MOORE

Agreement between the Government of the Republic of Mozambique and the Government of the Republic of India

Resolution No. 23/2011 of 10 June



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RESOLUTION NO. 23/2011 OF 10 JUNE

If there is a need to comply with the requirements set out in the Agreement between the Government of the Republic of Mozambique and the Government of the Republic of India to avoid Double Taxation and prevent Tax Evasion in Matters of Income Taxes, under the provisions of Article 204(1)(g) of the Constitution of the Republic, the Council of Ministers determines:

Article 1. The Agreement between the Government of the Republic of Mozambique and the Government of the Republic of India for the Avoidance of Double Taxation and Prevention of Tax Evasion in Matters of Income Taxes and the respective Additional Protocol, signed on 30 September 2010, in New Delhi, Republic of India, is hereby ratified, the attached texts of which in Portuguese and English are an integral part of this Resolution.

Art. 2. The Ministry of Finance is responsible for adopting all necessary measures for the implementation of this Agreement.

Approved by the Council of Ministers, on January 25th, 2011.

Public.

The Prime Minister, Aires Bonifácio Baptista Ali.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE AND THE GOVERNMENT OF THE REPUBLIC OF INDIA TO AVOID DOUBLE TAXATION AND PREVENT TAX EVASION IN MATTERS OF INCOME TAXES

The Government of the Republic of Mozambique and the Government of the Republic of India; Desirous of concluding an Agreement with a view to avoiding double taxation and preventing tax evasion in matters of Income Taxes and with a view to promoting economic cooperation between the two countries, agree on the following provisions:

ARTICLE 1 – Persons concerned

This Agreement applies to persons residing in one or both of the Contracting States.

ARTICLE 2 – Taxes concerned

1. This Agreement shall apply to the income taxes required by each of the Contracting States, their political subdivisions or their local authorities, regardless of the system used for their collection.

2. Taxes on total income or on elements of income, including taxes on gains derived from the disposal of movable or immovable property, as well as taxes on the total amount of salaries paid by companies, shall be considered taxes on income.

3. The current taxes to which this Agreement applies are, inter alia:

(a) in the case of Mozambique:

(i) Personal Income Tax (IRPS); e

(ii) Corporate Income Tax (IRPC) (hereinafter referred to as "Mozambican tax").

b) In the case of India: Income Tax including any surcharge (hereinafter referred to as "Indian tax").

4. The Agreement shall also apply to taxes of an identical or substantially similar nature which are established after the date of signature of the Agreement and which may be added to or replace existing taxes. The competent authorities of the Contracting States shall communicate to each other any significant changes made to their respective tax laws.

ARTICLE 3 – General Definitions

1. For the purposes of this Agreement, unless the context requires otherwise:

a) The term "Mozambique" refers to the entire territorial extension of the Republic of Mozambique and its territorial sea as well as other areas, including the islands, where, in accordance with Mozambican law and international law, the Republic of Mozambique has sovereign rights in relation to the exploration and exploitation of natural resources, namely the seabed, its subsoil and the underlying waters";

(b) the term 'India' means the territorial extent of India and includes the territorial sea and airspace, as well as any other maritime areas over which India exercises sovereign rights, other rights and jurisdiction, in accordance with Indian law and in accordance with international law, including the United Nations Convention on the Law of the Sea;

(c) The terms "Contracting State" and "the other Contracting State" shall mean, depending on the context, the Republic of Mozambique or the Republic of India;

(d) The term "person" means a natural person, a company and any other entity that is treated as a person for tax purposes in accordance with the tax laws in force in the respective Contracting States;

(e) The term "company" means any legal person or any entity treated as a legal person for tax purposes;

f) The term "undertaking" applies to the exercise of any economic activity;

(g) the terms "undertaking of a Contracting State" and "undertaking of the other Contracting State" shall mean respectively an undertaking operated by a resident of a Contracting State and an undertaking operated by a resident of the other Contracting State;

(h) the term "international traffic" means any carriage carried out by a ship or aircraft operated by an undertaking of a Contracting State, except where the ship or aircraft is operated only between places situated in the other Contracting State;

(i) The term "competent authority" means:

(i) In the case of Mozambique, the Minister of Finance or his authorised representative;

(ii) In the case of Mozambique, the Minister of Finance, Government of India or its authorised representative.

