the Elimination of Double Taxation

Double taxation shall be avoided in the following manner:

1. As regards Tunisia:

a) Where a resident of Tunisia derives income which, in accordance with the provisions of this Convention, may be taxed in Luxembourg, Tunisia shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Luxembourg.

b) Where a company which is a resident of Tunisia receives dividends from a company which is a resident of Luxembourg and in which it owns at least 10 percent of the capital, the deduction shall take into account, in addition to the Luxembourg tax which is deducted according to sub-paragraph a), the Luxembourg tax owed by the first-mentioned company on the profits in respect of which such dividends are paid.

c) Such deduction shall not, however, in either case, exceed that portion of the income tax as calculated before the deduction is given, which is attributable, as the case may be, to the income taxable in Luxembourg.

2. As regards Luxembourg:

a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Tunisia, Luxembourg shall, subject to the provisions of sub-paragraphs b) to e), exempt such income or such capital from tax. However, in calculating the amount of tax on the remaining income or capital of such resident, it may apply the same tax rates as if such income or capital had not been exempted.

b) Notwithstanding the provisions of sub-paragraph a), if a bank or a holding company which is a resident of Luxembourg earns income which, in accordance with the provisions of Article 7, may be taxed in Tunisia, but which is totally or partially exempt from taxation under Tunisian laws regarding investment incentives, Luxembourg shall allow as a deduction from the tax on the income of such resident an amount equal to the tax paid in Tunisia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income derived from Tunisia.

c) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12 and paragraph 2 of Article 18, may be taxed in Tunisia, Luxembourg shall allow as a deduction from the tax on the income of such resident an amount equal to the tax paid in Tunisia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income derived from Tunisia.

d) For the purposes of sub-paragraph c),

- dividends received by an individual who is a resident of Luxembourg shall be regarded as liable to payment of tax in Tunisia at the rate of 15 percent, provided that the company paying the dividends is liable to the company tax mentioned in Article 2; any Tunisian company to which tax exemptions or reductions are granted by reason of special investment incentives in Tunisia (with the exception of banks, closed-end and open-end investment companies) shall also be regarded as liable to the company tax in Tunisia.

- interest and royalties shall be regarded as liable to payment of tax in Tunisia at the rates mentioned in Articles 11 and 12 respectively, if tax exemptions or reductions are allowed by reason of special investment incentives in Tunisia (with the exception of banks, closed-end and open-end investment companies).

The provisions of this sub-paragraph shall apply for a period of fifteen years starting on January 1 of the calendar year following the year in which the Convention enters into force. That period may be extended by mutual agreement between the competent authorities of both Contracting States.

e) Where a company which is a resident of Luxembourg receives dividends from sources in Tunisia,

- Luxembourg shall exempt such dividends from taxation, provided that such company being a resident of Luxembourg has owned directly since the beginning of its fiscal year at least ten percent of the capital of the company paying the dividends, and provided that the company concerned is liable to the company tax in Tunisia covered in Article 2. The aforementioned stocks and shares in the Tunisian company shall be exempt from the Luxembourg tax on capital, under the same conditions. The exemption allowed under this sub-paragraph shall also apply, even if the Tunisian company receives tax exemptions or reductions owing to special investment incentives in Tunisia (with the exception of banks, closed-end and open-end investment companies).

- if the investment conditions mentioned above are not met, dividends shall be regarded as liable to payment of tax in Tunisia at the rate of 20 percent, provided that the company paying the dividends is liable in Tunisia to the company tax covered in Article 2; any Tunisian company receiving tax exemptions or deductions owing to special investment incentives in Tunisia shall also be regarded as liable to the company tax in Tunisia (with the exception of banks, closed-end and open-end investment companies).

The provisions set forth under the second dash in this sub-paragraph shall apply for a period of 15 years starting on January 1 of the calendar year following the year in which the Convention enters into force. That period may be extended by mutual agreement between the competent authorities of both Contracting States.

Article 24 Non-Discrimination and Investment Incentives

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 are or may be subjected, particularly in respect of residence.

2. The taxation on a permanent establishment which an enterprise or a resident of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same business.

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. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. In this Article, the term "taxation" means taxes of every kind and description covered in Article 2 of this Convention.

6. The provisions of this Convention shall not preclude the application of more favorable tax provisions under the laws of either Contracting State for the purpose of promoting investment.

Article 25 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, independently of any remedies provided for under the domestic laws of those States, submit his case to the competent authority of the Contracting State of which he is a resident.

The case must be submitted within three years after the first notification of the action resulting in taxation which is not in accordance with the Convention.

2. Such competent authority shall endeavor, 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 any taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also cooperate for the purpose of avoiding double taxation in cases not covered by the Convention.

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

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is in accordance with the Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities involved in the assessment or collection of the taxes covered by this Convention. Such persons or authorities shall use such information solely for such purposes.

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

a) to carry out administrative measures at variance with its laws and administrative practice or those of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of its administrative practices or those of the other Contracting State;

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

Article 27 Members of Diplomatic Missions and Consular Posts

The provisions of this Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or the provisions of special agreements.

Article 28 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Luxembourg as soon as possible.
2. This Convention shall enter into force upon the exchange of the instruments of ratification and the provisions thereof shall have effect:
 - a) with respect to taxes owed at source on income attributed or paid on or after January 1 of the calendar year following the year in which the instruments of ratification are exchanged;
 - b) with respect to other taxes for tax periods ending on or after January 1 of the calendar year following the year in which the instruments of ratification are exchanged.

Article 29 Termination

This Convention shall remain in force indefinitely, but either Contracting State may, through June 30 of any calendar year starting in the fifth year after the year of ratification, terminate the Convention, through diplomatic channels, by giving notice in writing to the other Contracting State.

In the event of termination before July 1 of such year, the Convention shall apply for the last time:

- a) to taxes owed at source on income attributed or paid no later than December 31 of the year of termination;
- b) to other taxes for tax periods ending no later than December 31 of the year of termination;

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in duplicate at Luxembourg, this 27th day of March, 1996 in the French and Arabic languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG:

Jacques Poos

Minister of Foreign Affairs, Foreign Commerce and Cooperation

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA:

Tahar Sioud

Ambassador Extraordinary and Plenipotentiary