

LEGAL NOTICE NO. 142

THE INCOME TAX ACT

*(Cap. 470)*THE DOUBLE TAXATION RELIEF (BURUNDI, RWANDA,
UGANDA AND THE UNITED REPUBLIC OF TANZANIA)
NOTICE, 2014

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, being arrangements made between the Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania in the articles of an agreement signed on the 30th November, 2010, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything to the contrary in the Act or any other written law, have effect in relation to income tax under the Act.

SCHEDULE

The Governments of the Republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

HAVE agreed as follows:

*Article 1**Personal Scope*

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

*Article 2**Taxes Covered*

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.

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

- (a) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470;
- (b) in Tanzania, the tax on income chargeable under the Income Tax Act, Cap. 332;
- (c) in Uganda, the tax on income chargeable under the Income Tax Act, Cap. 340;
- (d) in Rwanda, the tax on income chargeable under the Law No. 16/2005 of 18/08/2005 on direct taxes on income and the tax on rent of immovable property as provided under Law No. 17/2005 establishing the source of revenue for districts and towns and its management; and
- (e) in Burundi, the tax on income chargeable in accordance with the provisions of the income tax acts of 1963.

4. This Agreement shall apply to any other taxes of identical or substantially similar character which are imposed by any of the Contracting States after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

Article 3

General Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
 - (b) the term "competent authority" means:
 - (i) in Kenya, the Cabinet Secretary for the time being responsible for finance or his authorised representative;
 - (ii) in Tanzania, the Minister for the time being responsible for finance or his authorised representative;
 - (iii) in Uganda, the Minister for the time being responsible for finance or his authorised representative;

- (iv) in Rwanda, the Minister for the time being responsible for finance or his authorised representative; and
- (v) in Burundi, the Minister for the time being responsible for finance or his authorised representative;
- (c) the term "international traffic" means any transport by water, railway or air, operated by an enterprise which has its place of effective management in a Contracting State, except when the transport is operated solely between places within a Contracting State;
- (d) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (e) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons which is treated as an entity for tax purposes.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State in relation to the taxes which are the subject of this Agreement.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature. This term does not include any person who is liable to tax in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of more than one of the Contracting States, then his status shall be determined in accordance with the following rules:

- (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 two or more States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in any of the Contracting States, 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 two or more States or none 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 two or more States or of none 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 of this Article a person other than an individual is a resident of two or more Contracting States, then it 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 Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site or a construction, installation [other than the installations referred to in 2 (h)] or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State,

provided that such activities continue for the same or a connected project for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (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 of this Article, a person acting in a Contracting State on behalf of an enterprise of any of the other Contracting States (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to have a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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 agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of any of the other Contracting States, 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 resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provision of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in any of the other Contracting States through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in any of the other Contracting States through a permanent establishment situated therein, there shall in each Contracting State be attributed to that

permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment:

- (a) there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State; and
- (b) no account shall be taken of amounts charged, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping, Inland Waterways, Railway And Air Transport

1. Profits of an enterprise from the operation or rental of ships, trains or aircrafts in international traffic and the rental of containers, wagons, coaches, tankers and related equipment which is incidental to the operation of ships, trains 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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the contracting state in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting States, and in either case conditions are made or imposed between the enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income 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 income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State and taxes accordingly profits on which an enterprise of any of the other Contracting States has been charged to tax in that State and the profits so included are income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. The provisions of paragraph 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

5. The provisions of paragraph 2 of this Article shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of any of the other Contracting States 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 of the dividends, the tax so charged to the beneficial owner shall be fixed at 5 percent of the gross amounts of the dividends. The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or 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 the shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in any of the other Contracting States of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in any of the other States independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from any of the other Contracting States, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, subject to the provisions of paragraph 3 of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall be fixed at 10 percent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government, a political subdivision or a local authority of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government, a political subdivision or a local authority of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in

the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Management or Professional Fees

1. Management or professional fees arising in a Contracting State which are derived by a resident of any of the other Contracting States may be taxed in that other Contracting State.

2. However, such management or professional fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such management or professional fees is a resident of the other Contracting State, the tax so charged shall be fixed at 10 percent of the gross amount of the management or professional fees.

3. The term "management or professional fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial, professional or consultancy nature not covered under any other Article of this Agreement.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the management and professional fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 shall apply.

5. Management or professional fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the management or professional fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management or professional fees was incurred, and such management or professional fees are borne by that permanent establishment or fixed base, then such management or professional fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management or professional fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments

shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in any of the Contracting States may be taxed in that 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 permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in any of the other Contracting States for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this provision, where an individual who is a resident of a Contracting State stays in any of the other Contracting States for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned or was present in that other State in the fiscal year concerned and in each of the two preceding years for periods exceeding in aggregate more than 122 days in each such year, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributed to that fixed base.

