

**AGREEMENT**  
**BETWEEN**  
**THE REPUBLIC OF KENYA**  
**AND**  
**THE KINGDOM OF BELGIUM**  
**FOR THE ELIMINATION OF DOUBLE TAXATION**  
**WITH RESPECT TO TAXES ON INCOME**  
**AND FOR THE PREVENTION OF FISCAL EVASION AND AVOIDANCE**

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*The Government of the Republic of Kenya,  
on the one hand,*

*and*

*The Belgian Federal Government,  
the Flemish Government,  
the Government of the French Community,  
the Government of the German-speaking Community,  
the Government of the Walloon Region,  
and the Government of the Brussels-Capital Region,  
on the other hand,*

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

**INTENDING** to eliminate double taxation with respect to taxes on income 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:

## **CHAPTER I - SCOPE OF THE AGREEMENT**

### **Article 1**

#### **Persons Covered**

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

### **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 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, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are in particular:
  - a) in the case of Kenya: the income tax chargeable in accordance with the provisions of the Income Tax Act;  
*(hereinafter referred to as "Kenyan tax");*
  - b) in the case of 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;
    - (v) the withholding tax on immovable property;including the prepayments and the surcharges on these taxes and prepayments,  
*(hereinafter referred to as "Belgian tax").*
4. This Agreement shall apply also to any identical or substantially similar taxes that 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 each other of any significant changes that have been made in their taxation laws.

## CHAPTER II - DEFINITIONS

### Article 3

#### General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a)
    - (i) the term “Belgium” means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
    - (ii) the term “Kenya” means all territory of the Republic of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;
  - b) the terms “a Contracting State” and “the other Contracting State” mean Belgium or Kenya as the context requires;
  - c) the term “person” includes an individual, a partnership, a company, an estate, a trust and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
  - [e) the term “enterprise” applies to the carrying on of any business;]
  - 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 “international traffic” means any transport by a ship or aircraft operated by an enterprise that 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;
  - h) the term “competent authority” means:
    - (i) in the case of Belgium, as the case may be, the Minister of Finance of the federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;

- (ii) in the case of Kenya, the Cabinet Secretary responsible for finance or his authorized representative;
- i) the term “national”, in relation to a Contracting State, means:
  - (i) any individual possessing the nationality or citizenship of that Contracting State; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- [j] the term “business” includes the performance of professional services and of other activities of an independent character;]
- [k] the term “pension fund” means any person established in a Contracting State:
  - (i) that administers pension schemes or provides retirement benefits; or
  - (ii) that earns income on behalf of one or more persons operated to administer pension schemes or provide retirement benefits; andprovided that:
  - (i) in the case of Belgium, it is supervised by the Financial Services and Markets Authority (FSMA) or by the National Bank of Belgium or registered with the Belgian tax Administration; or
  - (ii) in the case of Kenya, it is supervised by the Retirement Benefits Authority (RBA) and registered with the Commissioner of Income Tax.]
- 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 his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority 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 his status shall be determined as follows:
  - a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the 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 State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
  - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
  - d) if he is a national of both 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 only of the State in which its place of effective management is situated.

For the purposes of this Agreement the place of effective management of a person other than an individual is the place where the business management of this person as a whole is carried on and where the higher supervision of the activities is carried on. The following criteria will among others be taken into consideration in order to determine where the place of effective management is situated:

- the place where the board of directors or equivalent body holds its meetings;
- the place where the senior day-to-day management is carried on;
- the place where the senior executives carry on their activities.

## **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 sales outlet;
- g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

[3. The term "permanent establishment" likewise encompasses:

- a) a building site or a construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- b) the furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than \_\_\_ days within any twelve-month period commencing or ending in the fiscal year concerned;]

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 of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. 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.

- [6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and in doing so, habitually {secures orders and/or} 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
- a) in the name of the enterprise, or
  - b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
  - c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.]

- [7.] Paragraph 5 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.] 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.



