N° 6552

CHAMBRE DES DEPUTES

Session ordinaire 2012-2013

P R O J E T D E L O I

portant approbation de l'Accord entre l'Administration des Contributions Directes du Luxembourg et l'Agence des impôts du Ministère des Finances à Taipei, Taïwan tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune, et du Protocole y relatif, signés à Luxembourg, le 19 décembre 2011

* * *

(Dépôt: le 7.3.2013)

SOMMAIRE:

*

ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Finances et après délibération du Gouvernement en Conseil;

Arrêtons:

Article unique.– Notre Ministre des Finances est autorisé à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation de l'Accord entre l'Administration des Contributions Directes du Luxembourg et l'Agence des impôts du Ministère des Finances à Taipei, Taïwan tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune, et du Protocole y relatif, signés à Luxembourg, le 19 décembre 2011.

Château de Berg, le 18 février 2013

Le Ministre des Finances,
Luc FRIEDEN

HENRI

*

TEXTE DU PROJET DE LOI

Art. 1er. Sont approuvés l'Accord entre l'Administration des Contributions Directes du Luxembourg et l'Agence des impôts du Ministère des Finances à Taipei, Taïwan tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune, et le Protocole y relatif, signés à Luxembourg, le 19 décembre 2011.

Art. 2. Les demandes de renseignements introduites par application de l'échange de renseignements prévu par l'Accord visé par l'article 1er sont traitées suivant la procédure instituée par les articles 2 à 6 de la loi du 31 mars 2010 portant approbation des conventions fiscales et prévoyant la procédure y applicable en matière d'échange de renseignements sur demande.

*

COMMENTAIRE DES ARTICLES DE L'ACCORD

Ad article 1

Les *articles 1 et 2* délimitent le champ d'application de l'Accord en définissant respectivement les personnes et les impôts visés.

Dans la définition du champ d'application, il est fait référence à la notion de résident d'un „territoire" et non à la notion de résident d'un „Etat contractant". Cette modification est nécessaire vu que le statut international de Taïwan ne se prête pas à la conclusion d'un traité au sens de la Convention de Vienne sur le droit des traités. L'accord est conclu entre l'Administration des Contributions Directes du Luxembourg et l'Agence des Impôts du Ministère des Finances à Taipei, Taïwan.

Conformément à l'article 1, l'Accord s'applique aux personnes qui sont des résidents d'un territoire ou des deux territoires.

L'Accord s'applique donc aux personnes visées à l'article 3 qui sont des résidents au sens de l'article 4, soit du territoire dans lequel l'Administration des Contributions Directes est compétente pour l'application de la législation fiscale luxembourgeoise, soit du territoire sur lequel l'Agence des impôts taïwanaise est compétente pour l'application de la législation fiscale.

Le paragraphe 3 de l'article 2 fournit une liste des impôts actuels auxquels l'Accord s'appliquera. Du côté luxembourgeois, il s'agit de l'impôt sur le revenu des personnes physiques, de l'impôt sur le revenu des collectivités, de l'impôt sur la fortune et de l'impôt commercial communal.

Cependant, le paragraphe 4 prévoit que l'Accord s'appliquera aux impôts de nature identique ou analogue qui, après la signature, s'ajouteraient ou remplaceraient ceux couverts par l'Accord.

L'*article 3* réunit un certain nombre de dispositions générales nécessaires à l'interprétation des termes utilisés dans l'Accord afin de prévenir d'éventuelles divergences d'interprétation et de qualification dans les deux territoires. Il comprend au sous-paragraphe a) du paragraphe 1 la définition de „territoire".

L'*article 4* donne une définition de l'expression „résident". Cette notion est importante, étant donné que l'Accord ne s'applique qu'aux personnes qui sont des résidents d'un territoire ou des deux territoires. Elle permet de résoudre les cas de double résidence.

Le paragraphe 1 vise en principe les personnes qui sont assujetties dans un territoire en vertu de la législation interne. Il retient comme critères le domicile, la résidence, le siège de direction, le lieu d'enregistrement ou tout autre critère de nature analogue.

Le lieu d'enregistrement a été ajouté à l'énumération des termes et expressions qui peuvent être pris en considération pour la qualification de l'expression „résident d'un territoire".

