

1998 Income Tax Convention and Final Protocol (English Translation)

Treaty Partners: Italy; Mozambique

Signed: December 14, 1998

In Force: August 6, 2004

Effective: January 1, 2005. See Article 29.

Status: In Force

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Mozambique and the Government of the Italian Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed to the following provisions:

Chapter I

Scope of the Convention

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, of its political or administrative subdivisions or its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income, taxes imposed on total income or on items of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:
- (a) in the case of Italy:
 - (1) taxes on the income of individuals (sul reddito delle persone fisiche);
 - (2) taxes on the income of a body corporate (imposta sul reddito delle persone giuridiche);
 - (3) regional taxes on production operations (imposta regionale sulle attivita' produttive) even if these taxes are withheld at the source,(hereinafter referred to as "Italian tax");
 - (b) in the case of Mozambique:
 - (1) industrial contribution (contribution industrielle);
 - (2) taxes on earnings from work (impôt sur les revenus de travail);
 - (3) supplementary taxation (impôt complémentaire) even if these taxes are withheld at the source,(hereinafter referred to as "Mozambican tax").
4. The Convention shall apply also to any identical or similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.

Chapter II Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) the term "Mozambique" means the Republic of Mozambique;
 - (b) the term "Italy" means the Italian Republic;

- (c) the expressions "a Contracting State" and "the other Contracting State" mean Italy or Mozambique, as the case may be;
 - (d) the term "person" includes individuals, companies and any other bodies of persons;
 - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "competent authority" means:
 - (i) in the case of Mozambique: the Minister of the Plan and Finance or his authorized representative;
 - (ii) in the case of Italy: the Ministry of Finance.
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

Resident

1. For the purposes of this Convention, 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 management or any other criterion of

a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income derived 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 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 a resident of the State with which his personal and economic relations are closer (center of vital interests);
 - (b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident 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 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 of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, 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, a quarry or any other place of extraction of natural resources;
 - (g) a building site or installation project that lasts for more than six months.
3. It is deemed that there is no permanent establishment if:
- (a) the facilities are used solely for the purpose of storage, display or delivery of merchandise belonging to the enterprise;
 - (b) the maintenance of merchandise belonging to the enterprise is performed solely for the purpose of storage, display or delivery;
 - (c) the maintenance of merchandise belonging to the enterprise is performed solely for the purpose of processing by another enterprise;
 - (d) a fixed place of business is used solely for the purpose of purchasing merchandise or of collecting information for the enterprise;
 - (e) a fixed place of business is used solely for the purpose of advertising, supplying information, scientific research or for similar activities which have a preparatory or auxiliary character.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 B [sic] applies - shall be deemed to have a "permanent establishment" in that State if that person has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to the purchase of merchandise for the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent

establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III Taxation of Income

Article 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, as well as rights to which the provisions of private law respecting landed property apply. Moreover, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, sources and other natural resources shall be regarded as "immovable property". 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 farm tenancy, as well as use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income derived from the 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, 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 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 profit 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, either in the State in which the permanent establishment is situated or elsewhere.
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, no provision in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; however, the method of apportionment adopted shall 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 merchandise for the enterprise.
6. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year, unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

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

Article 9
Associated Enterprises

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner, the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, "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 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 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, either an industrial or commercial activity through a permanent establishment situated therein, or performs in that other State 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 cases, the dividends may be taxed in the aforementioned other Contracting State, in accordance with its national legislation.
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 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 that 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, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, the interest arising from a Contracting State is tax-exempt in the said State if:
 - (a) the person who pays the interest is the Government of the said Contracting State or one of its local authorities;
 - (b) the interest is paid to the Government of the other Contracting State or to one of its local authorities or to institutions or organizations (including financial institutions) belonging entirely to that Contracting State or to one of its local authorities; or

- (c) the interest is paid to other institutions or organizations (including financial institutions) in proportion to the financing accorded by them in the context of agreements entered into by the Governments of the Contracting States.
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, as well as all other income that is treated as income from money lent by the taxation laws of the State in which the income arises.
 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, either an industrial or commercial activity through a permanent establishment situated therein or performs 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 cases, the interest may be taxed in the aforementioned other Contracting State, in accordance with its national legislation.
 6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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 Convention.