- [9. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.]
- [10]. 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 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 the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 independent personal 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 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States 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 taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment 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 permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. 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. 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 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. 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 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.
7. 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.
- [8. 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 (other than life insurance)[, other than through a permanent establishment,] may be taxed in the other Contracting State in accordance with the Tax Law of that other State at a rate not exceeding \_\_\_ percent of the premiums.]

## 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. Notwithstanding paragraph 1 of this Article where an enterprise derives profits from the operation of ships in international traffic in the other Contracting State:
  - a) such profits shall be deemed to be an amount not exceeding \_\_\_ per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State; and
  - b) the tax chargeable in that other state shall be reduced by an amount equal to \_\_\_ per cent thereof.]
- [3. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic shall also include:
  - a) profits from the leasing of ships or aircraft engaged in international traffic on charter fully equipped, manned and supplied;
  - b) profits from the leasing of ships or aircraft on a bare boat charter basis if such leasing activity is an ancillary activity for the enterprise engaged in international traffic;
  - c) profits from the leasing of containers if such leasing activity is an ancillary activity for the enterprise engaged in international traffic.
- [4. 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.
- [5. The provisions of paragraph 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 in cases where one or more transactions leading to an adjustment of profits in accordance with paragraph 1 are regarded as fraudulent according to an administrative or judicial decision.

## 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 \_\_\_ per cent of the gross amount of the dividends.]
- [3. Notwithstanding the preceding provisions of this paragraph, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:
  - a) a company (other than a partnership) which holds directly at least \_\_\_ per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

- b) a pension fund that is a resident of the other Contracting State, provided that the shares or other rights in respect of which such dividends are paid are held for the purpose of an activity mentioned under Article 3, paragraph 1, k).]
- [4.] The provisions of paragraphs [2 and 3] shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
- [5.] 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 tax legislation of the Contracting State of which the paying company is a resident.
- [6.] The provisions of paragraphs [1 and 2] shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein [, or performs in any of the other States independent personal services from a fixed base situated therein,] and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment [or fixed base]. In such case the provisions of Article 7 [or Article 15, as the case may be] shall apply.
- [7.] 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 insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment [or a fixed base] situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## Article 11

### Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, 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 the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is:

- a) interest paid in respect of a loan granted, guaranteed or insured or a credit extended, guaranteed or insured under a scheme organised by a Contracting State or one of its political subdivisions or local authorities in order to promote export and/or economic development;
  - b) interest paid to a pension fund, provided that the debt-claim in respect of which such interest is paid is held for the purpose of an activity mentioned under Article 3, paragraph 1, k);]
  - c) interest paid to the other Contracting State, to one of its political subdivisions or local authorities or to a public entity {which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting 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. However, the term “interest” shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10.
  5. The provisions of paragraphs 1, 2 and 3 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 such permanent establishment [or fixed base]. 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment [or a fixed base] in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment [or fixed base], then such interest shall be deemed to arise in the State in which the permanent establishment [or fixed base] 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 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 Contracting State.
2. 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 beneficial owner 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 cinematograph films and films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, [or the right to use industrial, commercial or scientific equipment] or for information concerning industrial, commercial or scientific experience [and gains derived from the sale or exchange of any right of property giving rise to that royalty].
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]. In such case 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment [or a fixed base] in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, 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

**Management, Professional or Technical Fees**

1. Management or professional fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall not exceed \_\_\_ percent of the gross amount of the management or professional fees.
3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial, professional or consultancy nature not covered under any other Article of this Agreement.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 shall apply.
5. Management or professional fees 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 management or professional fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees 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 management or professional fees paid exceeds, for whatever reason, 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 law 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, [or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services] including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) [or of such fixed base], may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- [[4.] Gains 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 \_\_\_ 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 12-month period preceding such alienation, held directly or indirectly not less than \_\_\_ per cent of the capital of that company.]
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

## Article [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 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 State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate \_\_\_ days in any

twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than \_\_\_ days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants and economists.]