Pour ce qui est de la résidence des sociétés, le critère du siège de direction effective en tant que critère de préférence n'a pas été retenu à la demande des négociateurs taïwanais. Le paragraphe 4 de l'Accord figure dans les commentaires du modèle de l'OCDE et il propose une solution alternative pour résoudre les cas de double résidence de sociétés. Il préconise une approche au cas par cas des autorités compétentes des deux territoires pour déterminer le siège de direction effective d'une personne morale.

En l'absence d'un accord entre les autorités compétentes des deux territoires, une personne ne pourra prétendre à aucun des allègements ou exonérations prévus par l'Accord sauf dans la mesure et selon les conditions convenues par les autorités compétentes des deux territoires en ayant recours au mécanisme de la procédure amiable prévue à l'article 25.

En ce qui concerne les personnes physiques, il y a lieu de relever que Taïwan applique le système de territorialité. Le paragraphe 2 de l'article 4 vise à confirmer de façon explicite qu'une personne physique n'est pas obligatoirement à exclure du champ d'application du présent Accord au motif que le système fiscal qui lui est appliqué repose sur l'existence du principe de territorialité.

En effet, cette approche est expressément confirmée par les commentaires de l'OCDE relatifs à l'article 4 qui disposent à ce sujet *„ ... elle risquerait d'exclure du champ d'application de la Convention tous les résidents de pays qui appliquent un principe de territorialité en matière fiscale alors que de toute évidence, ce n'est pas le résultat recherché"*. L'approche adoptée à l'article 4 est donc conforme aux commentaires de l'OCDE.

Le paragraphe 3 de l'article 4 vise à résoudre les cas de double résidence des personnes physiques par l'application des critères retenus aux sous-paragraphes a) à c).

Le Protocole de l'Accord relatif à l'article 4 confirme de façon explicite qu'un organisme de placement collectif qui est établi dans un territoire et qui est considéré comme une personne morale aux fins d'imposition dans ce territoire est considéré comme un résident du territoire dans lequel il est établi et comme le bénéficiaire effectif des revenus qu'il reçoit.

A ce propos, il y a lieu de relever que les organismes de placement collectif sont explicitement considérés comme des résidents de sorte qu'ils peuvent bénéficier des avantages de l'Accord.

En contrepartie les dividendes et les intérêts payés à un organisme de placement collectif sont soumis à une retenue à la source de 15% tandis que pour les personnes autres qu'un organisme de placement collectif cette retenue s'élève à 10%, sous réserve des dispositions du paragraphe 3 de l'article 11.

L'*article 5* donne une définition de l'établissement stable. Elle ne correspond qu'en partie au modèle de l'OCDE et reprend entre autres certaines dispositions du modèle des Nations Unies qui a adopté une définition plus large de la notion d'établissement stable.

Ainsi, le paragraphe 3. a) considère comme établissement stable un chantier de construction ou de montage, un projet de dragage ainsi que les activités de surveillance s'y exerçant lorsque ce chantier ou ces activités ont une durée supérieure à six mois.

Par ailleurs, le paragraphe 3. b) prévoit que la fourniture de services dans un territoire par une entreprise agissant par l'intermédiaire de salariés ou d'autre personnel engagé à cette fin constitue un établissement stable lorsque ces salariés ou ce personnel séjournent dans ce territoire pendant une ou des périodes excédant au total six mois endéans toute période de douze mois.

Les *articles 6 à 21* posent les règles d'attribution du droit d'imposition concernant diverses catégories de revenus pour lesquelles des dispositions détaillées sont nécessaires.

L'*article 6* traite de l'imposition des revenus immobiliers. Il accorde le droit d'imposer le revenu des biens immobiliers au territoire dans lequel est situé le bien immobilier qui produit le revenu. Le paragraphe 4 précise que les dispositions des paragraphes 1 et 3 s'appliquent non seulement aux revenus de biens immobiliers des entreprises industrielles ou commerciales, mais également aux revenus des biens immobiliers servant à l'exercice d'une profession indépendante visés à l'article 14.

L'*article 7* qui a trait aux bénéfices des entreprises reprend le texte du modèle de l'OCDE dans sa version 2008.

Cet article dispose qu'une entreprise n'est imposable dans le territoire de la source que si elle y dispose d'un établissement stable. Dans cette hypothèse, seuls les bénéfices imputables à cet établissement stable sont imposables dans le territoire de la source des revenus.