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, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 or recordings for radio and television transmission, any patent, trade mark, design or model, plan, secret formula or process, as well as for the use of, or the right to use, industrial, commercial or scientific equipment and for information concerning industrial, commercial, or scientific, and 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, either an industrial or commercial activity through a permanent establishment situated therein or performs 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 cases, the royalties may be taxed in the aforementioned other Contracting State, in accordance with its national legislation.
5. Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base for which the contract giving rise to payment of the royalties was made, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or the 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 benefit 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 Convention.

Article 13

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 derived from the alienation of this stable establishment (alone or with the whole enterprise) or of such a 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 from the alienation of any property other than that referred to in paragraphs 1, 2 or 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may be taxed in the other Contracting State in the following cases:
 - (a) if the resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, but he will

only be taxed on the income that is attributable to that base in the other Contracting State;

- (b) if the resident is present in the other Contracting State for a period or periods exceeding a total of 183 days during the fiscal year.
2. The term "professional services" includes especially independent scientific, literary, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State, for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
 - (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 where the place of effective management is situated.

Article 16

Directors' Fees

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 Supervisory Board of a company which is a resident in the other Contracting State may be taxed in that other State.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself, but to another person, that income may, notwithstanding the provisions of Articles 7, 14, and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions

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

Article 19

Government Service

1. (a) Remuneration, other than pensions, paid by a Contracting State, or one of its political or administrative subdivisions or local authorities 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 remuneration shall be taxable only in the other Contracting State if the services are rendered in that 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 for the sole purpose of rendering the services.
2. Pensions paid by, or out of funds created by, a Contracting State or one of its political or administrative subdivisions or local authorities to an individual in respect of services rendered to that State or subdivision or authority, shall be taxable only in that State.

3. However, such pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
4. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with an industrial or commercial activity carried on by a Contracting State or one of its political or administrative subdivisions or local authorities.

Article 20

Professors, Teachers and Researchers

Professors, teachers or researchers who visit temporarily a Contracting State for a period not exceeding two years for the purpose of teaching or performing research activities in a university, a college, a school or any other educational institution recognized by that Government as a not-for-profit institution and who are or were immediately before this visit, residents of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration derived from teaching or research.

Article 21

Students

Payments which a student or trainee, who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training, shall not be taxed in that State.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention 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 State, either an industrial or commercial activity 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 interest may be taxed in the aforementioned other Contracting State, in accordance with its national legislation.

Chapter IV

Article 23

Elimination of Double Taxation

1. It is understood that double taxation will be avoided in accordance with the following paragraphs of this Article.

2. In the case of Mozambique:

Where a resident of Mozambique derives income which may be taxed in Italy, Mozambique may, in determining its income taxes referred to in Article 2 of this Convention, include such income in the taxable base of such taxes, unless otherwise provided in specific provisions of this Convention. In such a case, Mozambique shall deduct from the taxes so calculated, the income tax paid in Italy, but the amount of the deduction may not exceed that part of the Mozambican tax appropriate to such income in accordance with the ratio of such income to total income.

However, no deduction will be granted if the income is subjected in Mozambique to a final withholding tax by request of the recipient of the income under Mozambican law.

3. In the case of Italy:

Where a resident of Italy derives income which may be taxed in Mozambique, Italy may, in determining its income taxes referred to in Article 2 of this Convention, include such income in the taxable base of such taxes, unless otherwise provided in specific provisions of this Convention. In such a case, Italy shall deduct from the taxes so calculated, the income tax paid in Mozambique, but the amount of the deduction may not exceed that part of the Italian tax appropriate to such income in accordance with the ratio of such income to total income.

However, no deduction will be granted if the income is subjected in Italy to a final withholding tax by request of the recipient of the income under Italian law.

4. Where by virtue of the legislation of one of the Contracting States and for the purposes of economic development, the taxes covered by this Convention are not wholly or partly deducted for a limited period, such taxes are considered as entirely paid for the purposes of paragraphs 2 and 3 above, exclusively in respect of business profits referred to in Article 7.

