

2003 Income and Capital Tax Convention (English Translation)

Treaty Partners: Algeria; Austria

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CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA CONCERNING AVOIDANCE OF DOUBLE TAXATION REGARDS TO TAX ON INCOME AND CAPITAL

The Government of the Republic of Austria and the Government of the Democratic People's Republic of Algeria, desiring to enter into a convention for the avoidance of double taxation with regards to tax on income and capital, have agreed as follows:

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 and capital imposed on behalf of a Contracting State or one of its local subdivisions, irrespective of the manner in which they are levied.

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

(3) The existing taxes to which this Convention shall apply are in particular:

(a) in Austria:

1. income tax (Einkommenssteuer);

2. corporate income tax (Körperschaftsteuer);
 3. property tax (Grundsteuer);
 4. agricultural and forestry company tax (Abgabe von land- und forstwirtschaftlichen Betrieben), and
 5. property value tax for undeveloped properties (Abgabe vom Bodenwert bei un bebauten Grundstücken),
- (which shall hereinafter be referred to as "Austrian Taxes").

(b) in Austria:

1. worldwide income tax (l'impôt sur le revenu global);
 2. corporate income tax (l'impôt sur les benefices des sociétés);
 3. professional tax (la taxe sur l'activité professionnelle);
 4. flat-rate payment (le versement forfaitaire);
 5. capital tax (l'impôt sur le patrimoine),
 6. tax and charge on the proceeds from prospecting, research, exploitation and pipeline transportation of hydrocarbon compounds (la redevance et l'impôt sur les resultants relatifs aux activités de prospection, de recherche, d'exploitation et de transport par canalization des hydrocarbures);
 7. tax on profits from mining (l'impôt sur les benefices miniers)
- (which shall hereinafter be referred to as "Algerian Taxes").

(4) This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws at the end of each year.

Article 3
General Definitions

- (1) For the purposes of this Convention, unless the context requires a different interpretation:
- a) the term "Algeria" refers to the Democratic and Popular Republic of Algeria and, when used in its geographical sense, to the territory of the Democratic and Popular Republic of Algeria, including its territorial waters, and, beyond thereof, the areas over which, in conformity with international law, the Democratic and Popular Republic of Algeria has jurisdiction or exercises its sovereign rights for the purpose of exploration and use of the natural resources of the sea bottom, the subsea bottom and the water column situated on top thereof;
 - b) the term "Austria" refers to the Republic of Austria;
 - c) the term "Person" refers to any individual or company or group of people.
 - d) the term "Company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - e) the terms "Enterprise of a Contracting State" and "Enterprise of the other Contracting State" refer, respectively, to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State;
 - f) the term "international traffic" refers to any transport by a ship or aircraft operated by an enterprise whose place of effective management is located in one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - g) the term "Competent Authority" refers to the following:
 - i) in the case of Algeria, the Minister of Finance or his or her authorized representative;
 - ii) in the case of Austria, the Federal Minister of Finance or his or her authorized representative;;
 - h) the term "National" refers to
 - i) any natural person having the nationality of a Contracting State,

- ii) and any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (2) As regards the application of this 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 for the respective period of application concerning the taxes to which this 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 and also includes such State and its local subdivisions. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources situated in that State or capital located therein.
- (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 or she shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him or her in both States, such individual shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (center of vital interests);
 - b) if the State in which he or she has his center of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, such individual shall be deemed to be a resident of the State in which he or she has an habitual abode;
 - c) if he or she has an habitual abode in both States or in neither of them, such individual shall be deemed to be a resident of the Contracting State of which he or she is a national;
 - d) if he or she is a national of both or neither of the Contracting States, 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 a natural person is a resident of both Contracting States, then such person shall be deemed to be a resident of the 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" refers to a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" includes, in particular:
 - a) a place of management,
 - b) a branch,
 - c) an office,
 - d) a factory,
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- (3) A construction or assembly site only constitutes a permanent establishment provided its duration exceeds six months.
- (4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) facilities solely for the purpose of storage, display or delivery 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, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information on behalf of the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activities 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) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an independent agent to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the 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 above which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
 - (6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other independent agent, provided that such persons are acting in the ordinary course of their business.
 - (7) 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.

Article 6

Income From Immovable Property

- (1) Income derived by a person being a resident of one of the Contracting States from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in the other Contracting 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 agricultural and forestry operations, 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, leasing, or use in any other form of immovable property.