Le paragraphe 1 de l'*article 8* concernant la navigation maritime et aérienne ne se réfère pas, pour la détermination du droit d'imposition, à la notion de siège de direction effective, mais au territoire dont l'entreprise est un résident.

Le paragraphe 2 énumère certains revenus qui constituent des bénéfices provenant de l'exploitation de navires ou d'aéronefs en trafic international.

Le paragraphe 3 dispose que les participants à un pool, une exploitation en commun ou à un organisme international d'exploitation ne sont imposables que sur la partie des bénéfices qui leur est imputable en proportion de leur participation dans l'activité commune.

L'*article 9* permet à un territoire d'opérer des ajustements de bénéfices à des fins fiscales lorsque des transactions ont été conclues entre des entreprises associées dans des conditions autres que celles de pleine concurrence. La rectification de la comptabilité des transactions entre entreprises associées peut entraîner une double imposition économique. Le paragraphe 2 vise à supprimer ces doubles impositions.

L'*article 10* partage le droit d'imposition des dividendes entre le territoire d'où proviennent ces dividendes et le territoire duquel le bénéficiaire est un résident.

Le paragraphe 2 fixe les taux applicables dans le territoire d'où proviennent ces dividendes. Ainsi, l'impôt établi dans le territoire d'où proviennent ces dividendes ne peut excéder 15 pour cent du montant brut des dividendes, si le bénéficiaire effectif est un organisme de placement collectif. Dans tous les autres cas, la retenue maximale s'élève à 10 pour cent du montant brut des dividendes.

Le même principe est repris à l'*article 11* qui réglemente l'imposition des intérêts. Il dispose que l'impôt établi dans le territoire d'où proviennent ces intérêts ne peut excéder 15 pour cent du montant brut des intérêts, si le bénéficiaire effectif est un organisme de placement collectif. Dans tous les autres cas, la retenue maximale s'élève à 10 pour cent du montant brut des intérêts.

Le paragraphe 3 prévoit entre autres une exemption de la retenue à la source sur intérêts en relation avec des prêts interbancaires.

Contrairement à la disposition du modèle de l'OCDE qui ne prévoit qu'une imposition dans le territoire duquel le bénéficiaire des redevances est un résident, l'*article 12* partage le droit d'imposition entre le territoire de la source, d'une part, et de résidence du bénéficiaire effectif, d'autre part.

L'imposition dans le territoire de la source ne peut excéder 10 pour cent du montant brut des redevances. L'ajout, par rapport au modèle de l'OCDE, d'une telle retenue à la source sur les redevances a rendu nécessaire l'insertion du paragraphe 5 définissant le territoire de la source.

L'*article 13* traite les gains en capital. Le paragraphe 2 précise que la règle générale ainsi établie vaut également pour les biens mobiliers servant à l'exercice d'une profession indépendante visée à l'article 14. Le paragraphe 4 du modèle de l'OCDE concernant l'aliénation d'actions de sociétés à prépondérance immobilière a été omis.

A la demande des négociateurs taïwanais, l'Accord comprend un *article 14* concernant l'imposition des professions indépendantes qui ne figure plus dans le modèle de convention de l'OCDE depuis la version 2000.

Cet article dispose que le droit d'imposition des revenus qu'un résident d'un territoire tire d'une profession indépendante est attribué au territoire où s'exerce une pareille activité par l'intermédiaire d'une base fixe. Il en est de même dans l'hypothèse où le résident séjourne pendant plus de 183 jours dans le territoire où s'exerce l'activité indépendante. Dans ce cas, seule la fraction des revenus qui est tirée des activités exercées dans cet autre territoire est imposable dans cet autre territoire.

Au paragraphe 3 de l'*article 15* sur les professions dépendantes, il est fait référence à la résidence de l'entreprise et non pas au siège de direction effective en ce qui concerne le personnel travaillant à bord d'un navire ou d'un aéronef exploité en trafic international.

L'*article 16* vise les rémunérations perçues par une personne physique ou morale qui est un résident d'un territoire, en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est un résident de l'autre territoire. L'article considère que ces services sont imposables dans le territoire dont la société concernée est un résident.