(j) The term "national" means:

(i) any individual holding the nationality of a Contracting State;

(ii) Any legal person, partnership or association formed in accordance with the legislation in force in that Contracting State.

k) The term "tax" means the Indian tax or Mozambican tax, as the context requires, but does not include any amount due in respect of any error or commission in respect of taxes to which this Agreement applies or which would represent a penalty or fine applicable in respect of such taxes.

l) The expression "fiscal year" means:

(i) In the case of Mozambique, the financial year commencing on 1 January or any other financial year as defined in Mozambican income tax legislation;

(ii) In the case of India, the financial year commencing on 1 April.

2. With respect to the application of this Agreement at any given time by a Contracting State, any expression not defined therein, unless the context requires otherwise, shall have the meaning given to it at that time by the legislation of that State governing the taxes to which this Agreement applies, and the interpretation resulting from the tax legislation shall prevail over that resulting from other legislation of that State.

ARTICLE 4 – Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is subject to tax there by reason of his domicile, residence, place of conduct or any other criterion of a similar nature, and also includes that State, its political subdivisions or its local authorities. However, that term does not include any person who is subject to tax in that State, only in respect of income from sources located in that State.

2. Where, by virtue of paragraph 1, a natural person is resident of both Contracting States, his or her situation shall be determined as follows:

(a) shall be deemed to be a resident only of the State in which he has a permanent residence. If he has a permanent residence at his disposal in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closest (centre of vital interests);

(b) if the State in which he has the centre of vital interests cannot be determined or if he does not have a permanent residence at his disposal in any of the States, he shall be deemed to be a resident only of the Contracting State in which he habitually resides;

(c) if he/she habitually stays in both States, or if he/she does not habitually stay in either of them, he/she shall be deemed to be resident only in the State of which he/she is a national;

(d) If he is a national of both States, or if he is not a national of either of them, the competent authorities of the Contracting States shall settle the case by mutual agreement.

2. Where, by virtue of paragraph 1, a person, other than a natural person, is resident of both Contracting States, he shall be deemed to be resident only in the State in which his effective management is situated. If it cannot be determined in which State he has effective management, then the competent authorities of the Contracting States shall settle the matter by common agreement.

ARTICLE 5 – Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed facility through which the undertaking carries on all or part of its business.

2. The term "permanent establishment" includes, inter alia:

a) A place of direction;

b) A branch;

c) An office;

d) A factory;

e) A workshop;

f) A place of sale;

g) A warehouse for the purpose of storing third-party goods;

h) A farm, plantation or other place where agricultural, forestry and planting activities or related activities are carried out; e

i) A mine, oil or gas well, quarry or any other natural resource extraction site.

3. The term "permanent establishment" also includes:

(a) a site of the building or construction site or an installation or assembly project, or the supervisory activities in connection therewith, but only if that site, project or activity is maintained for a period exceeding 12 months.

(b) the provision of services, including consultancy services, by an undertaking through employees or other personnel employed by the undertaking for such purposes, but only if such activities continue (for the same or a related project) in a Contracting State for a period or periods totalling more than nine months in any 12-month period.

4. Notwithstanding the provisions of this Article, the term "permanent establishment" shall be understood as not implying:

(a) premises used solely for storing or delivering goods or merchandise belonging to the undertaking;

(b) a warehouse of goods or merchandise belonging to the undertaking which is kept solely for the purpose of storing or delivering them;

(c) a warehouse of goods or merchandise belonging to the undertaking, kept solely for processing by other undertakings;

d) A facility is maintained solely to purchase goods or merchandise or to gather information for the company;

e) A fixed installation, maintained solely for the purpose of carrying out, for the undertaking, any other activity of a preparatory or auxiliary nature;

(f) a fixed installation maintained solely for the exercise of any combination of the activities referred to in points (a) to (e), provided that the overall activity of the fixed installation resulting from such a combination is of a preparatory or ancillary nature.

