

LEGAL NOTICE NO. 60

THE INCOME TAX ACT

(Cap. 470)

THE DOUBLE TAXATION RELIEF (IRAN) NOTICE, 2012

IN EXERCISE of the powers conferred by section 41 of the Income Tax Act, the Cabinet Secretary for the National Treasury declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Islamic Republic of Iran in the articles of an agreement signed on the 29th May, 2012 with a view to affording relief from double taxation in relation to income tax and any other taxes of similar character imposed by the laws of Iran, 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 Government of the Republic of Kenya and the Government of Islamic Republic of Iran desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on income from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) in the case of the Islamic Republic of Iran;
 - (i) the income tax;
 - (ii) the property tax.
 - (b) in the case of the Republic of Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Chapter 470 of the Laws of Kenya.
4. The Agreement shall apply also to any identical or substantially similar taxes, which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of any changes, which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires, the meanings of the terms are as follows:
 - (a) (i) the term "Islamic Republic of Iran" means the territory under the sovereignty and/or jurisdiction of the Islamic Republic of Iran;
 - (ii) the term " Kenya" means all territory of Kenya in state boundaries including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law.
 - (b) the term "person" means:
 - (i) an individual,
 - (ii) a company or any other body of persons;
 - (c) the term "company" means anybody corporate or any entity, which is treated as a body corporate for tax purposes;
 - (d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between the places in the other Contracting State;
 - (f) the term "competent authority" means:
 - (i) in the case of the Islamic Republic of Iran, the Minister of Economic Affairs and Finance or his authorized representative;
 - (ii) in the case of the Republic Kenya, the Minister for Finance or his authorized representative.
2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

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 residence, domicile, place of effective management, place of incorporation or any other criterion of a similar nature, and also

includes that State and any political subdivision or any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
 - (b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if his status cannot be determined under the provisions of subparagraph (c), 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 both 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 an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) 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;
 - (h) an installation or structure used for the exploration or exploitation of

natural resources.

3. The term "permanent establishment" also encompasses:
 - (a) a building site, a construction, assembly or installation, project or supervisory activities in connection therewith, constitutes a "permanent establishment" but only where such site, project or activities continue for a period of more than twelve 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 connected project for a period or periods aggregating more than 183 days 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 of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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, where a person - other than an agent of an independent status to whom paragraph 6 applies- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
 - (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 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; or
 - (b) has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.
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 resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State shall be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the laws 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 including oil, gas and quarries. Ships, boats, aircraft or road vehicles and railway shall not be regarded as immovable property.
3. The provisions 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.
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 the 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 Contracting 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 the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, insofar as they are incurred for the purposes of the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied 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. 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

International Traffic

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State, in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived by an enterprise of a Contracting State from the participation in a pool, a joint business or an international operating¹ agency, but only so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

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, 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 Contracting 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 Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other.
3. A Contracting State shall not charge the income of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the limits provided in its national laws.

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 Contracting 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 resident of the other Contracting State and the beneficial owner of the dividends the tax so charged shall not exceed 5 percent of the gross amount of the dividends.

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

3. The term "dividends" in this Article means income from shares, "Jouissance" shares or "Jouissance" rights, founders' shares or other rights (not being debt-claims, participating in profits), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by

the laws of the contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such 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 Contracting 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 Contracting 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 Contracting State) nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and derived by the Government of the other Contracting State or ministries, local authorities or municipalities thereof, other institutions wholly owned by that Government, the Central Bank of the Islamic Republic of Iran and the Central Bank of Kenya shall be exempt from tax in the first-mentioned State.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated there in, and the

debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, 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 Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.
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 cinematographic films, or films or tapes or discs used for radio and television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience or for the use of, or the right to use, industrial, commercial or scientific equipment.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other Contracting 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 cases, the provisions of Article 7 or Article 14, 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 subdivision, a local authority thereof 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 in connection with which the right or property giving rise the royalties is effectively connected to, and such royalties are borne by such permanent establishment or fixed base then, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right to use 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 a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, with due regard to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other 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 (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterway transport or movable property pertaining to the operation of such ship, aircraft or boat, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights, in a company or any other legal entities, the assets of which directly or indirectly consist mainly of immovable property situated in the other Contracting State may be taxed in that other Contracting State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) If he has a fixed base available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the fiscal year/year of income concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, engineers, technicians, experts, lawyers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting 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 the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year/year of income concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration paid by an enterprise of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed only in that 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 in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17

Artistes And Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, 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 sports person from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to the income derived by an entertainer or a sportsperson from the activities performed within the framework of the cultural agreement concluded between the Contracting States.