S'agissant de l'*article 17* ayant pour objet l'imposition des artistes du spectacle et des sportifs, celui-ci stipule que les revenus des artistes du spectacle ainsi que des sportifs sont imposables dans le

territoire où ils exercent leurs activités, même si ces revenus sont attribués non pas à l'artiste ou au sportif lui-même, mais à une autre personne.

Le paragraphe 3 prévoit certains cas où les dispositions sur l'imposition dans le territoire de l'exercice des activités ne s'appliquent pas. Dans ces cas, les revenus sont imposables dans le territoire de résidence de l'artiste du spectacle ou du sportif.

L'*article 18* qui règle le droit d'imposition des pensions et rentes retient de façon générale un droit d'imposition exclusif pour le territoire duquel proviennent les pensions et rentes.

Cette disposition s'applique également aux pensions et autres rémunérations similaires payées en application de la législation sur la sécurité sociale. Elle maintient en matière de pensions la position de négociation générale du Luxembourg prévoyant une imposition dans le territoire de la source.

L'*article 19* réglementant le droit d'imposition des revenus relatifs aux fonctions publiques suit l'approche adoptée par la disposition correspondante du modèle de l'OCDE.

L'*article 20* règle le régime d'imposition applicable aux étudiants.

L'*article 21* réglemente le droit d'imposition des revenus qui ne sont pas traités dans les articles 6 à 20. Suivant le modèle de l'OCDE ces revenus ne sont, en principe, imposables que dans le territoire dont le bénéficiaire est un résident.

Le paragraphe 3 de l'article 21 déroge au principe général du modèle de l'OCDE en permettant l'imposition dans le territoire duquel proviennent des éléments du revenu qui ne sont pas expressément mentionnés dans les autres articles de l'Accord.

L'*article 22* réglemente le droit l'imposition de la fortune.

L'*article 23* contient les dispositions pour éliminer la double imposition.

Le Luxembourg a choisi la méthode de l'exemption avec réserve de progressivité pour éviter la double imposition. Cette méthode consiste à exonérer de l'impôt luxembourgeois les revenus et la fortune imposables à Taïwan, mais à en tenir compte pour calculer le taux d'impôt applicable aux revenus et à la fortune qui sont imposables au Luxembourg.

En ce qui concerne les dividendes, les intérêts et les redevances dont le droit d'imposition est, aux termes des articles 10, 11 et 12, partagé entre le territoire d'où proviennent les revenus et le territoire dont le bénéficiaire est un résident, le Luxembourg applique pour ces catégories de revenus la méthode de l'imputation. Il en est de même pour les revenus des artistes et sportifs visés à l'article 17, ainsi que pour les autres revenus visés au paragraphe 3 de l'article 21.

Cette méthode consiste à intégrer ces revenus de source étrangère dans la base d'imposition luxembourgeoise, mais à déduire de l'impôt luxembourgeois l'impôt payé sur ces revenus à Taïwan. La déduction ne peut toutefois pas dépasser l'impôt luxembourgeois relatif à ces revenus.

Le sous-paragraphe c) du paragraphe 1 est conforme au modèle de l'OCDE. La disposition proposée par l'OCDE a pour objet d'éviter l'absence d'imposition qui résulterait de désaccords entre le territoire de résidence et le territoire de la source sur les faits d'un cas spécifique ou sur l'interprétation des dispositions de l'Accord. Cette disposition permet ainsi d'éviter une double exonération, de sorte à ne pas aboutir à un résultat qui est contraire à l'objet d'un Accord tendant à éviter les doubles impositions.

Taïwan a opté d'une manière générale pour la méthode de l'imputation.

Les *articles 24 à 30* contiennent certaines dispositions spéciales ainsi que les dispositions finales de l'Accord.

L'*article 24* établit le principe de la non-discrimination. Le paragraphe 6 vise à préciser que les sociétés étrangères ne sont pas exclues de mesures fiscales existant dans la législation taïwanaise.

L'*article 25* règle les cas où une procédure amiable peut être engagée entre les autorités compétentes des deux territoires. Il prévoit que les autorités compétentes doivent s'efforcer de régler par voie

d'accord amiable la situation des contribuables qui ont fait l'objet d'une imposition non conforme aux dispositions de l'Accord. En outre, l'article donne aux autorités compétentes les moyens pour résoudre par accord amiable les problèmes relatifs à l'interprétation ou l'application de l'Accord.