5. Notwithstanding paragraphs 1 and 2 of this Article, where a person – who is not an independent agent, to whom paragraph 7 applies – acts in a Contracting State on behalf

of an undertaking of another Contracting State, that undertaking shall be deemed to have a permanent establishment in the first Contracting State in respect of any activity which that person carries on for the undertaking, if that person:

(a) has and habitually exercises in that State the power to conclude contracts on behalf of that undertaking, unless the activities of such person are limited to those referred to in paragraph 4 which, if carried on by means of a fixed installation, would not permit such fixed installation to be regarded as a permanent establishment in accordance with the provisions of this subparagraph;

(b) it does not have such authority, but habitually maintains in the first State a stock of goods or merchandise belonging to the undertaking through which it regularly supplies goods and merchandise on behalf of the undertaking; or

(c) it usually insures orders in the first mentioned State, either exclusively or almost exclusively for the company itself.

6. Without prejudice to the preceding provisions of this Article, an insurance undertaking of a Contracting State shall, except in respect of reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other Contracting State or insures risks situated there through a person other than an independent agent to whom the provisions of paragraph (7) apply.

7. An undertaking shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on its business in that State through the intermediary of a broker, a Commissioner-General or any other independent agent, provided that those persons act in the normal course of their business. However, if the activity of such an independent agent is devoted exclusively or almost exclusively to that undertaking, he shall not be regarded as an independent agent for the purposes of this paragraph.

8. The fact that a company resident in a Contracting State controls or is controlled by a company which is resident in the other Contracting State or carries on business in that other State (whether through a permanent establishment or otherwise) is not in itself sufficient to make any of those companies a permanent establishment of the other.

ARTICLE 6 – Income from immovable property

1. Income which a resident of a Contracting State receives from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning given to it by the law of the Contracting State in which such property is situated. The term shall always include the accessories, livestock and equipment of agricultural and forestry holdings, rights to which the provisions of private law relating to the ownership of immovable property apply, usufruct of immovable property and rights to variable or fixed remuneration for the exploitation or concession of the exploitation of 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, lease or any other form of use of immovable property.

4. The provisions of paragraphs (1) and (3) shall apply equally to income from the immovable property of an undertaking and to income from immovable property used for the exercise of self-employed professions.

ARTICLE 7 – Corporate profits

1. The profits of an undertaking in a Contracting State may be taxed in that State only unless the undertaking carries on its business in the other Contracting State through a permanent establishment situated there. If the undertaking carries on its business in this way, its profits may be taxed in the other State, but only in so far as they are attributable to that permanent establishment.

2. Subject to paragraph 3 of this Article, where an undertaking of a Contracting State carries on its business in the other Contracting State through a permanent establishment situated there, each Contracting State shall charge to that permanent establishment the profits which it would make if it were a separate and separate undertaking carrying on the same or similar activities under the same or similar conditions and dealing with the undertaking of which it is a permanent establishment with absolute independence.

3. In determining the profit of a permanent establishment, it shall be permissible to deduct expenses incurred in attaining the purposes pursued by that permanent establishment, including management and general administration expenses, incurred for that purpose, either in the State in which that permanent establishment is situated or outside it. However, no deduction shall be allowed in respect of amounts, if any, paid (unless it is reimbursement of expenses incurred) by the permanent establishment to the head office of the undertaking, or any other of its establishments, in the form of royalties, royalties or other similar payments in return for the use of patents, know-how or other rights, or through commissions or other payments for specific services performed or for management, or in the case of banking undertakings, as interest on loans to the permanent establishment. Similarly, in determining the profits of a permanent establishment, the amounts charged (other than reimbursement of expenses incurred) by the permanent establishment at the head office of the undertaking or any other of its establishments by way of royalties, royalties or other similar payments in return for the use of patents, know-how or other rights, or by way of commissions or other payments, for specific services performed or for management, or, except in the case of banking undertakings, by means of interest on loans taken out at the head office of the undertaking or any of its establishments, shall not be taken into account.

