

# **Agreement between the Kingdom of Belgium and the State of Malta for the avoidance of double taxation and the prevention of fiscal evasion, and the protocol, signed at Brussels on 28 June 1974**

The Government of the State of Malta and the Government of the Kingdom of Belgium, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion, have agreed as follows:

## **Part I: Scope of the agreement**

### ***Article 1 Personal scope***

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

### ***Article 2 Taxes covered***

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or its political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages and salaries paid by enterprises as well as taxes on capital appreciation.

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

(a) in Belgium:

- (i) the individual income tax;
- (ii) the corporate income tax;
- (iii) the income tax on legal entities;
- (iv) the income tax on non-residents;

including the prepayments, the surcharges on these taxes and prepayments, and the communal supplement to the individual income tax;

(hereinafter referred to as "Belgian tax").

(b) In Malta:

the income tax and surtax, including prepayments of tax, whether made by deduction at source or otherwise,

(hereinafter referred to as "Malta tax").

- (4) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.
- (5) Where the Agreement provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to be allowed in the first mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

## **Part II: Definitions**

### ***Article 3 General definitions***

- (1) In this Agreement, unless the context otherwise requires:
- (a) the term "Belgium", when used in a geographical sense, means the Kingdom of Belgium including the territorial waters thereof, and any area outside the territorial sea of Belgium which, in accordance with international law has been or may hereafter be designated, under the laws of Belgium concerning the continental shelf, as an area within which the rights of Belgium with respect to the seabed and subsoil and their natural resources may be exercised;
  - (b) the term "Malta", 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 water thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the continental shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;
  - (c) the term "Contracting State" and "the other Contracting State" mean Belgium or Malta as the context requires;
  - (d) the term "person" comprises an individual, a company 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 carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "national" means:
    - (i) in respect of Belgium, any individual possessing the nationality of Belgium and any legal person, partnership and association deriving its status as such from the law in force in Belgium;
    - (ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership and association deriving its status as such from the law in

force in Malta;

- (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:
  - (i) in the case of Belgium, the Minister responsible for finance or his authorised representative;
  - (ii) in the case of Malta, the Minister responsible for finance or his authorised representative.
- (2) In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Agreement.

#### **Article 4 Fiscal domicile**

- (1) For the purposes of this Agreement, the term "resident of Contracting State" means any person, whose income is subject to tax in that State, by reason of his domicile, residence, place of management or any other criterion of a similar nature, but does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein or capital situated in that State.
- (2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:
  - (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of this Contracting State with which his personal and economic relations are closest (centre of vital interests);
  - (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has 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 a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

## **Article 5 Permanent establishment**

- (1) For the purpose of this Agreement the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, quarry or other place of extraction of natural resources;
  - (g) a building site or construction or assembly project which exists for more than twelve months.
- (3) 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 solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitual exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (6) 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 make either company a permanent establishment of the

other.

### **Part III: Taxation of income**

#### ***Article 6 Income from immovable property***

- (1) Income from immovable property may be taxed in the Contracting State in which such property is situated.
- (2) The term "immovable property" shall be defined in accordance with the 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, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
- (3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
- (4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

#### ***Article 7 Business profits***

- (1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
- (2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
- (3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
- (4) In so far 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 laid down 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 purpose of the preceding paragraphs, the profit to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
- (7) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of these Articles shall not be affected by the provisions of this Article.

### ***Article 8 Shipping and air transport***

- (1) Profits 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.
- (2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
- (3) The provisions of paragraph (1) shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

### ***Article 9 Associated enterprises***

- (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.

### ***Article 10 Dividends***

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State, but:
  - (a) where dividends are paid by a company resident of Belgium to a resident of Malta who is the beneficial owner thereof, the tax so charged shall not exceed 15 percent of the gross amount of the dividends; this provision shall not affect the taxation of the

Belgian company in respect of the profits out of which the dividends are paid;

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

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

(ii) notwithstanding the provisions of sub-paragraph (i) hereof, Malta tax shall not exceed 15 percent of the dividends if such dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident. The term means also income, even when paid in the form of interest, which is taxable under the head of income on capital invested by the members of a company other than a company with share capital, which is a resident of Belgium.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein or performs in that other State professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the dividends may be taxed by that other State in accordance with its law.

(5) Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to a resident of that first mentioned State, or subject the company's undistributed profits to a tax on undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State; this provision shall not prevent that other State from taxing dividends relating to a holding which is effectively connected with a permanent establishment maintained in that other State by a resident of the first-mentioned 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 law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the amount of the interest.