- (4) The provisions of paragraphs 1 and 3 shall also apply to 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, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
- (3) In determining the profits of a permanent establishment, there shall be allowed as deductions any 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 this permanent establishment is situated or elsewhere. No deduction shall be permitted, however, for sums which would otherwise be paid (for purposes other than the reimbursement of expenses incurred) by the permanent establishment to the headquarters of the enterprise or to any one of its establishments as royalties, fees, or other similar payments for the use of patents or other rights or as a commission for specific services rendered or for a management activity or, except in the case of a banking enterprise, as interest on sums loaned to the permanent establishment. Accordingly, in calculating the profits of a permanent establishment, any sums (other than for the purpose of reimbursing expenses incurred) which are charged by the permanent establishment to the headquarters of the enterprise or any of its establishments as royalties, fees or other similar payments for the use of patents or other rights or as commission for specific services rendered or for a management activity or, except in the case of a banking enterprise, as interest on sums loaned to the headquarters of the enterprise or any of its establishments, shall not be included.
- (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 contained in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted, however,

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 on behalf of 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 proceed otherwise.
- (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 **Sea and Air Traffic**

- (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) Where the place of effective management of a shipping enterprise is aboard a ship, then such enterprise shall be deemed to be situated in the Contracting State in which the home harbor of this 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 arising out of 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 proceed to 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 Convention, and the competent authorities of the Contracting States shall if necessary consult each other.

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 in accordance with the laws of that State, but if the person receiving the dividends is their beneficial owner, the tax so charged shall not exceed the following:
 - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (although not a partnership) which holds, whether directly or indirectly, at least 10 per cent of the capital of the company paying the dividends;
 - b) 15 per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall determine, by mutual agreement, the application of these limits.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits which are used to pay dividends.

- (3) The term "dividends" as used in this Article refers to income from shares, "jouissance" shares or certificates, mining or founder's shares or other beneficiary rights, not being debt-claims, participating in the profits as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares under the laws of the State of which the company making the distribution is a resident.

- (4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, either an industrial or commercial activity through a permanent establishment situated therein, or independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except 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 any tax on the company's undistributed profits, even in case 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 only be taxed in that other State.
- (2) However, such interest may also be taxed in the Contracting State in which it arises and in accordance with the laws of that State, but if the person receiving the interest is its beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of interest.
- (3) The provisions of paragraph 2 notwithstanding, in the following cases, the interest mentioned in paragraph 1 shall only be taxable in the Contracting State of which its beneficial owner is a resident:
 - a) such interest is paid in connection with the sale on deferred terms of industrial, commercial, or scientific equipment, or
 - b) such interest is paid in connection with the sale on deferred terms of merchandise or the provision of services between enterprises, or
 - c) such interest is paid for a loan of any kind granted by a financial institution.
- (4) The provisions of paragraph 2 notwithstanding, any interest arising in a Contracting State shall be exempt from tax in that State in the following cases:

- a) the person paying such interest is that State or one of its local subdivisions,

or
- b) such interest is paid to the other Contracting State or one of its local subdivisions or institutions or entities (including financial institutions) which belong entirely to that other State or one of its local subdivisions,
or
- c) such interest is paid to other institutions or entities (including financial institutions) for financing granted by them within the scope of agreements entered into between the Contracting States.

- (5) The term "interest" as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a clause establishing the 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. Late-payment penalties shall not be considered interest as defined in this Article.
- (6) The provisions of paragraphs 1 and 2 shall not apply in case the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial activity 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 therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (7) 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 or she 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, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (8) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some third parties, 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 a similar 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 in accordance with 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 shall be taxable in that other State.
- (2) However, while these royalties shall also be taxable in the Contracting State in which they arise in accordance with the laws of such State, in case the person receiving such royalties is their beneficiary owner, such tax must not exceed 10 per cent of the gross amount of the royalties.
- (3) The term "royalties" as used in this Article means compensation of any kind paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process or for the provision of information concerning industrial, commercial or scientific experience (know-how).
- (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 an industrial or commercial activity 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 therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (5) The royalties shall be deemed to arise in a Contracting State in case the payer is a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment in a Contracting State for which the contract giving rise to the payment of the royalties has been entered, these royalties are deemed to arise in the Contracting 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 service 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 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 person residing in a Contracting State from the alienation of immovable property in accordance with Article 6 which is situated in the other Contracting State may be subject to tax in the other Contracting 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 (whether alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.
- (3) Gains resulting 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, and 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 State unless:
 - a) this resident habitually has, in that other State, a fixed base for the exercise of his or her activities; in this case, only that part of the income which is attributable to this fixed base shall be taxable in that other State;
 - or
 - b) he or she is present in that other State for a period or periods with a total length of equal to or more than 183 days during the fiscal year in question; in this case, only that part of the income which is derived from activities exercised in that other State shall be taxable in that other State.
- (2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