4. If it is customary for a Contracting State to determine the profits attributable to a permanent establishment on the basis of an apportionment of the total profits of the undertaking among its various parts, the provisions of paragraph 2 shall not prevent that Contracting State from determining the taxable profits according to the usual apportionment; the apportionment method adopted shall, however, lead to a result consistent with the principles set out in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be calculated each year in accordance with the same method, unless there are valid and sufficient reasons for proceeding differently.

7. Where profits comprise elements of income specifically dealt with in other articles of this Agreement, the provisions thereof shall not be affected by the provisions of this Article.

ARTICLE 8 – Sea and Air Transport

1. The profits of an undertaking of a Contracting State arising from the operation of ships or aircraft in international trade may be taxed only in that State.

2. Profits accruing from a transport undertaking which is resident of a Contracting State for the use, maintenance and hire of containers (including trailers and other equipment for the carriage of containers) used for the carriage of goods and merchandise in international trade which are incidental to or connected with the operation of ships or aircraft in international trade may be taxed only in that State, unless the containers are used only within the other Contracting State.

3. For the purposes of this Article, interest generated from investments directly linked to the operation of ships or aircraft in international traffic shall be considered as profits arising from the operation of such ships or aircraft if they are an integral part of the performance of such activity, and the provisions of Article 11 shall not apply in respect of such interest.

4. The provisions of paragraph 1 shall also apply to profits arising from participation in a pool, a joint operation or an international operating body.

ARTICLE 9 – (Associated companies)

1. When:

(a) an undertaking of a Contracting State participates, directly or indirectly, in the management, control or capital of an undertaking of the other Contracting State; or

(b) the same persons who participate, directly or indirectly, in the management, control or capital of an undertaking of a Contracting State and of an undertaking of another Contracting State, and in both cases the two undertakings, in their commercial or financial relations, are linked by accepted or imposed conditions which differ from those which would be established between independent undertakings, profits which, in the absence of those conditions, would have been obtained by one of the undertakings but were not so because of those conditions, may be included in the profits of that undertaking and consequently taxed.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – the profits on which an enterprise of the other Contracting State has

been taxed in that other State, and the profits thus included constitute profits which would have been obtained by the enterprise of the first State, if the conditions agreed between the two enterprises had been the conditions which would have been established between independent enterprises, the other State shall make an appropriate adjustment to the amount of tax levied therein on the profits referred to. In determining this adjustment, the other provisions of this Agreement shall be taken into account and the competent authorities of the Contracting States shall consult each other if necessary.

ARTICLE 10 – Dividends

1. Dividends paid by a company resident in a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is resident and in accordance with the legislation of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so established may not exceed 7.5 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company on the profits on which the dividends have been distributed.

3. The term "dividends" as used in this Article means income from shares, shares in mines or other rights, other than credits, which enable them to participate in profits, as well as income derived from other shares subject to the same tax regime as income from shares under the law of the State of which the company distributing them is resident.

4. The provisions of paragraphs (1) shall (2) not apply if the beneficial owner of the dividends, who is resident in a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is resident through a permanent establishment situated there or pursues in that other State a self-employed profession by means of a fixed facility situated there, and the shareholding in respect of which the dividends are paid is actually linked to that permanent establishment or fixed facility. In this case, the provisions of Article 7 or Article 14 shall apply, as the case may be.

5. Where a company resident in a Contracting State makes profits or income from the other Contracting State, that other State may not levy any tax on dividends paid by the company, except in so far as those dividends are paid to a resident of that other State or in so far as the shareholding in respect of which the dividends are paid is actually linked to a permanent establishment or fixed establishment situated in that other State, or make the undistributed profits of the company subject to undistributed profits tax, even if the dividends paid or undistributed profits consist, in whole or in part, of profits or income from that other State.