(3) Notwithstanding the provisions of paragraph (2):

(a) interest arising in Belgium and paid to the State of Malta, the Central Bank of Malta or any other institution the capital of which is wholly owned by the State of Malta shall be



exempt from Belgian tax;

- (b) interest arising in Malta and paid to the Kingdom of Belgium, the National Bank of Belgium or any other institution the capital of which is wholly owned by the Kingdom of Belgium shall be exempt from Malta tax.
- (4) The term "interest" as used in this Article means income from debtclaims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures, as well as income assimilated to or taxes in the same way as income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include for the purpose of this Article, penalty charges for late payment nor interest treated as dividends under paragraph (3) of Article 10.
- (5) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment of fixed base. In such a case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.
- (6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
- (7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12 Royalties**

- (1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties and the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting.
- (2) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State if the royalties consist of payments of any kind received as a consideration for the use of or the right to use, any patent trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the



royalties the tax so charged shall not exceed 10 percent of the gross amount of such royalties.

- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.
- (4) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
- (5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Agreement.

### ***Article 13 Capital gains***

- (1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.
- (2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of in Contracting State in the other Contracting State for the purpose of performing professional services including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.
- (3) Gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) shall be taxable only in the Contracting State of which the alienator is a resident.

### ***Article 14 Independent personal services***

- (1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed

base.

- (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, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- (2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and;
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and;
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employment has in the other State.
- (3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### ***Article 16 Director's fees***

- (1) Director's fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors on a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
- (2) The remuneration which a person to whom paragraph (1) applies derives from the company in respect at the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15.

#### ***Article 17 Artistes and athletes***

- (1) Notwithstanding the provisions of Article 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
- (2) Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State

in which the activities of the entertainer or athlete are exercised.

### ***Article 18 Pensions and annuities***

- (1) Subject to the provisions of paragraph (2) of Article 19, pensions and similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

### ***Article 19 Government service***

(1)

- (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

- (b) However, such remuneration shall be taxable only in the Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:

- (a) is a national of that State; or

- (ii) did not become a resident of that State solely for the purpose of performing the services.

(2)

- (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

- (b) However, such pension shall be taxable only in the Contracting State of which the recipient is a national of and a resident of that State.

- (3) The provisions of paragraph (1) shall likewise apply in respect of remuneration paid under a development assistance programme of a Contracting State, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, those political subdivisions or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

- (4) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by one of the Contracting States or a public community or a local authority thereof.

### ***Article 20 Teachers, students and trainees***

- (1) Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university or any other recognized educational institution receives for such

work shall not be taxed in the other State.

- (2) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university or any other recognized educational institution in that other State or as a business apprentice shall, from the date of his first arrival in that State in connection with that visit, be exempt from tax in that other State:

- (a) on all remittances from abroad for purpose of his maintenance, education or training; and
- (b) for a period not exceeding in the aggregate four years, on any remuneration not exceeding 120.000 Belgian Francs or the equivalent in Malta currency, for each calendar year for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

- (3) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

- (a) on the amount of such grant, allowance or award; and
- (b) on all remittances from abroad for the purposes of his maintenance, education or training.

#### **Article 21 Other income**

- (1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
- (2) The provisions of paragraph (1) shall not apply if the recipient of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

### **Part IV: Taxation of capital**

#### **Article 22**

- (1) Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.
- (2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircrafts, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

## **Part V: Elimination of double taxation**

### **Article 23**

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

(a) Where a resident of Belgium derives income which may be taxed in Malta in accordance with this Agreement and which is not subject to the provisions of subparagraphs (b) or (c), or possesses elements of capital which may be taxed in Malta in accordance with the provisions of the Agreement, Belgium shall exempt such income and such elements of capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident apply the rate of tax which would have been applicable if such income or elements of capital had not been exempted.

(b) When a resident of Belgium derives from Malta:

(i) dividends taxable in accordance with paragraph (2) (b) of Article 10, not exempt from Belgian tax in accordance with subparagraph (c) hereof,

(ii) interest taxable in accordance with paragraphs (2) or (7) of Article 11, and

(iii) royalties taxable in accordance with paragraphs (2) or (5) of Article 12, Belgium shall allow an appropriate credit against Belgian tax relating to such income. This credit shall be the fixed proportion (quotité forfaitaire d'impôt étranger/forfaitair gedeelte van de buitenlandse belasting) for which provision is made under Belgian law.

Notwithstanding the provisions of its law, Belgium shall also allow the credit provided for in this subparagraph in respect of tax chargeable on dividends, interest and royalties which are taxable in Malta by virtue of this Agreement and the law of Malta, but is temporarily remitted or reduced under special provisions designed to promote investment necessary for the economic development of Malta.

(c) When a company which is a resident of Belgium owns shares or other rights in a company with share capital which is a resident of Malta, the dividends which are paid to it by the latter company and which are subject to Malta tax in accordance with the provisions of paragraph (2) (b) of Article 10, shall be exempt from the corporate income tax in Belgium to the extent that exemption would have been accorded if the two companies had been residents of Belgium.