L'*article 26* réglemente l'échange de renseignements entre les territoires contractants. L'article contient des dispositions sur l'échange de renseignements qui respectent le standard international. Le paragraphe 5 de l'article 26 permet donc un échange de renseignements sur demande selon le standard OCDE. Le Protocole précise les conditions et modalités dans lesquelles un échange d'informations devra se faire. L'échange de renseignements ne se fera que pour les impôts visés par l'Accord.

L'*article 27* sur la limitation des avantages du présent Accord contient à la demande des négociateurs taïwanais une disposition destinée à empêcher l'utilisation incorrecte de l'Accord.

Le paragraphe dispose qu'un territoire peut refuser les avantages de l'Accord s'il est établi que le principal objectif ou l'un des principaux objectifs est d'obtenir les avantages prévus par l'Accord.

Il s'agit d'une clause générale anti-abus mais elle oblige les deux territoires de s'engager dans des consultations entre autorités compétentes avant de refuser les exonérations ou réductions d'impôt prévues par l'Accord. Cette clause empêche donc qu'un territoire puisse appliquer l'article 27 de manière unilatérale pour refuser les avantages du présent Accord.

L'interprétation et l'application du présent article est à faire conformément aux commentaires relatifs à l'article 1 du modèle de convention fiscale.

L'*article 28* dispose que l'article 19 du présent Accord s'applique également du côté luxembourgeois au personnel du bureau responsable pour le commerce et les investissements à Taipei, et du côté taïwanais au personnel du bureau responsable pour les relations avec le Luxembourg désigné par les autorités de Taïwan.

L'*article 29* établit les règles relatives à l'entrée en vigueur de l'Accord dans les deux territoires contractants.

L'*article 30* décrit la procédure à respecter en cas de dénonciation de l'Accord par l'un des territoires contractants.

L'Accord est complété par un Protocole dont les dispositions ont été commentées aux articles auxquels elles se réfèrent. Le Protocole forme partie intégrante de l'Accord.

L'Accord a été signé en langue anglaise.

Ad article 2

Les dispositions de l'article 2 font référence à la procédure instituée par les articles 2 à 6 de la loi du 31 mars 2010 portant approbation des conventions fiscales et prévoyant la procédure y applicable en matière d'échange de renseignements sur demande. Ces articles instituent la procédure pour gérer les relations entre le contribuable et les administrations fiscales dans le cadre de l'échange de renseignements.

*

FICHE FINANCIERE

(art. 79 de la loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'Etat)

Le projet de loi ne comporte pas de dispositions dont l'application est susceptible de grever le budget de l'Etat.

*

AGREEMENT

between the Direct Tax Administration of Luxembourg and the Taxation Agency of the Ministry of Finance in Taipei, Taiwan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Direct Tax Administration of Luxembourg and the Taxation Agency of the Ministry of Finance in Taipei, Taiwan

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

Persons covered

This Agreement shall apply to persons who are residents of one or both of the territories referred to in paragraph 3 of Article 2.

Article 2

Taxes covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each territory or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

3. The existing taxes to which the Agreement shall apply are in particular:
   a) in the territory in which the taxation law administered by the Direct Tax Administration (Administration des Contributions Directes) of Luxembourg is applied:
      (i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
      (ii) the corporation tax (l'impôt sur le revenu des collectivités);
      (iii) the capital tax (l'impôt sur la fortune); and
      (iv) the communal trade tax (l'impôt commercial communal);
      including the surcharges levied thereon, whether or not they are collected by withholding at source;
   b) in the territory in which the taxation laws administered by the Taxation Agency of the Ministry of Finance in Taipei, Taiwan are applied:
      (i) the profit-seeking enterprise income tax;
      (ii) the individual consolidated income tax; and
      (iii) the income basic tax;
      including the surcharges levied thereon, whether or not they are collected by withholding at source.