ARTICLE 11 – Interest

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

2. However, such interest may be taxed in the Contracting State from which it originates and in accordance with the legislation of that State, but if the actual recipient of the interest is a resident of the other Contracting State, the tax so established may not exceed 10 per cent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2, interest accruing in a Contracting State shall be exempt from tax in that State, provided that the origin and beneficial owner are:

(a) the Government, a political subdivision or a local authority of the other Contracting State; or (i) in the case of India, the Reserve Bank of India, the ExportImport Bank of India, the National Housing Bank; and (ii) in the case of Mozambique, the Bank of Mozambique.

(c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States by means of an exchange of correspondence.

4. The term "interest" as used in this article means income from claims of any kind secured or unsecured by a mortgage and whether or not entitled to share in the debtor's profits, and in particular income from government debt and loan obligations, including premiums and advantages in connection with such securities or bonds. For the purposes of this article, penalties for late payment shall not be considered to be interest.

5. The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, who is resident in a Contracting State, carries on an activity in the other Contracting State from which the interest is based, through a permanent establishment situated there, or pursues in that other State a self-employed profession, through a fixed installation located there, and the claim in respect of which the interest is paid is actually linked to that permanent establishment or fixed installation. In this case, the provisions of Article 7 or Article 14 shall apply, as the case may be.

6. Interest shall be deemed to have accrued from a Contracting State where the debtor is a resident of that State. However, where the person liable for interest, whether or not a resident of a Contracting State, has in a Contracting State a permanent establishment or fixed facility in respect of which the obligation for which the interest is paid has been contracted and that permanent establishment or fixed facility bears the payment of that interest, such interest shall be deemed to accrue from the State in which the permanent establishment or fixed facility is situated.

7. Where, by reason of special relationships existing between the debtor and the beneficial owner or between the debtor and any other person, the amount of interest paid, taking into account the claim on which it is paid, exceeds the amount that would have been agreed between the debtor and the beneficial owner in the absence of such relationships, the provisions of this Article shall apply only to the latter amount. In such a case, the excess may continue to be taxed in accordance with the law of each Contracting State, taking into account the other provisions of this Agreement.

ARTICLE 12 – Royalties

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

2. However, such royalties may also be taxed in the Contracting State from which they originate and in accordance with the legislation of that State, but if the person receiving the royalty is the beneficial owner of the royalty, the tax so established shall not exceed 10 per cent of the gross amount of the royalty.

3. The term "royalties" as used in this article means the consideration of any kind paid for the use or grant of use of a copyright in a literary, artistic or scientific work, including motion pictures, films, recordings or discs for radio or television broadcasting, of a patent, a trade mark, a design, a plan, a formula or a secret process, or for the use of or right to use industrial, commercial or scientific equipment or for information relating to experience acquired in the industrial, commercial or scientific sector.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalty, who is resident in a Contracting State, carries on an activity in the other Contracting State from which the royalty originates through a permanent establishment situated there, or pursues in that State a self-employed profession through a fixed installation situated there and the right or property in respect of which the royalty is paid is actually linked to that permanent establishment or fixed installation. In this case, the provisions of Article 7 or Article 14 shall apply, as the case may be.

5. (a) A royalty shall be deemed to have come from a Contracting State where the debtor is a resident of that State. However, where the person liable for the royalty is or is not a resident of a Contracting State, has in the Contracting State a permanent establishment or fixed facility in connection with which the obligation giving rise to the payment of the royalty has been entered into, and that permanent establishment or fixed installation supports the payment of such royalties, such royalty shall be deemed to have come from the Contracting State in which the permanent establishment or fixed facility is situated.

(b) Where under subparagraph (a) the royalty does not originate from one of the Contracting States and relates to the use or grant of use of a right or property in one of the Contracting States, the royalty shall be deemed to accrue from that Contracting State.

