

Proposed Kenya and Oman DTA

AGREEMENT BETWEEN THE SULTANATE OF OMAN AND THE REPUBLIC OF KENYA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

PREAMBLE

The Government of the Sultanate of Oman and the Government of the Republic of Kenya:

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States)

HAVE AGREED AS FOLLOWS:

ARTICLE 1

PERSONS COVERED

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 20, 21, 24, 25, 26 and 29.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, 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

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or immovable property as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) in the case of the Sultanate of Oman:
the income tax;

(hereinafter referred to as "Omani tax");
 - (b) in the case of the Republic of Kenya:
the income tax chargeable in accordance with the provisions of the
Income Tax Act.

(hereinafter referred to as "Kenyan tax").
4. The Agreement shall apply also to any identical or substantially similar taxes which 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 Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "Sultanate of Oman" means the territory of the Sultanate of Oman and the islands belonging thereto, including the territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law and the laws of the Sultanate of Oman, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and the sub-soil and the superjacent waters;
 - (b) the term "Republic of Kenya" means all of the territory of Kenya including internal waters, territorial waters and the seabed and subsoil of the territorial waters, the exclusive economic zone and the continental shelf and the seabed and subsoil within such area which has been or may hereafter be designated under her national law, in accordance with international law, as an area over which Kenya has sovereign rights or jurisdiction for purposes of exploring and exploiting natural resources;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean the Sultanate of Oman or Republic of Kenya, as the context requires;

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- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term “enterprise” applies to the carrying on of any business;
- (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term “international traffic” means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;
- (i) the term “place of effective management” includes the place where strategic management and commercial decisions that are necessary for the conduct of the entity’s business as a whole are in substance made;
- (j) the term “competent authority” means:
 - i. in the case of the Sultanate of Oman: the Chairman of Tax Authority or his authorized representative; and
 - ii. in Kenya, the Cabinet Secretary responsible for finance or his authorised representative;
- (k) the term “national”, means:
 - i. any individual possessing the nationality of a Contracting State; and
 - ii. any legal person, partnership, or association deriving its status as such from the laws in force in a Contracting State;
- (l) The term “statutory body” means
 - i. in the case of Sultanate of Oman a body constituted by an or under Royal Decree in the Sultanate of Oman whose principal objective is to engage in non-commercial activities.
 - ii. in the case of the Republic of Kenya...
- (m) the term “business” includes the performance of professional services and of other activities of an independent character.

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- (n) The term “political subdivision” includes:
- i. in the case of the Republic of Kenya
 - ii. in the case of sultanate of Oman....
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4
RESIDENT

1. For the purposes of this Agreement, the term ‘resident of a Contracting State’ means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State or any political subdivision thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:
- (a) the individual shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the individual; if a permanent home is available to the individual in both states, the individual shall be deemed to be a resident solely of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the individual has his centre of vital interests cannot be determined, or if the individual has not a permanent home available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
 - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
 - (d) if the individual is a national of both States or of neither of them, the

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competent authorities of the Contracting States shall settle the question by mutual agreement.

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

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;
 - (f) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation of natural resources.
 - (g) a warehouse, in relation to a person providing storage facilities to others.
3. The term "permanent establishment" shall be deemed to include:
 - (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than 183 days; For the sole purpose of determining whether the period referred to in this paragraph has been exceeded,
 - i. where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding 183 days, and

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- ii. connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise, these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
 - (c) an installation or structure used in the exploration for natural resources provided that the installation or structure continues for a period of not less than 91 days in any twelve-month period.
 - (d) Substantial equipment or machinery that is operated, or is available for operation, in a Contracting State for a period aggregating more than 91 days in any twelve-month period.
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, or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
 - (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;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity or, in the case of subparagraph f), the overall

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activity of the fixed place of business, is of a preparatory or auxiliary character.

