

SUBSIDIARY LEGISLATION 123.03

**DOUBLE TAXATION RELIEF (TAXES ON
INCOME) (LIBYAN ARAB REPUBLIC) ORDER**

1st January, 1973

LEGAL NOTICE 7 of 1973, as amended by Legal Notice 201 of 1996.

1. The title of this Order is Double Taxation Relief (Taxes on Income) (Libyan Arab Republic) Order. Title.

2. It is hereby declared -

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Arab Libyan Republic with a view to afford relief from double taxation in relation to the following taxes imposed by the laws of the Libyan Arab Republic -
- (i) Real Estate Revenue Tax;
 - (ii) Agricultural Revenue Tax;
 - (iii) Taxes on Commercial, Industrial and Professional profits, which comprise:
 - (a) Taxes on profits realised from Commercial, Industrial and Professional activities;
 - (b) Taxes on Companies;
 - (iv) Taxes on profits realised by practising Free Professions;
 - (v) Taxes on wages, salaries and the like;
 - (vi) Taxes on Income realised abroad;
 - (vii) General Tax on Income;
 - (viii) Al-Jihad Tax (Defence Tax); and
- (b) that it is expedient that those arrangements should have effect.

Amended by:
L.N. 201 of 1996.

SCHEDULE

CONVENTION BETWEEN MALTA AND THE GREAT SOCIALIST PEOPLES' LIBYAN ARAB JAMAHIRIYA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

Malta and the Great Socialist Peoples' Libyan Arab Jamahiriya, desiring to enter into a Convention with each other for the avoidance of double taxation with respect to taxes on income, have agreed as follows:

CHAPTER I

Scope of Convention

ARTICLE 1

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State or 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.

3. The existing taxes to which this Convention shall apply are:

(A) With regards to the Libyan Arab Republic.

- (i) Real Estate Revenue Tax;
- (ii) Agricultural Revenue Tax;
- (iii) Taxes on Commercial, Industrial and Professional profits, which comprise:
 - (a) Taxes on profits realised from Commercial, Industrial, and Professional activities;
 - (b) Taxes on Companies;
- (iv) Taxes on profits realised by practising Free Professions;
- (v) Taxes on wages, salaries and the like;
- (vi) Taxes on Income realised abroad;
- (vii) General Tax on Income;
- (viii) Al-Jihad Tax (Defence Tax).

(B) With regards to Malta.
The Income Tax.

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting State shall notify to each other any changes which have been made in their respective taxation laws.

CHAPTER II

Definitions

ARTICLE 2

General Definitions

1. In this Convention, unless the context otherwise requires -
 - (a) the terms "a Contracting State" and "the other Contracting State" mean Malta or Libya, as the context requires;
 - (b) the term "person" comprises an individual, a company and any other body of persons;
 - (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (d) 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 by a resident of the other Contracting State;
 - (e) the term "competent authority" with respect to the Libyan Arab Republic means the Ministry of the Treasury, and with respect to Malta means the Commissioner of Inland Revenue.
2. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
3. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

ARTICLE 3

The Tax Home

Without prejudice to the provisions of this Convention, the Tax Home of any income shall be deemed to be the Contracting State in which the income arises.

ARTICLE 4

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include 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 or building site.
3. The term "permanent establishment" shall not be deemed to include -
- (a) the use of facilities solely for the purpose of storage and 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 and display;
 - (c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (d) 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 habitually 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 independently 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 constitute either company a permanent establishment of the other.

CHAPTER III

Taxation of Income

ARTICLE 5

Income from Immovable Property

1. Income from immovable property shall only 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.

ARTICLE 6

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable in the State where the enterprise is situated and also in the State where it has a permanent establishment, in which latter case the tax so charged shall be limited to the profits

attributable to the permanent establishment and shall not exceed 15 per cent of the said profits.

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 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 deduction expenses which are incurred for the purpose of the permanent establishment whether such expenses have been incurred in the State in which the permanent establishment is situated or elsewhere.

4. 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.

5. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. 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 7

Shipping and Air Transport

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.

ARTICLE 8

Associated Enterprises

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. It is to be understood that the procedures available in the respective laws of each Contracting State in this regard shall be applied.

ARTICLE 9

Dividends

1. Dividends paid by a company which is registered in one of the Contracting States to a resident of the other Contracting State shall be taxed only in the first-mentioned State. However, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends:

Provided that a company registered in one of the Contracting States shall be entitled to require that the gains or profits, or part thereof, derived by it and which are distributable by way of dividend to a resident of the other Contracting State shall, notwithstanding that the dividend, or part thereof, has not been distributed, be taxed at a rate not exceeding 15 per cent.