6. Where, due to special relationships existing between the debtor and the beneficial owner of the royalty or between them and any other person, the amount of the royalty, taking into account the use, right or information for which they are paid, exceeds the amount that would be agreed between the debtor and the beneficial owner, in the absence of such relationships, the provisions of this Article shall apply only to the latter amount. In this case, the excess may continue to be taxed in accordance with the legislation of each Contracting State, taking into account the other provisions of this Agreement.

ARTICLE 13 – (Capital gains)

1. Gains which a resident of a Contracting State derives from the disposal of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains arising from the disposal of movable property forming part of the assets of a permanent establishment which an undertaking of one Contracting State has in the other Contracting State or from assets assigned to a fixed establishment which a resident of a Contracting State has in the other Contracting State for the purpose of pursuing a self-employed profession, including gains arising from the disposal of that permanent establishment (alone or with the whole of the undertaking) or from the fixed installation, may be taxed in that other State.

3. Gains from the disposal of ships or aircraft operated in international traffic, or movable property used for the operation of such ships or aircraft, may be taxed only in the Contracting State of which the seller is resident.

4. Gains arising from the disposal of shares in the share capital of an undertaking owned directly or indirectly, principally by immovable property situated in the other Contracting State, may be taxed in that other State.

5. Gains arising from the disposal of shares other than those referred to in paragraph 4 of this Article of a company resident in a Contracting State may be taxed in that State.

6. Gains arising from the disposal of any assets other than those referred to in paragraphs 1, 2, 3, 4 and 5 may be taxed in the Contracting State of which the seller is a resident.

ARTICLE 14 – Independent Professions

1. Income obtained by a resident of a Contracting State by pursuing a profession or other activities of a self-employed or similar nature may be taxed in that State only except, in the following circumstances, in which case such income may be taxed in the other Contracting State:

(a) if the resident has a fixed facility in the other Contracting State habitually for the exercise of his activities. In such a case, the other Contracting State may tax the part of the income attributable to that fixed facility; or

(b) if the resident remains in the other Contracting State for a period or periods exceeding a total of 183 days in any 12-month period beginning or ending in the tax year in question. In this case, only the portion of income obtained from activities carried on in that Contracting State may be taxed in that Contracting State.

2. The term "liberal professions" shall cover, in particular, self-employed activities of a scientific, literary, artistic, educational or pedagogical nature, as well as the self-employed activities of doctors, lawyers, engineers, architects, surgeons, dentists, and accountants.

ARTICLE 15 – Dependent Professions

1. Subject to Articles 16, 18, 19, 20 and 21, wages, salaries and other similar remuneration obtained from employment by a resident of a Contracting State may be taxed only in that State, unless the employment is carried on in the other Contracting State. If the employment is carried on there, the corresponding remuneration may be taxed in that other State.

2. Notwithstanding paragraph 1, remuneration received by a resident of a Contracting State from employment in the other Contracting State may be taxed in the first mentioned State only if:

(a) the beneficiary remains in the other Contracting State for a period or periods not exceeding a total of 183 days in any 12-month period beginning or ending in the relevant tax year;

(b) the remuneration is paid by an employer or on behalf of an employer who is not a resident of the other State; e

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

3. Notwithstanding the foregoing provisions of this Article, remuneration derived from employment on board a ship or aircraft operated on international trade by an undertaking of a Contracting State may be taxed in that State.

ARTICLE 16 – Fees of members of councils

Fees and other similar remuneration received by a resident of a Contracting State as a member of the Board of Directors of a company which is resident in the other Contracting State may be taxed in that other State.

ARTICLE 17 – Artists and sportsmen

I. Notwithstanding the provisions of Articles 14 and 15, income received by a resident of a Contracting State as a professional performer, such as a theatre, cinema, radio or television performer, or musician, as well as a sportsman, arising from his personal activities carried out in that capacity in the other Contracting State, may be taxed in that other State.