### **Article [16]**

#### **[Dependent Personal Services] [Income from Employment]**

1. Subject to the provisions of Articles [17, 19, 20 and 21] [15, 17 and 18], 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 \_\_\_ days in any twelve month period commencing or ending in the taxable period 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 employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

### **Article [17]**

#### **Directors' fees and remuneration of managerial officials**

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

The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision.

2. Remuneration derived by a person referred to in paragraph 1 from a company which is a resident of a Contracting State in respect of the discharge of day-to-day functions of a managerial or technical, commercial or financial nature and remuneration received by a resident of a Contracting State in respect of his day-to-day activity as a partner of a company, other than a company with share capital, which is a resident of a Contracting State, shall be taxable in accordance with the provisions of Article [16], as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company.

## **Article [18]**

### **Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles [7, 15 and 16] [7 and 14], 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 his 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 his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of [Articles 7, 15 and 16] [Articles 7 and 14], be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Where a resident of a Contracting State derives income referred to in paragraph 1 or 2 and such income is taxable in the other Contracting State on a gross basis, that income shall, upon request before July 1 of the year next following the year in which the personal activities are exercised, be taxed on a net basis in that other State. In determining the taxable income of such resident in the other State, there shall be allowed as deductions those expenses deductible under the domestic laws of the other State which are incurred for the purposes of the activities exercised in the other State to the extent that such deductions are available to a resident of the other State exercising the same or similar activities under the same or similar conditions.
4. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to the other State is supported wholly or mainly by public funds of the first mentioned Contracting State, a political subdivision or local authorities thereof, or takes place under a cultural agreement or arrangement between the Contracting States, a political subdivision or local authorities thereof.

## Article [19]

### Pensions

Subject to the provisions of paragraph 2 of Article [20], pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable in the Contracting State in which they arise.

## Article [20]

### Remuneration and Pensions in respect of Government Service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
b) However, such 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 State solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
b) However, such pension and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.]
3. The provisions of Articles [16, 17 and 19] [14, 15, 16 and 17] shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## Article [21]

### Professors and Teachers

1. A resident of a Contracting State who, at the invitation of an officially recognized university, college or other institute for higher education of the other Contracting State, visits that other Contracting State solely for the purpose of teaching or research in such

university, college or institute shall not be taxed in that other State for a period not exceeding two years on the remuneration received for such teaching or research activities.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public's interest but wholly or mainly for the private benefit of a specific person or persons.

#### **Article [22]**

##### **Students and Business Apprentices**

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present, was a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for purpose of his maintenance, education and training.

#### **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 income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein [, or performs in that other State independent personal services from a fixed base situated therein,] and the right or property in respect of which the income is paid is effectively connected with such permanent establishment[or fixed base]. In such case the provisions of Article 7 [or Article 15, as the case may be,] 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 this Agreement and arising in the other Contracting State may be taxed in that other State [if such items of income are not effectively taxed in the first-mentioned State].

### **CHAPTER [IV] - METHODS FOR ELIMINATION OF DOUBLE TAXATION**

#### **Article [24]**

##### **Elimination of Double Taxation**

1. In the case of Kenya:

- a) Where a resident of Kenya derives income which in accordance with the provisions of this Agreement may be taxed in Belgium, Kenya shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Belgium. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in Belgium.
  - b) Where in accordance with any provision of this Agreement income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
2. In the case of Belgium:

- a) Where a resident of Belgium derives income, not being dividends, interest or royalties, which is taxed in Kenya in accordance with the provisions of this Agreement [(except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State or because the capital is also capital owned by a resident of that State)], Belgium shall exempt such income from tax but if such resident is an individual, Belgium shall only exempt such income from tax to the extent that such income is effectively taxed in Kenya.
- b) Notwithstanding the provisions of subparagraph a) and any other provision of this Agreement, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and conurbations, take into account the earned income (revenus professionnels – beroepsinkomsten) that is exempted from tax in Belgium in accordance with subparagraph a). These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.