Article 15
Dependent Personal Services

- (1) Subject to the provisions of Articles 16, 18, 19, and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of 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 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 during any twelve-month period,
 - and
 - b) such remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c) such remuneration is not borne by a permanent establishment or a fixed place of business which the employer has in the other State.
- (3) Notwithstanding the preceding provisions of this Article, any remuneration derived in respect of paid 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 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 a similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
Artists and Athletes

- (1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as an athlete, from his personal activities 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 or her capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.
- (3) Any income derived from activities as defined by Articles 1 and 2 above on the basis of a cultural or another agreement between the governments of the Contracting States shall be exempt from tax in the Contracting State in which such activities are carried out as long as the presence of such individual in that State was, whether wholly or predominantly, funded by public resources of one or both of the Contracting States or their local subdivisions. The benefits of this Article shall apply accordingly to not-for-profit events.

Article 18
Pensions

- (1) 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.
- (2) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid pursuant to the social-security laws of a Contracting State shall be taxable in that State.

Article 19
Government Service

- (1)
 - a) Salaries, wages and similar remuneration, other than retirement pay, paid by a Contracting State or one of its political subdivisions to an individual in respect of services rendered to that State or political subdivision shall be taxable only in that State.
 - b) However, such salaries, wages, and similar 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 and
 - i) is a national of that State, or
 - ii) did not become a resident of that State solely for the purpose of rendering these services.
- (2)
 - a) Any retirement pay paid by, or out of funds created by, a Contracting State or one of its political subdivisions, whether directly or by drawing

on funds specifically created for that purpose, to an individual in respect of services rendered to that State or political subdivision thereof shall be taxable only in that State.

- b) However, such retirement pay shall only be taxable in the other Contracting State if the individual is a resident and a national of that State.
- (3) The provisions of Articles 15, 16, 17, or 18 shall apply to salaries, wages and similar remuneration as well as retirement pay in respect of services rendered in connection with a commercial or industrial activity carried on by a Contracting State or one of its local subdivisions or public-law corporations.

Article 20 Students

- (1) Payments which a student or commercial, technical, agricultural or forestry apprentice or intern who is present in a Contracting State solely for the purpose of his or her education or training and who is a resident of the other Contracting State and was a resident thereof immediately prior to entering the first-mentioned State receives for the purpose of his or her maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments arise from sources outside that State.
- (2) Any compensation which a student or apprentice who is currently or was immediately prior thereto a resident of a Contracting State receives for employment exercised in the other Contracting State for no more than a total 183 days during the fiscal year in question shall be exempt from tax in the other State as long as such employment is directly related with his or her studies or education in the first-mentioned State.

Article 21 Other Income

- (1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
- (2) The provisions of paragraph 1 above shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, in case the beneficial owner of such income, being a resident of a Contracting State, carries on a commercial or industrial activity 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 therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

- (3) Income derived by a person residing in a Contracting State on the basis of the social-security laws of the other Contracting State may not be taxed in the first-mentioned State as long as, in accordance with the laws of the other Contracting State, such income would be exempt from tax.

Article 22 Capital

- (1) Immovable property as defined by Article 6 that is owned by a person residing in a Contracting State and is located in the other Contracting State may be taxed in the other Contracting State.
- (2) 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 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 may be taxed in that other State.
- (3) Ships and aircraft operated in international traffic as well as movable property pertaining to the operation of such ships or aircraft shall only be taxable in the Contracting State where the place of effective management of the enterprise is located.
- (4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23 Elimination of Double Taxation

- (1) Insofar as Algeria is concerned, double taxation shall be eliminated as described below:

Where a person residing in Algeria receives income or holds capital which, in accordance with the provisions of this Convention, are taxable in Austria, Algeria shall deduct the following:

- i) from the tax levied on the income of this resident, the equivalent of the income tax paid in Austria;
- ii) from the tax levied on the capital of this resident, the equivalent of the capital tax paid in Austria.

However, the amount deducted in either case must not exceed the share of the income tax or asset tax, calculated prior to the deduction, corresponding, as the case may be, to the income or capital which is subject to tax in Austria.