2. Notwithstanding the provisions of Articles 7, 14 and 15, income from activities personally carried out by entertainment professionals or sportspeople in that capacity attributed to another person may be taxed in the Contracting State in which those activities of entertainment professionals or sportspeople are carried out.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income from activities carried out in a Contracting State by entertainment professionals or sportsmen if the activities are substantially supported by public funds of one or both of the Contracting States, their political subdivisions or local authorities. In such a case, the

income shall be taxable only in the Contracting State of which the entertainment professional or sportsman is resident.

ARTICLE 18 – Pensions

Subject to paragraph 2 of Article 19, pensions and other similar remuneration originating in a Contracting State and paid to a resident of another Contracting State as a result of previous employment may be taxed only in that State.

ARTICLE 19 – Public Remuneration

1. (a) Salaries, wages and similar remuneration, other than pensions, paid by a Contracting State or by a political subdivision or local authority to a natural person as a result of services rendered to that State or to that subdivision or local authority may be taxed only in that State.

(b) However, such salaries, wages and other similar remuneration may be taxed in the other Contracting State only if the services are provided in that State and if the natural person is a resident of that State who:

(i) Is a national; or

(ii) That he has not become a resident of that State solely for the purpose of providing such services.

2. (a) Any pension or other similar remuneration paid by a Contracting State, its political subdivision or by a local authority to a natural person, either directly or through funds set up by them to a natural person, as a result of services rendered to that State, subdivision or local authority may be taxed only in that State.

(b) However, such pensions or similar remuneration may be taxed in the other Contracting State only if the natural person is a resident and a national of that State.

3. The provisions of Articles 15, 16, 17 and 18 of this Agreement shall apply to salaries, wages and other similar remuneration and pensions paid as a result of services rendered in connection with an activity carried out by a Contracting State, its political subdivisions or one of its local authorities.

ARTICLE 20 – Professors, Professors and Researchers

1. A teacher, teacher or researcher who is or has been a resident of a Contracting State immediately prior to visiting the other Contracting State for the purpose of teaching or research, or both, at a university, college or other similar institution recognised in that other Contracting State shall be exempt from tax in that other State in respect of remuneration received as a result of such teaching or research, for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall apply to research income only if such research is carried out in the public interest and not for the private benefit of one or more persons.

3. For the purposes of this Article, a natural person shall be considered to be a resident of a Contracting State if he is resident in that State in the tax year in which he is visiting the other Contracting State or in the year immediately preceding it.

ARTICLE 21 – Students

1. A student who is or was, immediately prior to his stay in a Contracting State, a resident of the other Contracting State and whose stay in the Contracting State mentioned above is for the sole purpose of pursuing his studies or training there, shall be exempt from tax in that other State in respect of grants, loans and scholarships, provided that:

(a) payments made to him by persons resident outside that other State are to meet the costs of his maintenance, studies or training; e

(b) the remuneration received by that person derives from employment in the other Contracting State which is directly related to his studies.

2. The benefits of this article shall apply only for the period of time that may be considered reasonable or normal for completing studies or training, but in no case may any individual benefit from the provisions of this article for more than six consecutive years from the date of his arrival in that other State.

ARTICLE 22 – Other Income

1. Items of income from a Contracting State and from which it originates not expressly dealt with in the preceding Articles of this Agreement may be taxed only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of that income, being a resident of a Contracting State, carries on an activity in the other Contracting State through a permanent establishment or pursues in that other Contracting State a self-employed profession through a fixed establishment situated there, and the right or property in respect of which the income is paid is actually linked to that permanent establishment or fixed installation. In this case, the provisions of Article 7 or 14 shall apply, as the case may be.

3. Notwithstanding paragraph 1, if a resident of a Contracting State derives income from sources in another Contracting State in the form of lotteries, crossword puzzles, races, including horse racing, card games and other forms of games of chance or betting of any kind, such income may be taxed in the other Contracting State.