Where in accordance with any provision of this Agreement income derived by a resident of Belgium is exempted from tax in Belgium, Belgium may nevertheless, in calculating the amount of tax on the remaining income of such resident, apply the rate of tax which would have been applicable if such income had not been exempted.

- c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Kenya shall be exempted from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- d) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the Kenyan tax

charged on that income shall be allowed as a credit against Belgian tax relating to such income.

- e) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Kenya have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for 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 in Kenya by reason of compensation for the said losses.

## **CHAPTER IV] - SPECIAL PROVISIONS**

### **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 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. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a 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.
4. Except where the provisions of paragraph 1 of Article 9, paragraph [7] of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be

deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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.
6. 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 him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. 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 this 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 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. [They may also consult together for the elimination of double taxation in cases not provided for in this Convention.]
4. The competent authorities of the Contracting States shall communicate directly with each other for the application of the Agreement.
- [5. Where,
  - a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and



b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.]

## 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 concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a 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 authorises 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).
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, trust, foundation, 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 any amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, together with 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 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 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,

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]

**Entitlement to Benefits**

- [1. Except as otherwise provided in this Article, a resident of a Contracting State shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or paragraph 1 of Article 12 only if such resident is a qualified person as defined in paragraph 2.
2. A resident of a Contracting State is a qualified person only if such resident is either:
- (a) an individual;
  - (b) the Government of that Contracting State, any political subdivision or local authority thereof or the central bank thereof;
  - (c) a company, if its principal class of shares is regularly traded on one or more recognised stock exchanges;
  - (d) a bank, an insurance company or a securities dealer that is established and regulated as such under the laws of that Contracting State;
  - (e) a pension fund, provided that as of the beginning of the taxable period in which the claim to the benefit is made:
    - (i) more than 50 per cent of the beneficiaries, members or participants of the pension fund are individuals who are residents of either Contracting State; or
    - (ii) more than 75 per cent of the contributions made to the pension fund is derived from residents of either Contracting State which are qualified persons;
  - (f) an organisation established under the laws of that Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, cultural or public purpose, only if the tax laws of that Contracting State provide that all or part of its income is exempted from tax or that such person is only subjected to tax with respect to some types of income; or
  - (g) a person other than an individual, if residents of either Contracting State that are qualified persons by reason of either of subparagraphs (a) to (f) own, directly or indirectly, at least 50 per cent of the voting power or other beneficial interests of the person.
3. A resident of a Contracting State shall be entitled to a benefit granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph if persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the voting power or other beneficial interests of that resident.
4. For the purposes of applying the provisions of subparagraph (g) of paragraph 2 and paragraph 3, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph or paragraph only if such resident satisfies those conditions

during the twelve month period preceding the date of the payment (or, in the case of dividends, the date on which entitlement to the dividends is determined).

5.

(a) A resident of a Contracting State shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph derived from the other Contracting State if:

- (i) the resident is carrying on business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless the business is banking, insurance or securities business carried on by a bank, insurance company or securities dealer); and
- (ii) that item of income is derived in connection with, or is incidental to, that business.

(b) If a resident of a Contracting State derives an item of income from a business carried on by that resident in the other Contracting State or derives an item of income arising in the other Contracting State from a person that has with the resident a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9, the conditions described in subparagraph (a) of this paragraph shall be considered to be satisfied with respect to such item of income only if the business carried on in the first-mentioned Contracting State is substantial in relation to the business carried on in that other Contracting State. Whether such business is substantial for the purpose of this subparagraph shall be determined on the basis of all the facts and circumstances.

(c) In determining whether a person is carrying on business in a Contracting State under subparagraph (a) of this paragraph, the business conducted by a partnership in which that person is a partner and the business conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one owns, directly or indirectly, at least 50 per cent of the beneficial interests in the other (or, in the case of a company, at least 50 per cent of the voting power of the company) or a third person owns, directly or indirectly, at least 50 per cent of the beneficial interests (or, in the case of a company, at least 50 per cent of the voting power of the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

6.