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person

- (a) Habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise and these contracts are:
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of ownership of, or for the granting of the right to use property owned by that enterprise or that the enterprise has a right to use or,
 - (iii) for the provision of services by that enterprise

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of that enterprise;

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6. Notwithstanding the preceding provisions of this Article but subject to the provisions of Paragraph 7, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.
7. Paragraphs 5 and 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.
9. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for

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the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to
 - (a) that permanent establishment;
 - (b) business activities carried on in that other State of the same or similar kind or connected to those effected through 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office

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of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State.

- 4 Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
- 5 For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
- 6 Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.
- 7 Notwithstanding the preceding provisions of this Article, profits of an enterprise of a Contracting State arising in the other Contracting State from carrying on a business of any form of insurance may be taxed in the other Contracting State in accordance with the Tax Law of that other State.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircrafts in international traffic shall be taxable only in that Contracting State.
2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State according to its domestic laws, provided that such profits are derived from operations in that other Contracting State.
3. For the purposes of this Article, the term "operation of ships or aircraft in international traffic" by an enterprise, includes:
 - a) the charter, lease or rental of ships or aircraft fully equipped, manned and supplied, and used in the operation international traffic;
 - b) the charter, lease or rental on a bare boat charter basis of ships or aircraft, where such charter, lease or rental is incidental to the operation of ships or aircraft in international traffic;

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- c) the use, maintenance or rental of containers and other related equipment, where such use, maintenance or rental is incidental to the operation of ships or aircraft in international traffic.
4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.
3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

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, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed ten (10) percent of the gross amount of the dividends.

This paragraph 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 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 laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein 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 Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Notwithstanding any other provision of this Agreement, where a company which is a resident of a contracting State has a permanent establishment in the other Contracting State, the profits taxable under Article 7 paragraph 1 may be subject to an additional tax in that other State in accordance with its laws but the additional charge shall not exceed per cent of the amount of those profits.

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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, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed _____ per cent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the interest is that State, a political subdivision or a statutory body, or a bank performing central banking functions in that State.
4. The term 'interest' as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late-payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with
 - (a) such permanent establishment or fixed base, or with
 - (b) business activities referred to in (b) of Paragraph 1 of Article 7.

In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person 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 such interest shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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

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taxable according to the laws 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 may be taxed in that other State.
2. However, royalties arising in a Contracting State may also be taxed in that State and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed _____ percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including computer software, cinematograph films, or films or tapes or discs used for radio or television broadcasting, 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.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base, or business activities referred to in (b) of Paragraph 1 of Article 7. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the 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 Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

FEEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, notwithstanding the provisions of Article 15 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed _____ per cent of the gross amount of the fees.
3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, contractual, technical, professional or consultancy nature, unless the payment is made:
 - (a) to an employee of the person making the payment;
 - (b) for teaching in an educational institution or for teaching by an educational institution; or
 - (c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with such permanent establishment or fixed base, or business activities referred to in (b) of Paragraph 1 of Article 7. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligations to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.
6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such fees are borne by that permanent establishment or fixed base.

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7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than fifty (50) per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other Contracting State if the alienator, at any time during the 365 days preceding such alienation, held directly or indirectly at least 30 per cent of the capital of that company.
6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
 - (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
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 16

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 17, 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 or the employer is a resident or a permanent establishment in the other Contracting State. If the employment is so exercised or the employer is a resident or has a permanent establishment 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 or the employer is a resident 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 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 Contracting State; and

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- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 17

**DIRECTORS' FEES & REMUNERATION OF OTHER TOP-LEVEL
MANAGERIAL OFFICIALS**

1. Directors' fees and other similar payments derived by a resident of a Contracting State in that person's 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.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in the individual's capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State or a political subdivision or a statutory body thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

ARTICLE 19

PENSIONS AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or if the person paying the pensions or similar remuneration, whether he is a resident of a Contracting State or not, has in that other State a permanent establishment or a fixed base in connection with which the obligation to pay the pensions or similar remuneration was incurred, and such pensions or similar remuneration are borne by such permanent establishment or fixed base.
3. Notwithstanding the provisions of paragraph 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a statutory body thereof shall be taxable only in that State.