ARTICLE 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of a Contracting State in consideration of past employment may be taxed only in that Contracting State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other Contracting State 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 public schemes which are parts of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that Contracting State.

ARTICLE 19

Government Services

- (1) (a) Salaries, wages and other similar remuneration paid by a Contracting State, a political subdivision or local authority thereof to an individual in respect of services rendered to that State, a political subdivision or local authority shall be taxable only in that Contracting State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that other Contracting State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, a political subdivision or local authority shall be taxable only in that Contracting State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

ARTICLE 20

Teachers, Students And Researchers

1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other Contracting State, provided that such payments arise from sources outside that other State.
2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State for the purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempted from tax in that other Contracting State, provided that such payments arise from sources outside that other State.

This paragraph shall not apply to remuneration and income from research if such research is undertaken for persons and enterprises with business purposes.

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 Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the right or property in respect of which the income is derived is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by 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 by 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 Contracting State.

3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the place of effective management of the enterprise is situated.
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. In the case of the Islamic Republic of Iran, double taxation shall be avoided as follows:
 - (a) Where a resident of the Islamic Republic of Iran derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Republic of Kenya, the Islamic Republic of Iran shall allow:
 - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Republic of Kenya;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Republic of Kenya.

Such deduction in either case shall not, however, exceed that part of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital.

- (b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of the Islamic Republic of Iran is exempted from tax in that State, the Islamic Republic of Iran may notwithstanding the exemption, in calculating the amount of tax on the remaining income or capital of such resident take into account the exempted income or capital.
2. In the case of the Republic of Kenya, double taxation shall be avoided as follows:
 - (a) where a resident of Kenya derives income or own capital which, in accordance with the provisions of this Agreement, may be taxed in the Islamic Republic of Iran, Kenya shall allow as a credit against the tax on the income or capital of that resident an amount equal to the tax paid in the Islamic Republic of Iran.

Such credit, however, shall not exceed that portion of the tax as computed before the credit is given, which is attributable, as the case may be, to the income which may be taxed in the Islamic Republic of Iran.

- (b) Where in accordance with any provision of the agreement, income derived by a resident of Kenya is exempt from tax in Kenya, Kenya may nevertheless, in calculating the amount of tax on the remaining income of such resident take into account the exempted income.

ARTICLE 24

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or maybe subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied than the taxation levied on enterprises of that other Contracting State carrying on the same activities.
3. 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 the other Contracting State shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first - mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first - mentioned State.
5. These provisions 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 personal status or family responsibilities which it grants to its own residents.

ARTICLE 25

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both 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 laws 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 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other

Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

ARTICLE 26

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder 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 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 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 the 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.
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 against the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. (order public)

ARTICLE 27

Members Of Diplomatic Missions And Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry Into Force

1. This Agreement shall be ratified in either of the Contracting State in accordance with their laws and regulations and the instruments of ratification shall be exchanged as soon as possible.
2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - (a) In the Islamic Republic of Iran in respect of taxes on income arising, or capital owned, in any fiscal year beginning on or after the first day of Farvardin (in the Republic of Kenya corresponding to March 21) next following the calendar year in which the Agreement enters into force;
 - (b) In the Republic of Kenya in respect of taxes on income arising, or capital owned, in any year of income beginning on or after the first day of January (in the Islamic Republic of Iran corresponding to Dec 11) next following the calendar year in which the Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall remain in force until it is terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect in respect of any portion of the income and capital that exist or are earned at the beginning of or after the calendar year following the year in which the notice has been given.

Made on the 24th February, 2014.

HENRY ROTICH,
*Cabinet Secretary for the
National Treasury.*