(a) A resident of a Contracting State shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or paragraph 1 of Article 12

with respect to an item of income described in the respective paragraph derived from the other Contracting State if:

- (i) that resident functions as a headquarters company for a multinational corporate group; and
- (ii) the item of income derived from that other Contracting State either is derived in connection with, or is incidental to, the business referred to in clause (ii) of subparagraph (b).

(b) A resident of a Contracting State shall be considered a headquarters company for a multinational corporate group for the purpose of subparagraph (a) only if:

- (i) that resident provides a substantial portion of the overall supervision and administration of the group or provides financing for the group;
- (ii) the group consists of companies which are residents in, and are carrying on business in, at least five countries, and the business carried on in each of the five countries generates at least 5 per cent of the gross income of the group;
- (iii) the business carried on in any one country other than that Contracting State generate less than 50 per cent of the gross income of the group;
- (iv) no more than 50 per cent of its gross income is derived from the other Contracting State;
- (v) that resident has, and exercises, independent discretionary authority to carry out the functions referred to in clause (i); and
- (vi) that resident is subject to the same income taxation rules in that Contracting State as persons described in paragraph 5.

(c) For the purposes of subparagraph (b), a resident of a Contracting State shall be deemed to satisfy the gross income requirements described in clause (ii), (iii) or (iv) of that subparagraph for the taxable period in which the item of income is derived if that resident satisfies each of those gross income requirements when averaging the gross income of the three taxable periods preceding that taxable period.

7. A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3, 5 or 6 to a benefit granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or paragraph 1 of Article 12 shall nevertheless be entitled to such benefits if the competent authority of the other Contracting State determines, in accordance with its domestic law or administrative practice, that the establishment, acquisition or maintenance of such

resident and the conduct of its operations did not have the obtaining of such benefits as one of the principal purposes.

8. For the purposes of this Article:

- (a) the term “principal class of shares” means the class or classes of shares of a company which represent a majority of the voting power of the company;
- (b) the term “recognised stock exchange” means:
  - (i) any stock exchange established under the terms of the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
  - (ii) any regulated market pursuant to the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (as amended) or any successor Directive;
  - (iii) Hong Kong Exchanges and Clearing, the NASDAQ System, the New York Stock Exchange, Singapore Exchange, SIX Swiss Exchange and the Taiwan Stock Exchange; and
  - (iv) any other stock exchange which the competent authorities of the Contracting States agree to recognise for the purposes of this Article;
- (c) the term “equivalent beneficiary” means any person who would be entitled to a benefit, with respect to the item of income in respect of which the benefit of this Convention is claimed to a Contracting State, granted by that Contracting State under the law of that Contracting State, this Convention or any other international instrument, provided that such benefit is equivalent to the benefit to be granted to that item of income under the Convention;
- (d) the term “gross income” means the total revenues derived by an enterprise from its business, less the direct costs of obtaining such revenues.

9. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income 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.

10. Where, pursuant to any provisions of this Convention, a Contracting State relieves or exempts from tax income of a resident of the other Contracting State and, under the laws of that other Contracting State, the resident is subjected to tax in that other Contracting State only on that part of such income as is remitted to or received in that other Contracting State, then such relief or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State.]

## Article [30]

### Members of Diplomatic Missions and Consular Posts

- [1.] Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
2. For the purposes of the Agreement, persons who are members of diplomatic missions or consular posts 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 on capital as are residents of that State.

## [CHAPTER VI - FINAL PROVISIONS]

### Article [31]

#### Entry into Force

1. Each Contracting State shall notify the other Contracting State of the completion of the procedures required by its laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of these notifications is received.
2. The provisions of the Agreement shall have effect:
  - a) in Kenya:
    - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which this Agreement enters into force; and
    - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.
  - b) in Belgium:
    - (i) with respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which the Agreement entered into force;
    - (ii) with respect to other taxes on income, on income of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force;



- (iii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Agreement entered into force.