2. The term "dividends" shall be defined in accordance with the law of the Contracting State in which the company in question is registered.

ARTICLE 10

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall only be taxed in the Contracting State where it arises. If the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

2. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 6 shall apply.

3. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or resident of that State.

ARTICLE 11

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed only in the Contracting State where they arise. If the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

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

3. The term "royalties" as used in this Article shall exclude rentals and other income in respect of cinematographic films. Such rentals and income shall, for the purpose of this Convention, be considered the profits from business.

ARTICLE 12

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" means independent activities according to the laws and regulations in force in each Contracting State.

ARTICLE 13

Dependent Personal Services

Salaries, wages and similar emoluments arising in one of the Contracting States shall only be taxable in the State where the services giving rise to that income are performed, but if such income is realised from work carried out on a ship or aircraft operating in the field of international transport, it shall only be taxable in the State where the place of effective management of the enterprise is situated.

ARTICLE 14

Directors' Fees

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

ARTICLE 15

Artists and Athletes

Notwithstanding the provisions of Articles 12 and 13, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

ARTICLE 16

Pensions

Pensions and other similar income paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 17

Government Functions

1. Remuneration paid by the Government of one of the Contracting States to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other State if the individual is not resident in that other State or is resident in that other State solely for the purpose of rendering those services, so provided, however, that such an individual has the nationality of that Contracting State.

2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for the purposes of profit.

3. In this Article, "Government" shall be deemed to include public corporations and any other similar parastatal bodies.

ARTICLE 18

Students

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that other State provided that such payments are made to him from sources outside that other State.

2. The provisions of this Article shall also apply to the income which the student or business apprentice may derive from an employment in the other Contracting State: provided that such employment is related to his study or training and/or that the income deriving therefrom is required by the student or trainee to meet his living expenses.

ARTICLE 19

Professors, Teachers and Researchers

A professor, teacher or research worker from one of the Contracting States who receives remuneration for teaching or carrying out research work during a period of temporary residence not exceeding three months at a University, college or some other institute of higher education or scientific research in the other Contracting State shall be exempt from tax in that other State in respect of that remuneration: provided that the said period of three months may be extended by similar periods.

CHAPTER IV

Elimination of Double Taxation

ARTICLE 20

Tax Credits

1. When a resident of a Contracting State derives income which has also suffered tax in the other Contracting State, the first mentioned State shall allow a deduction from its tax on the income of that person equal to the tax paid in the other Contracting State: provided that the deduction shall not exceed that part of the tax as computed before the deduction is given, which is applicable to the income taxed in the other Contracting State.

2. Nothing in this Article contained shall prevent the granting of such further relief as may be appropriate under the provisions of the law of either Contracting State in respect of any amount by which the tax in one of the States exceeds the credit allowed on its account in the other State in accordance with the provisions of this Article.

CHAPTER V

Special Provisions

ARTICLE 21

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "national" means:

- (a) all individuals possessing the nationality of a Contracting State;
- (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. The taxation of 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 a personal allowance, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of a Contracting State the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirements 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.

ARTICLE 22

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 Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authorities of the Contracting State of which he is a resident.

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 not in accordance with the Convention.

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

4. The competent authorities of the Contracting States may communicate with each other directly 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 23

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

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 24

Diplomatic and Consular Officials

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

CHAPTER VI

Final Provisions

ARTICLE 25

Entry into Force

The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect as from the 1st January, 1973.

ARTICLE 26

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention through diplomatic channels by giving notice of termination at least six months before the end of any calendar year after the year 1975. In such event, the Convention shall cease to have effect in respect of all categories of income that are derived after the end of the calendar year during which notice of the denouncing of the Convention is given by one Contracting State to the other.

In witness of the agreement reached as above, the signatories have today signed this Convention in virtue of the authority delegated to them for this purpose by their respective Governments.

This Convention is being signed in duplicate, but to one effect, in the Arabic and English Language, both languages being equally authoritative.

This, the 27th of Shaban 1392 Hijria.
corresponding to 5th of October 1972 A.D.

For the Government of the
Libyan Arab Republic.

ABDUL ATI ELOBEIDI
Minister of Labour

(signature)

For the Government of Malta

DR JOSEPH CASSAR
Minister of Labour, Employment
and Welfare

(signature)