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

*Article 16**Dependent Personal Services*

1. Subject to the provisions of Articles 17, 19, 20 and 21, 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 any of the other Contracting States. If the employment is so exercised, such remuneration as is derived there from may be taxed in the State in which the employment is exercised.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in any of the other Contracting States 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 calendar year concerned; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

*Article 17**Directors' Fees*

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 of a company which is a resident of any of the other Contracting States may be taxed in the State in which the company is resident.

*Article 18**Artistes And Sportspersons*

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his or her personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his or her capacity as such accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 7,

15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of any of the Contracting States or local authority.

Article 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and similar payments arising in a Contracting State and paid in consideration of past employment to a resident of any of the other Contracting States, shall be taxable only in the Contracting State in which the payments arise.

2. However, such pensions and other remuneration may also be taxed in any of the other Contracting States if the payment is made by a resident of any of the other Contracting States, or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

Article 20

Remuneration And Pension In Respect Of Government Service

1. Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a political sub-division, local authority or statutory body thereof in the discharge of governmental functions shall be taxable only in that State. Such remuneration shall be taxable only in any of the other Contracting States creating the funds if the services are rendered in that other State and the individual is a resident of that State and:

- (a) is a national of that State; or
- (b) did not become a resident solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or

sub-division, authority or body in the discharge of governmental functions shall be taxable only in that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division, local authority or statutory body thereof.

Article 21

Professors and Teachers

1. Notwithstanding the provisions of Article 16, a professor or teacher who makes a temporary visit to any one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of another Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

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

Article 22

Students and Business Apprentices

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

Article 23

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in any of the other Contracting States 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 paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

Article 24

Elimination of Double Taxation

1. Where a resident of any of the Contracting States derives income which in accordance with the provisions of this Agreement may be taxed in the other Contracting States, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State. Provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in that other State.

2. Where in accordance with any provision of this Agreement income derived by a resident of a Contracting State is exempt from tax in that State such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 25

Non-Discrimination

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in any of the other Contracting States shall not be less favourably levied in that other State than the taxation levied on enterprises of any of the other States carrying on the same activities.

3. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any of the other Contracting States, 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 that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of any of the other Contracting States any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or more of the Contracting States result or will result for him in taxation not in accordance with this Agreement, 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 comes under paragraph 1 of Article 25, to that 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 this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of any of the other Contracting States, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may through consultations develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate procedures, conditions, methods and techniques to facilitate the above-mentioned actions and the implementation of the mutual agreement procedure.

Article 27

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 Agreement or of the domestic law of the Contracting States concerning taxes covered by this Agreement in so far as the taxation there under is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect

of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of any of the other Contracting States;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of any of the other Contracting States;
- (c) to supply information which would disclose any trade, business, industrial, commercial [or professional secret or trade process] or information, the disclosure of which would be contrary to public policy.

Article 28

Assistance in the Collection of Taxes

1. The Contracting States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Agreement shall apply and of any administrative penalties, interests and costs pertaining to the said taxes.

2. At the request of the applicant Contracting State, the requested Contracting State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State shall not be obliged to take any executory measures, which are not provided for in the laws of the applicant State.

3. When a tax claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That tax claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the tax claim were a tax claim of that other State.

4. When a tax claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that tax claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that tax claim in accordance with the provisions of its Income Tax law as if the tax claim were a tax claim of that other State even if, at the time when such measures are applied, the tax claim is not

enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Where, at any time after a request has been made by a Contracting State under paragraphs 3 and 4 and before the other Contracting State has collected and remitted the relevant tax claim to the first-mentioned State, the relevant tax claim shall cease to be—

- (a) in the case of a request under paragraph 3, a tax claim of the first-mentioned State that is enforceable under the law of that State and is owed by a person who, at the time, cannot, under the law of that State, prevent its collection; or
- (b) in the case of a request under paragraph 4, a tax claim of the first-mentioned State in respect of which that State may, under its law, take measures of conservancy with a view to ensuring its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

6. The requested State shall not be obliged to accede to the request:

- (a) if the applicant State has not notified the requested State that it has pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
- (b) if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.

7. The Contracting State in which tax is recovered in accordance with the provisions of this Article shall forthwith remit to the Contracting State on behalf of which the tax was collected the amount so recovered.

8. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery, which have been found unjustified in respect of the reality of the tax claim concerned.

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

10. In this Article the term “tax claim” means an amount owed in respect of taxes covered by this Agreement together with interest, administrative penalties and costs of collection or conservancy related to such amount.

*Article 29**Diplomatic Agents and Consular Officers*

Nothing in this Agreement 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 30**Entry into Force*

1. The Contracting States shall notify each other of the completion of the procedures required by their laws for entry into force of this Agreement. The Agreement shall enter into force on the date of the last of these notifications.

2. The provisions of this Agreement shall apply to income for any year of income beginning on or after the first day of January next following the date upon which this Agreement enters into force.

*Article 31**Termination*

1. This Agreement shall remain in force indefinitely but any of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting States written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect on income for any year of income beginning on or after the first day of January next following the calendar year in which such notice is given.

Dated the 15th September, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.