4. The Agreement shall apply also to any identical or substantially similar taxes that 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 territories shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
   a) the term „territory“ means the territory referred to in paragraph 3a) or 3b) of Article 2, as the context requires. The terms „other territory“ and „territories“ shall be construed accordingly;
   b) the term „person“ includes an individual, a company and any other body of persons;
   c) the term „company“ means any body corporate or any entity that is treated as a body corporate for tax purposes;
   d) the terms „enterprise of a territory“ and „enterprise of the other territory“ mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;
   e) the term „international traffic“ means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;
   f) the term „competent authority“ means:
      (i) in the case of the territory in which the taxation law administered by the Direct Tax Administration (Administration des Contributions Directes) of Luxembourg is applied, the Director of Taxes or his authorised representative;
      (ii) in the case of the territory in which the taxation law administered by the Taxation Agency of the Ministry of Finance in Taipei, Taiwan is applied, the Director General of the Taxation Agency or his authorised representative.

2. As regards the application of the Agreement at any time by a territory, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that territory for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4

Resident

1. For the purposes of this Agreement, the term „resident of a territory“ means any person who, under the laws of that territory, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes the authority administering a territory or any political subdivision or local authority thereof.

2. A person is not a resident of a territory for the purposes of this Agreement if that person is liable to tax in that territory in respect only of income from sources in that territory or capital situated therein, provided that this paragraph shall not apply to individuals who are residents of the territory referred to in paragraph 3b) of Article 2, as long as resident individuals are taxed only in respect of income from sources in that territory in accordance with its Income Tax Act.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both territories, then his status shall be determined as follows:
   a) he shall be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);
   b) if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident only of the territory in which he has an habitual abode;
   c) if he has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both territories, the competent authorities of the territories shall endeavour to determine by mutual agreement the territory of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the territories.

Article 5

Permanent establishment

1. For the purposes of this Agreement, the term „permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term „permanent establishment" includes especially:
   a) a place of management;
   b) a branch;
   c) an office;
   d) a factory;
   e) a workshop, and
   f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term „permanent establishment" also encompasses:
   a) a building site, a construction, a dredging project or assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities lasts more than 6 months;
   b) the furnishing of services, including consultancy services, by an enterprise of a territory through employees or other personnel or persons engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) in the other territory for a period or periods aggregating more than 6 months within any twelve-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, display or delivery of goods or merchandise belonging to the enterprise;
   b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, 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 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 on behalf of an enterprise and has, and habitually exercises, in a territory an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that territory in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a territory merely because it carries on business in that territory 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.

7. The fact that a company which is a resident of a territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (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 territory from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

2. The term „immovable property“ shall have the meaning which it has under the law of the territory 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 provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

Article 7

Business profits

1. The profits of an enterprise of a territory shall be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a territory carries on business in the other territory through a permanent establishment situated therein, there shall in each territory 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 which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the territory in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a territory 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 territory 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 and air transport

1. Profits of an enterprise of a territory from the operation of ships or aircraft in international traffic shall be taxable only in that territory.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

a) profits from the rental on a full (time or voyage) basis or a bareboat basis of ships or aircraft; and

b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency, 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 territory participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory and an enterprise of the other territory,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10

Dividends

1. Dividends paid by a company which is a resident of a territory to a resident of the other territory may be taxed in that other territory.

2. However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory, the tax so charged shall not exceed:

a) 15 per cent of the gross amount of the dividends if the beneficial owner of the dividends is a collective investment vehicle established in the other territory and treated as a body corporate for tax purposes in that other territory;

b) 10 per cent of the gross amount of the dividends in all other cases.

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

3. The term „dividends" as used in this Article means income from shares, „jouissance" shares or „jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the territory 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 territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory 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 territory derives profits or income from the other territory, that other territory 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 territory or insofar as the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base situated in that other territory, 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 territory.

Article 11

Interest

1. Interest arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

2. However, such interest may also be taxed in the territory in which it arises and according to the laws in force in that territory, but if the beneficial owner of the interest is a resident of the other territory, the tax so charged shall not exceed:

a) 15 per cent of the gross amount of the interest if the beneficial owner of the interest is a collective investment vehicle established in the other territory and treated as a body corporate for tax purposes in that other territory;

b) 10 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a territory shall be exempt from tax in that territory if it is paid:

a) to the other territory, a political subdivision or a local authority or the Central Bank thereof or any financial institution wholly owned or controlled by the other territory;

b) in respect of a loan granted, guaranteed or insured or a credit extended, guaranteed or insured by an approved instrumentality of the other territory which aims at promoting export;

c) on loans made between banks.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be shall apply.