Chapter V Special Provisions

Article 24 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 are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to nationals 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 Contracting State carrying on the same activity. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of Article 9, 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.
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 25 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 Convention, he may, irrespective of the remedies provided by

- the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case is comes under paragraph 1 of Article 24, to the competent authority of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavor, 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 Convention.
 3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.
 4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When, in order to reach this agreement, an oral exchange of opinions seems necessary, such exchange may take place through a commission comprised of representatives of the competent authorities of the Contracting States.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, as well as for avoiding tax evasion. The exchange of information is not restricted by Article 1. Any information received 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 taxes levied by the Convention, or with the enforcement or prosecution in respect of, or the determination of appeals in relation to, those taxes. 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.
2. In no case shall the provisions of paragraph 1 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; and;
- (c) to supply information which would disclose any trade, industrial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27
Diplomatic Agents and Consular Officers

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

Article 28
Refunds

1. Taxes withheld at the source in a Contracting State shall be refunded at the taxpayer's request or of the State of which he is a resident when the right to collect such taxes is limited by the provisions of the Convention.
2. Claims for refunds must be made within the timeframe specified by the legislation of the Contracting State responsible for making such refund and must be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying that the conditions required for tax exemption or a tax reduction provided for in the Convention have been met.
3. The competent authorities of the Contracting States shall by mutual agreement, in accordance with the provisions of Article 25 of this Convention, settle the mode of application of the present Article.

Chapter VI
Final Provisions

Article 29
Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged in Rome as soon as possible.

2. The Convention shall enter into force on the 30th day following the date of exchange of the instruments of ratification and its provisions shall have effect:
 - (a) in respect of taxes withheld at the source, on income payable or paid, from January 1st of the calendar year following the year in which the instruments of ratification are exchanged;
 - (b) in respect of other income taxes for taxable periods, from January 1st of the calendar year following the year in which the instruments of ratification are exchanged.

Article 30
Termination

1. This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention through the diplomatic channel, by giving notice of termination of at least six months, for the end of any calendar year, beginning with the fifth year following the year of its entry into force.
2. In this case, the Convention shall cease to have effect:
 - (a) in respect of taxes withheld at the source, on income payable or paid at the latest on December 31 of the year of termination;
 - (b) in respect of other income taxes, on taxes payable for taxable periods terminating at the latest on December 31 of the same year.

In witness whereof, the plenipotentiaries of the two States have signed this Convention.

Done in duplicate in Maputo, this fourteenth day of December, nineteen hundred and ninety-eight, in the Italian, French, and Portuguese languages, each text being equally authoritative. In the event of a difference in interpretation, the French text will be the conclusive authority.

**FOR THE GOVERNMENT OF THE REPUBLIC
OF MOZAMBIQUE:**

**FOR THE GOVERNMENT OF THE ITALIAN
REPUBLIC:**

PROTOCOL

Convention between the Government of the Italian Republic and the Government of the Republic of Mozambique for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

At the time of signing the Convention concluded this day between the Government of the Italian Republic and the Government of the Republic of Mozambique for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned agreed upon the provisions which are an integral part of the Convention.

It is agreed that:

- (a) with regard to paragraph 3 of Article 7, "expenses which are incurred for the purposes of the permanent establishment" refers to expenses pertaining directly to the activity of that permanent establishment;
- (b) the provisions of paragraphs 1 and 2 of Article 19 also apply to the remuneration and pensions allocated to their personnel by the following services or organizations;

-- in the case of Italy:

- Administration of the Railways (F.S.);
- Administration of the Postal and Telecommunications Service (PP.TT.);
- National Tourist Office (E.N.I.T.);
- Institute for Foreign Trade (ICE);
- Bank of Italy;

-- in the case of Mozambique:

- Administration of the Railways (C.F.M.);
- Administration of the Postal Service (C.M.);
- Administration of Telecommunications (T.D.M.);
- Bank of Mozambique (B.M.);

- (c) with respect to paragraph 1 of Article 25, the expression "irrespective of the remedies provided by domestic law" means that the start of the mutual agreement procedure is not an alternative with respect to the national contentious procedure, which in all cases, is the one having priority when the conflict refers to an application of the taxes not in accordance with the Convention;
- (d) the provision in paragraph 3 of Article 28 does not preclude the interpretation whereby the competent authorities of the Contracting States may by mutual agreement decide upon different procedures for implementing the tax reductions or exemptions accorded by the Convention.

In witness whereof, the plenipotentiaries of the two States have signed this Protocol.

Done in duplicate in Maputo, this fourteenth day of December, nineteen hundred and ninety-eight, in the Italian, French, and Portuguese languages, each text being equally authoritative. In the event of a difference in interpretation, the French text will be the conclusive authority.

**FOR THE GOVERNMENT OF THE REPUBLIC
OF MOZAMBIQUE:**

**FOR THE GOVERNMENT OF THE ITALIAN
REPUBLIC:**



Viva Africa Consulting Limited © 2010