

AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE GOVERNMENT OF THE PRINCIPALITY OF MONACO
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

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THE STATES OF GUERNSEY

AND

THE GOVERNMENT OF MONACO,

WHEREAS it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of Monaco;

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

ARTICLE 1

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Parties.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed by or on behalf of a Party or of its local authorities, 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, taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
 - a) in the case of Guernsey:
 - (i) income tax;
(hereinafter referred to as “Guernsey tax”);
 - b) in the case of the Principality of Monaco:
 - (i) the profit tax on commercial income levied from individual persons;

- (ii) the profit tax levied from companies (“impôt sur les bénéfices”).

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other of any significant changes that have been made in their taxation laws which may affect matters covered by the Agreement.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term “Guernsey”, means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;
 - b) the term “Monaco” means the Principality of Monaco’s lands, internal waters, territorial sea including its bed and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which the Principality of Monaco exercises sovereign rights and jurisdiction in accordance with the provisions of international law and the Principality of Monaco’s national laws;

- c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) the term “competent authority” means:
 - (i) in the case of Guernsey, the Director of Income Tax or his delegate;
 - (ii) in the case of Monaco Counsellor of the Government for Finance and the Economy (“Conseiller du Gouvernement pour les Finances et l’Economie”) or his delegate;
- e) the terms “enterprise of a Party” and “enterprise of the other Party” mean respectively an enterprise carried on by a resident of a Party and an enterprise carried on by a resident of the other Party and the term “enterprise” applies to the carrying on of any business;
- f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Party that has its place of effective management in a Party, except when the ship or aircraft is operated solely between places in the other Party;
- g) the term “national” means:
 - (i) in the case of Guernsey, any individual who has a place of abode in Guernsey and possesses British citizenship and any legal person, partnership or association deriving its status as such from the laws of Guernsey;
 - (ii) in the case of Monaco any person possessing the nationality of Monaco and any legal person, partnership, association or foundation deriving its status as such under the laws of Monaco;

- h) the terms “a Party” and “the other Party” mean Guernsey or Monaco, as the context requires;
- i) the term “person” includes an individual, a company and any other body of persons.

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

ARTICLE 4

RESIDENT

- 1. For the purposes of this Agreement, the term “resident of a Party” means:
 - a) in the case of Guernsey:
any person who, under the laws of Guernsey, 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 Guernsey, and a person other than an individual which is incorporated or constituted under the laws of Guernsey;
 - b) in the case of Monaco:
any person who, under the laws of the Principality of Monaco, has in Monaco his domicile, abode, residence, or place of management,

and also includes the State of Monaco and any local authorities thereof.

This term, however, does not include any person who is liable to tax in a Party in respect only of income from sources in that Party.

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

- a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
- b) if the Party 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 Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
- c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national;
- d) if he is a national of both Parties or neither of them, the competent authorities of the Parties 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 Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” 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. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

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

- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or 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 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party 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. An enterprise shall not be deemed to have a permanent establishment in a Party merely because it carries on business in that Party 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.

7. The fact that a company which is a resident of a Party controls or is controlled by a company which is a resident of the other Party, or which carries on business in that other Party (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 Party from immovable property (including income from agriculture or forestry) situated in the other Party shall be taxable only in that other Party.

2. The term “immovable property” shall have the meaning which it has under the law of the Party 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 Party shall be taxable only in that Party unless the enterprise carries on business in the other Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.

2. For the purposes of this Article, the profits that are attributable in each Party to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Party adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Parties and taxes accordingly profits of the enterprise that have been charged to tax in the other Party, the other Party shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of tax charged on those profits. In determining such adjustment, the competent authorities of the Parties shall if necessary consult each other, within a reasonable period of time.

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

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Party from the operation of ships or aircraft in international traffic shall be taxable only in the Party in which the place of effective management of the Party is situated.

2. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits;

- a) derived from the rental of ships and aircraft if such ships or aircraft are operated in international traffic; and
- b) derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise,

where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits described in paragraph 1.

3. 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 Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party;
or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

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 Party includes in the profits of an enterprise of that Party – and taxes accordingly – profits on which an enterprise of the other Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party 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 Agreement and the competent authorities of the Parties shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Party to a resident of the other Party and which are beneficially owned by that resident shall be taxable only in that other Party.

2. Paragraph 1 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, 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 Party of which the company making the distribution is a resident.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Party, carries on business in the other Party 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.

5. Where a company which is a resident of a Party derives profits or income from the other Party, that other Party 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 Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, 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 Party.

ARTICLE 11

INTEREST

1. Interest arising in a Party and which is beneficially owned by a resident of the other Party shall be taxable only in that other Party.

2. 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.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Party, carries on business in the other Party 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.

4. 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 according to the laws of each Party, due regard being had to the other provisions of this Agreement.

5. Interest shall be deemed to arise in a Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Party or not, has in a Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Party and beneficially owned by a resident of the other Party shall be taxable only in that other Party.

2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Party, carries on business in the other Party 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.

4. 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 use, right or information 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 Party, due regard being had to the other provisions of this Agreement.