ARTICLE 20

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or body shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that other State solely for the purpose of rendering the services.
2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remunerations paid by, or out of funds created by, a Contracting State, a political subdivision, a local authority or statutory body thereof to any individual in respect of services rendered to that State or sub-division or authority or body shall be taxable only in that State.

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

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3. The provisions of Articles 16, 17, 18 and 19 of this Agreement shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision, a local authority or a statutory body thereof.

ARTICLE 21

STUDENTS AND APPRENTICES

1. A student or business trainee or apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of that person's education or training, shall be exempt from tax in that other Contracting State on payments made to that person by persons residing outside that other Contracting State for the purposes of that person's maintenance, education or training.
2. In respect of grants, scholarships and remuneration for employment not covered by paragraph 1, a student or business trainee or apprentice described in paragraph 1, shall in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which that person is visiting.

ARTICLE 22

PROFESSORS, TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State for a period not exceeding two years for the sole purpose of teaching or carrying out research at a university, college, school or other recognized educational institution in that State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on any remuneration for such teaching or research, provided that such remuneration is derived by the individual from outside that State.
2. The provisions of paragraph 1 shall not apply to remuneration from research if such activities are undertaken by the individual not in the public interest but primarily for the private benefit of some person or persons.

ARTICLE 23

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 to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such

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income, being a resident of a Contracting State, carries on business in the other Contracting State 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. Double taxation shall be avoided in the following manner:
 - (a) In the case of Kenya, where a resident of Kenya receives income derived from sources within the Sultanate of Oman, which in accordance with the provisions of this Agreement may be taxed in the Sultanate of Oman, then Kenya shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Sultanate of Oman. Such a deduction, however, shall not exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in the Sultanate of Oman.
 - (b) In the case of Sultanate of Oman, where a resident of the Sultanate of Oman derives income which, in accordance with the provisions of the Agreement, may be taxed in Kenya, the Sultanate of Oman shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Kenya. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Kenya.
2. Where, in accordance with any provision of this Agreement, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
3. For purposes of paragraph 1, the term income tax paid shall be deemed to include the amount of tax which could have been imposed but for an exemption or reduction granted in respect of active income under any tax incentive.

ARTICLE 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which

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nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12 or paragraph 7 of Article 13 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of either of the Contracting States or, if the case comes under paragraph 1 of Article 25, to that of the Contracting State of which the person 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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any

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time limits in the domestic law of the Contracting States.

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

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions, insofar as the taxation thereunder is not contrary to the Agreement. In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance or evasion of such taxes. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (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 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 (ordre public).

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4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed by the Contracting States, or their political subdivisions, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to

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prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.
 - (c) the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to carry out measures which would be contrary to public policy (*ordre public*);
 - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 29

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.

ARTICLE 30

ENTITELMENT OF BENEFITS

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

ARTICLE 31

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of the Agreement shall apply:
 - (i) with regard to taxes withheld at source, in respect to amounts paid or credited on or after the first day of the second month immediately following the date upon which this Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which this Agreement enters into force.
3. Notwithstanding the provisions of paragraph 2, the provisions of Articles 27 and 28 shall have effect from the date of entry into force of this Agreement without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.

ARTICLE 32

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any year of Income after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect as follows:

- i) in respect of taxes withheld at source: for any amount paid or credited on or after the first day of January in the year of income immediately following that year in which the notice of such termination is given, and
- ii) in respect of other taxes: for any year of income commencing on or after the first day of January in the year of income immediately following that year in which the notice of such termination is given.

In WITNESS WHEREOF, the undersigned, duly authorised to that effect by their respective Governments thereto, have signed this Agreement.

Done at on theday of 2022, corresponding to..... day of14....AH in two identical originals each in the Arabic and English languages, both texts being equally authentic. In the case of divergence of the interpretation between the texts, the English text shall prevail.

For the Republic of Kenya:

[]

For the Sultanate of Oman:

[]