6. Interest shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the interest, whether he is a resident of a territory or not, has in a territory 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 territory 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 territory, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

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

3. The term „royalties“ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or 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 territory, carries on business in the other territory in which the royalties arise, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be shall apply.

5. Royalties shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the royalties, whether he is a resident of a territory or not, has in a territory

a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each territory, due regard being had to the other provisions of this Agreement.

Article 13

Capital gains

1. Gains derived by a resident of a territory from the alienation of immovable property referred to in Article 6 and situated in the other territory may be taxed in that other territory.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or of movable property pertaining to a fixed base available to a resident of a territory in the other territory 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 territory.

3. Gains derived by an enterprise of a territory 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 that territory.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the territory of which the alienator is a resident.

Article 14

Independent personal services

1. Income derived by a resident of a territory in respect of professional services or other activities of an independent character shall be taxable only in that territory except in the following circumstances, when such income may also be taxed in the other territory:

a) if he has a fixed base regularly available to him in the other territory 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 territory; or

b) if his stay in the other territory is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the calendar year concerned; in that case, only so much income as is derived from his activities performed in that other territory may be taxed in that other territory.

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

Article 15

Dependent personal services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment shall be taxable only in that territory

unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:

a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending 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 territory, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other territory.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the territory of which the enterprise is a resident.

Article 16

Directors' fees

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

Article 17

Artistes and sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other territory, may be taxed in that other territory.

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, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the territory in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a territory by an artistes or sportsperson if the visit to that territory is wholly or mainly supported by public funds of one or both of the authorities administering a territory or any political subdivision or local authority thereof. In such case, the income is taxable only in the territory of which the artiste or the sportsperson is a resident.

Article 18

Pensions and annuities

1. Pensions and other similar remuneration paid to a resident of a territory in consideration of past employment, shall be taxable only in the territory in which they arise. This provision shall also apply to annuities and to pensions and other similar remuneration paid by an entity of a territory under social security legislation in force in that territory or under a public scheme organised by that territory in order to supplement the benefits of that social security legislation.

2. The term „annuity“ means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

Government service

1. a) Salaries, wages and other similar remuneration, other than a pension or annuity, paid by an authority administering a territory, a political subdivision or a local authority thereof to an individual in respect of services rendered to that territory or subdivision or authority shall be taxable only in that territory.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the other territory if the services are rendered in that territory and the individual is a resident of that territory who:

      (i) is a national of that territory; or

      (ii) did not become a resident of that territory solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions or annuities, and other similar remuneration in respect of services rendered in connection with a business carried on by an authority administering a territory or a political subdivision or a local authority thereof.

Article 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a territory a resident of the other territory and who is present in the first-mentioned territory 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 territory, provided that such payments arise from sources outside that territory.

Article 21

Other income

1. Items of income of a resident of a territory, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that territory.

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 territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory independent personal service from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 22

Capital

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

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or by movable property pertaining to a fixed base available to a resident of a territory in the other territory for the purpose of performing independent personal services may be taxed in that other territory.

3. Capital of an enterprise of a territory represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that territory.

4. All other elements of capital of a resident of a territory shall be taxable only in that territory.

Article 23

Elimination of double taxation

1. Subject to the provisions of the law of the territory referred to in paragraph 3a) of Article 2 regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

a) where a resident of the territory referred to in paragraph 3a) of Article 2 derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the other territory, the first-mentioned territory shall, subject to the provisions of paragraphs b) and c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted;

b) where a resident of the territory referred to in paragraph 3a) of Article 2 derives income which, in accordance with the provisions of Articles 10, 11, 12, 17 and paragraph 3 of Article 21 may be taxed in the other territory, the first-mentioned territory shall allow as a deduction from the income tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in the other territory. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the other territory;

c) the provisions of paragraph a) shall not apply to income derived or capital owned by a resident of the territory referred to in paragraph 3a) of Article 2 where the other territory applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11 or 12 to such income.

2. Subject to the provisions of the law of the territory referred to in paragraph 3b) of Article 2 regarding the elimination of double taxation, double taxation shall be eliminated as follows:

where a resident of the territory referred to in paragraph 3b) of Article 2 derives income from the other territory, the amount of tax on that income paid in that other territory (but excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) and in accordance with the provisions of this Agreement, shall be credited against the tax levied in the first-mentioned territory imposed on that resident. The amount of credit, however, shall not exceed the amount of the tax in the first-mentioned territory on that income computed in accordance with its taxation laws and regulations.