5. Royalties shall be deemed to arise in a Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Party or not, has in a Party a permanent establishment in connection with which the liabilities to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Party from the alienation of immovable property referred to in Article 6 and situated in the other Party shall be taxable only in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Party has in the other Party including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) shall be taxable only in that other Party.

3. Gains derived by an enterprise of a Party 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 Party.

4. Gains derived by a resident of a Party from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Party shall be taxable only in that other Party.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Party 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 Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

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

- a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any 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 Party; and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Party may be taxed in the Party in which the place of effective management of the enterprise is situated.

ARTICLE 15

DIRECTORS' FEES

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

ARTICLE 16

ARTISTES AND SPORTSMEN

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

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

ARTICLE 17

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including lump sum payments) paid to a resident of a Party in consideration of past employment or self-employment and social security pensions shall be taxable only in that Party.

2. However, such pensions and other similar remuneration (including lump sum payments) may be taxed in the other Party if they arise in that Party.

3. The provisions of paragraph 1 shall not apply if the pension and other similar remuneration (including lump sum payments) arise wholly in consideration of past employment or self-employment and the services or functions in respect of which such payments are made were performed wholly in the Party in which they arise and during a period in which the person receiving the payments was a resident of that Party

ARTICLE 18

GOVERNMENT SERVICE

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

ARTICLE 19

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Party a resident of the other Party and who is present in the first-mentioned Party 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 Party, provided that such payments arise from sources outside that Party.

ARTICLE 20

OTHER INCOME

1. Items of income of a resident of a Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

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 Party, carries on business in the other Party through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

ARTICLE 21

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey (which shall not affect the general principle hereof):
 - a) subject to the provisions of sub-paragraph c), where a resident of Guernsey derives income which, in accordance with the provisions of the Agreement, may be taxed in Monaco, Guernsey shall allow as a deduction from the tax payable in respect of that income, an amount equal to the income tax paid in Monaco;

- b) such deduction shall not, however, exceed that part of the income tax, as computed before deduction is given, which is attributable to the income which may be taxed in Monaco;
- c) where a resident of Guernsey derives income which, in accordance with the provisions of the Agreement shall be taxable only in Monaco, Guernsey may include this income in calculating the amount of tax on the remaining income of such resident.

2. In the case of Monaco, where a resident of Monaco derives income which, in accordance with the provisions of this Agreement, is taxable in Guernsey, then Monaco shall allow a deduction from the tax on income of that resident an amount equal to the tax paid in Guernsey provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from Guernsey.

ARTICLE 22

NON-DISCRIMINATION

1. Nationals of a Party shall not be subjected in the other Party 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 Party 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 Parties.

2. Stateless persons who are residents of a Party shall not be subjected in either Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which

nationals of the Party concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Party has in the other Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Party to grant to residents of the other Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Party to a resident of the other Party 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 Party.

Similarly, any debts of an enterprise of a Party to a resident of the other Party 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 Party.

5. Enterprises of a Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Party, shall not be subjected in the first-mentioned Party 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 Party are or may be subjected.

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

ARTICLE 23

NO PREJUDICIAL OR RESTRICTIVE MEASURES

1. Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents, non residents or nationals of either Party so long as this Agreement is in force and effective.

2. For the purpose of this Article a “prejudicial or restrictive measure based on harmful tax practices” means a measure applied by one Party to residents or nationals of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lack transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measure” includes:

- a) the denial of a deduction, credit or exemption;
- b) the imposition of a tax, charge or levy;
- c) the inclusion on a discriminatory list or any similar or assimilated measure or practice;
- d) the requirement for a special reporting.

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

ARTICLE 24

MUTUAL AGREEMENT PROCEDURE

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

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

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

4. The competent authorities of the Parties 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.

ARTICLE 25

EXCHANGE OF INFORMATION

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

2. Any information received under paragraph 1 by a Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party 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.

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Party;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Party;

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

4. Any request for information shall be formulated with the greatest detail possible and, in particular, the competent authority of the Party making a request (“the Requesting Party”) shall provide the following information to the competent authority of the other Party (“the Requested Party”) when making a request for information:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the Requesting Party would prefer to receive it;
- c) the tax purpose for which the information is sought;
- d) the period for which the information is requested;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- f) the grounds for believing that the information requested is held in the Requested Party or is in the possession or obtainable by a person within the jurisdiction of the Requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;

- h) a statement that the request is in conformity with the law and administrative practices of the Requesting Party and the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

5. If information is requested by a Party in accordance with this Article, the other Party shall use its information gathering measures to obtain the requested information, even though that other Party 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 Party to decline to supply information solely because it has no domestic interest in such information.

6. In no case shall the provisions of paragraph 3 be construed to permit a Party 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 a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement 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 Parties shall notify each other in writing that the legal requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes on income derived or accrued during any taxable period or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the Agreement enters into force.

3. The provisions of Article 25 of this Agreement shall be applicable in respect of tax years beginning on or after the first day of January immediately following the date on which this Agreement enters into force.

ARTICLE 28

TERMINATION

This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect in respect of taxes on income derived during any taxable period 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 of termination is given.