- (2) In Austria, double taxation shall be prevented as follows:
- a) Where a person residing in Austria receives income or has capital and such income or such capital can, in accordance with this Convention, be taxed in Algeria, Austria shall exempt such income or such capital from tax, subject to the provisions of letters b) and c).
 - b) Where a person residing in Austria receives income which, in accordance with Articles 10, 11, and 12 of this Convention, can be taxed in Algeria, Austria shall grant a tax credit in the amount of the tax levied on the income of such person and paid in Algeria. However, the amount of such tax credit must not exceed the share of the tax, calculated prior to the deduction, representing the income received in Algeria.
 - c) Dividends as defined by Letter a) of paragraph 2 of Article 10 which are paid by a company residing in Algeria to a company residing in Austria shall be exempt from taxation in Austria subject to the respective provisions of domestic Austrian law, but irrespective of any different minimum holding requirements in accordance with such law.
- (3) Any income or capital of a person residing in a Contracting State which, in accordance with the provisions of this Convention, must be exempted from tax in that State can nonetheless be included in that State for the purpose of determining the tax on the remaining income or property of such person.

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 associated requirements to which nationals of that other State in the same circumstances are or may be subjected, in particular insofar as residence is concerned. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of any Contracting State.
- (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 or residents of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

- (3) Except where the provisions of paragraph 1 of Article 9, paragraph 8 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. Accordingly, debts incurred by a company of a Contracting State with respect to a person residing in the other Contracting State shall be deductible for the purpose of determining the taxable property of such company pursuant to the same terms as debts that are owed to a person residing in 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 associated therewith which is other or more burdensome than the taxation and associated 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 believes 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 or she 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 or she is a resident or, if his or her case comes under paragraph 1 of Article 24, to that of the Contracting State of which he or she is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 this Convention. 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

- (4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement as set forth in the preceding paragraphs of this Article, including within the scope of a joint commission consisting of such authorities or their representatives.

Article 26 **Exchange of Information**

- (1) The competent authorities of the Contracting States shall exchange such information as is necessary to carry out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. 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 enforcement or prosecution in respect of, or the determination of remedies or appeals in relation to taxes covered by this Convention. 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;
 - c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information whose disclosure would be contrary to public policy (ordre public) or in violation of basic rights granted by a State, in particular insofar as confidentiality of data is concerned.

Article 27 **Official Assistance in Collection of Tax Claims**

- (1) The Contracting States agree to provide each other with official assistance during execution proceeding and collect the taxes covered by this Convention, including any legal surcharges, additional claims, late-payment surcharges, interest as well as any costs related therewith in accordance with their domestic laws or administrative

practice as long as the amount of such taxes has been determined in a final ruling in accordance with the laws and administrative practice of the State requesting official assistance and such taxes are enforceable.

- (2) The procedures for the application of this Article shall be documented in an administrative agreement to be entered into between the competent authorities of the Contracting States.

Article 28 **Members of Diplomatic Missions and Consular Posts**

This Convention shall not 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.

Article 29 **Entry Into Force**

- (1) This Convention requires ratification; the instruments of ratification shall be exchanged as soon as possible.
- (2) This Convention shall come into effect on the first day of the third month following the month during which the instruments of ratification were exchanged, and thereafter, its provision shall apply:
 - a) insofar as taxes levied at the source are concerned, to amounts paid or credited on or after the date of entry into force hereof;
 - b) insofar as other taxes are concerned, to taxes which are levied for the calendar year during which this Convention came into force and effect and for business years commencing during such year.

Article 30 **Termination**

This Convention shall remain in force until terminated by one of the Contracting States. After a period of five years from the effective date hereof, each Contracting State can terminate this Convention as of the end of each calendar year by notifying the other Contracting State thereof in writing through diplomatic channels at least six months in advance. In this case, its provisions shall no longer apply to the following:

- a) insofar as taxes levied at the source are concerned, to amounts paid or credited no later than on December 31 of the calendar year as of the end of which the termination came into effect;

- b) insofar as other taxes are concerned, to taxes which are levied for the calendar year as of the end of which this Convention was terminated and for business years commencing during such year.

In witness whereof the undersigned of the Contracting States, duly authorized to that effect, have signed this Convention.

Done in Vienna on June 17, 2003 in two copies, both in the German and French languages; both versions shall be equally binding. In the event of discrepancies of interpretation of any provisions of this Convention, the French language text shall govern.

**FOR THE GOVERNMENT OF THE REPUBLIC
OF AUSTRIA:**

**FOR THE GOVERNMENT OF THE
DEMOCRATIC AND POPULAR REPUBLIC OF
ALGERIA:**



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