(d) When, in accordance with Belgian law, losses of a Belgian enterprise attributable to a permanent establishment situated in Malta have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided in subparagraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been

exempted from tax by Malta by reason of compensation for the said losses.

(2) In the case of Malta, double taxation shall be avoided as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within Belgium or elements of capital situated in Belgium, the Belgian tax on such income or elements of capital shall be allowed as a credit against Malta tax payable thereon.

## **Part VI: Special Provisions**

### ***Article 24 Non-discrimination***

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

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

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

(3) Except where the provisions of Article 9, or paragraph (7) of Article 11, or paragraph (5) of Article 12, apply interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible as if they had been contracted to a resident of the first-mentioned State.

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

(5) Nothing in this Article shall be construed as preventing Belgium:

a) from taxing the total amount of the profits attributable to a permanent establishment in Belgium of a company being a resident of Malta or of an association having its place of effective management in Malta at the rate of tax provided by the Belgian law, but this rate may not exceed the maximum rate applicable to the whole or a portion of the profits of companies which are residents of Belgium;

(b) from imposing the movable property prepayment on dividends derived from a holding



which is effectively connected with a permanent establishment or a fixed base maintained in Belgium by a company which is a resident of Malta or by an association which has its place of effective management in Malta and is taxable as a body corporate in Belgium.

(6) In this Article the term "taxation" means taxes of every kind and description.

#### ***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 this Agreement, he may, saving the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the first notification of the action giving rise to taxation not in accordance with the Agreement.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Agreement.

(4) The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Agreement, particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other Contracting State from the exemptions and reductions provided for in the Agreement.

(5) The competent authorities of the Contracting States shall communicate directly with each other for the application for the Agreement.

#### ***Article 26 Exchange of information***

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the national laws of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is in accordance with the Agreement. Any information so exchanged shall be treated as secret and may only be disclosed to the taxpayer or his agent, and to persons, authorities or courts concerned with the assessment or collection of the taxes which are the subject of the Agreement or the determination of appeals or the prosecution of offences in relation thereto.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;



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

### ***Article 27 Diplomatic and Consular Officials***

- (1) Nothing in this Agreement shall affect diplomatic or consular privileges under the general rules of international law or under the provisions of special agreements.
- (2) For the purposes of this Agreement, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and capital as are residents of that State.

## ***Part VI: Final provisions***

### ***Article 28 Entry into force***

- (1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Brussels as soon as possible.
- (2) The Agreement shall enter into force 30 days after the date of exchange of instruments of ratification, and its provisions shall have effect:
  - (a) in Belgium:
    - (i) in respect of taxes due at source on income credited or payable on or after the first day of January in the calendar year immediately following that in which the instruments of ratification have been exchanged;
    - (ii) in respect of taxes other than taxes due at source, on income of any accounting period ending on or after the 31st day of December in the calendar year in which the instruments of ratification have been exchanged;
  - (b) in Malta, in respect of taxes which are levied for any year of assessment beginning on or after the first day of January in the calendar year immediately following that in which the instruments of ratification have been exchanged.

### ***Article 29 Termination***

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the third year following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Agreement shall cease to have effect:

- (a) in Belgium:
  - (i) in respect of taxes due at source, on income credited or payable after the 31st day of December of the calendar year in which the notice of termination is given;

- (ii) in respect of taxes other than taxes due at source, on income of any accounting period ending after the 30th day of December of the calendar year in which the notice of termination is given;

- (b) in Malta, in respect of taxes which are levied for the year of assessment beginning on the first day of January of the calendar year immediately following that in which the notice of termination is given and for subsequent years of assessment.

In witness whereof the undersigned, being duly authorised thereto by their respective Government, have signed this Agreement.

Done at Brussels, this 28<sup>th</sup> day of June 1974, in duplicate in the English language.

For the Government of the Kingdom of Belgium:  
R. Van Elsende

For the Government of the State of Malta:  
J. Attard Kingswell

## **APPENDIX PROTOCOL**

At the signing of the Agreement between the State of Malta and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

- (1) Notwithstanding the provisions of Article 8 of the Agreement, profits from the operation of a ship in international traffic derived by a company which is a resident of Malta having more than 25 per cent of its capital owned, directly or indirectly, by persons not residents of Malta, may be taxed in Belgium unless the company proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in section 86 of the Merchant Shipping Act, 1973, or in any identical or similar provision.
- (2) The provisions of the Agreement shall not limit the taxation in accordance with Belgian law of a company which is a resident of Belgium, in the event of the purchase of its own shares or in the event of the distribution of its assets.

Done at Brussels, this 28<sup>th</sup> day of June 1974, in duplicate in the English language.

For the Government of the Kingdom of Belgium:  
R. Van Elsende

For the Government of the State of Malta:  
J. Attard Kingswell