## Article [32]

### Termination

1. This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, written notice of termination not later than June 30 of any calendar year from the fifth year following that in which the Agreement entered into force.
2. In the event of termination before July 1 of such year, the Agreement shall cease to have effect:
  - a) in Kenya:
    - (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the year in which the notice of termination is given; and
    - (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the year in which the notice of termination is given.
  - b) in Belgium:
    - (i) with respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which the notice of termination is given;
    - (ii) with respect to other taxes on income, on income of taxable periods beginning on or after January 1 of the year next following the year in which the notice of termination is given;
    - (iii) with respect to other taxes, on taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the notice of termination is given.

**IN WITNESS WHEREOF** the undersigned, being duly authorised [thereto by their respective Governments], have signed this Agreement.

[Done at ..... this ..... day of .....]

**For the Government of the Republic of Kenya**  
**For the Belgian Federal Government**  
**For the Flemish Government**  
**For the Government of the French-speaking Community**  
**For the Government of the German-speaking Community**  
**For the Government of the Walloon Region**  
**For the Government of the Brussels-Capital Region**

## PROTOCOL

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Upon signing the Agreement between the [Government of the] Republic of Kenya and the Kingdom of Belgium for the elimination of double taxation with respect to taxes on income and for the prevention of fiscal evasion and avoidance, the undersigned have agreed on the following provisions which shall form an integral part of the Agreement.

[1.] Ad Article 1:

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.

[2.] Ad Article 4, paragraph 1:

[It is understood that a person is “liable to tax” in a Contracting State where that person is subjected to the tax laws in force in that Contracting State even if, according to those laws, all or part of its income is exempted from tax.]

[It is understood that the term “resident of a Contracting State” includes a pension fund established in that State.]

[2.] Ad Article 7:

The competent authorities of the Contracting States may by mutual agreement adopt a new method of attribution of profits to permanent establishments as developed by the OECD or the UN.]

3. Ad Article 10, paragraph 4:

In the case of Belgium, the term “dividends” also means income paid in the form of interest by a company that is a resident of Belgium, where such income is subjected to the same taxation treatment as income from shares under Belgian law.

4. Ad Article [16], paragraphs 1 and 2:

It is understood that an employment is exercised in a Contracting State when the activity in respect of which the salaries, wages and other similar remuneration are paid, is effectively carried on in that State. The activity is effectively carried on in that State where the employee is physically present in that State for carrying on the activity, irrespective of the place in which the contract of employment was made, the residence of the employer or of the person paying the remuneration, the place or time of payment of the remuneration, or the place where the results of the employee’s work are

exploited. If an activity is effectively carried on in a Contracting State, only that part of the remuneration that is attributable to such activity may be taxed in that State.

[5.] Ad Article [19]:

[In the case of Belgium,] pensions and other similar remuneration shall be deemed to arise in Belgium when contributions paid to a pension scheme or under the social security legislation have given rise to tax relief in Belgium.

[6.] Ad Article [23], paragraph 3 and Article [25], paragraph 2, a):

For the application of paragraph 3 of Article [23] and paragraph 2, a) of Article [25], an item of income is effectively taxed in a Contracting State where such item of income is subjected to tax in that Contracting State and does not benefit as such from an exemption from tax therein.

[7.] Ad Article [25], paragraph 2, a):

For the application of paragraph 2, a) of Article [25], an item of income is taxed in Kenya where such item of income is subjected in Kenya to the tax regime that is normally applicable to such item of income according to Kenyan tax laws.

[IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.]

[SIGNED in duplicate at ....., this ....., in the English language.]

**For the Government of the Republic of  
Kenya**

**For the Belgian Federal Government  
For the Flemish Government  
For the Government of the French-speaking  
Community  
For the Government of the German-  
speaking Community  
For the Government of the Walloon Region  
For the Government of the Brussels-Capital  
Region**