Article 24

Non-discrimination

1. Nationals of a territory shall not be subjected in the other territory 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 territory in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the territories.

2. The taxation on a permanent establishment which an enterprise of a territory has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises

of that other territory carrying on the same activities. This provision shall not be construed as obliging a territory to grant to residents of the other territory any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory 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 territory. Similarly, any debts of an enterprise of a territory to a resident of the other territory 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 territory.

4. Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory 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 territory are or may be subjected.

5. The provisions of this Article shall apply to taxes which are the subject of this Agreement.

6. This Article shall not be construed so as to apply to any provision of the laws of a territory which:

a) does not allow tax rebates, credits or exemption in relation to dividends paid by a company that is a resident of that territory for purposes of its tax; or

b) is designed for the purpose of the promotion of economic development and public policy and is not applicable in the case of a permanent establishment of an enterprise which is a resident of the other territory provided that the first mentioned territory does not impose income tax on the earnings which are repatriated to that enterprise by its permanent establishment.

Article 25

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the territory 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 endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other territory, 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 territories.

3. The competent authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

1. The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of

the domestic laws concerning taxes covered by this Agreement imposed on behalf of the territories, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a territory the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;

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 territory;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a territory to decline to supply information upon request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

Limitation on benefits

Notwithstanding the provisions of any other Article of this Agreement, a resident of a territory shall not receive the benefit of any reduction in or exemption from tax provided for in the Agreement by the other territory if as a result of consultations between the competent authorities of both territories it is established that the conduct of operations by such resident had for the main purpose or one of the main purposes to obtain the benefits of this Agreement.

Article 28

Staff of representative offices

The provisions of Article 19 are applicable to staff of the Luxembourg Trade and Investment Office, Taipei and staff of the representative office responsible for relations with Luxembourg sent by the governing authorities of Taiwan.

Article 29

Entry into force

1. The Agreement shall be approved in accordance with the internal legal procedures under the laws in force of both territories. The Agreement shall enter into force on the date of the later notification of the competent authorities that the internal legal procedures have been completed.

2. The Agreement shall have effect:

a) in respect of taxes withheld at source, to income payable on or after 1st January of the calendar year next following the year in which the Agreement enters into force;

b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January of the calendar year next following the year in which the Agreement enters into force.

Article 30

Termination

1. The Agreement shall be applicable indefinitely in each territory. The competent authorities of the territories may communicate with each other for the purpose of the termination of this Agreement. In that event, the information of termination to the other territory shall be given at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of the entry into force of this Agreement.

2. The Agreement shall cease to have effect:

a) in respect of taxes withheld at source, to income payable on or after 1st January of the calendar year next following the year in which the information of termination is given;

b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January of the calendar year next following the year in which information of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Luxembourg this day of 19th December 2011, in the English language.

For the Direct Tax Administration of Luxembourg	*For the Taxation Agency of the Ministry of Finance in Taipei, Taiwan*
(signature)	(signature)

*

PROTOCOL

At the moment of the signing of the Agreement between the Direct Tax Administration of Luxembourg and the Taxation Agency of the Ministry of Finance in Taipei, Taiwan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

I. With reference to Article 4:

A collective investment vehicle which is established in a territory and that is treated as a body corporate for tax purposes in this territory shall be considered as a resident of the territory in which it is established and as the beneficial owner of the income it receives.

II. With reference to Article 26:

The competent authority of the requesting territory shall provide the following information to the competent authority of the requested territory when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

a) the identity of the person under examination or investigation;

b) a statement of the information sought including its nature and the form in which the requesting territory wishes to receive the information from the requested territory;

c) the tax purpose for which the information is sought;

d) grounds for believing that the information requested is held in the requested territory or is in the possession or control of a person within the jurisdiction of the requested territory;

e) to the extent known the name and address of any person believed to be in possession of the requested information;

f) a statement that the requesting territory has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Luxembourg this day of 19th December 2011, in the English language.

For the Direct Tax Administration of Luxembourg	*For the Taxation Agency of the Ministry of Finance in Taipei, Taiwan*
(signature)	(signature)