ARTICLE 23 – Methods for Eliminating Double Taxation

1. The legislation in force in any of the Contracting States shall continue to regulate the taxation of income in the respective Contracting State unless otherwise expressly provided for in this Agreement. Where income is subject to taxation in both Contracting States, the mitigation of double taxation shall be made in accordance with the following paragraphs of this Article.

2. Double taxation shall be eliminated as follows:

(i) In India:

(a) Where a resident of India earns income which, in accordance with the provisions of this Agreement, may be taxed in Mozambique, India shall deduct from the income tax of that resident an amount equal to the tax paid in Mozambique.

The amount deducted may not, however, exceed the fraction of the tax calculated before the deduction corresponding to income taxed in Mozambique.

(b) Where, in accordance with the provisions of this Agreement, the income earned by a resident of India is exempt from tax in India, India may, when calculating the amount of tax on the remainder of the income of that resident, take into account the exempt income.

(ii) In Mozambique:

(a) Where a resident of Mozambique obtains income which, in accordance with the provisions of this Agreement, may be taxed in India, Mozambique shall deduct from the income tax of that resident an amount equal to the tax paid in India.

(b) Where, in accordance with the provisions of this Agreement, the income earned by a resident of Mozambique is exempt from tax in Mozambique, Mozambique may, when calculating the amount of tax on the remainder of that resident's income, take into account the exempt income.

ARTICLE 24 – Non-Discrimination

1. Nationals of a Contracting State shall not be subject in the other Contracting State to any taxation or related obligation which is different or more onerous than that to which nationals of that other State who are in the same situation are or may be subject, in particular as regards residence. Notwithstanding the provisions of Article 1, this provision shall also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation of a permanent establishment which an undertaking of one Contracting State has in the other Contracting State shall not be less favourable in that State than that of undertakings of that other State engaged in the same activities. That provision cannot be interpreted as requiring a Contracting State to grant to residents of the other Contracting State the personal deductions, allowances and tax reductions granted on the basis of marital status or family expenses granted to its own residents.

3. Unless the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 apply, interest, royalties, and other sums paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profit of such enterprise, under the same conditions as if they were paid to a resident of the State first mentioned.

4. Undertakings of a Contracting State whose capital, in whole or in part, directly or indirectly, is owned or controlled by one or more residents of the other Contracting State shall not be subject, in the first-mentioned State, to any taxation or related obligation

which is different or more onerous than that to which similar undertakings of the first State are or may be subject.

5. The provisions of this Article shall apply only to taxes covered by this Agreement.

ARTICLE 25 – Mutual Settlement Procedure

1. Where a person considers that the measures taken by one or both of the Contracting States lead or may lead to taxation against him which is not in accordance with the provisions of this Agreement, he may, independently of the remedies provided for by the national law of those States, submit in writing the grounds for his complaint to the competent authority of the Contracting State of which he is resident. The case shall be submitted within three years from the date of the first notification of the measure giving rise to taxation not in accordance with the provisions of this Agreement.

2. If the complaint appears to it to be well founded and is not in a position to provide a satisfactory solution to the complaint, the competent authority shall endeavour to settle the matter by amicable agreement with the competent authority of the other Contracting State in order to avoid taxation not in accordance with this Agreement. Any agreement reached shall be applied irrespective of the time limits laid down in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve, by amicable settlement, any difficulties or doubts which may give rise to the interpretation or application of the Agreement. They may also consult each other with a view to eliminating double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may, where necessary, communicate directly with each other with a view to the implementation of this Agreement in order to reach agreement as indicated in the preceding paragraphs. Where it is advisable to have an oral exchange of views with a view to reaching a consensus, such exchange of views may take place through a Commission composed of representatives of the competent authorities of the Contracting States.

ARTICLE 26 – Exchange of Information

1. The competent authorities of the Contracting States shall exchange with each other such information (including documents or certified copies of documents) as necessary to implement the provisions of this Agreement or of domestic laws relating to taxes of any nature and denomination levied for the benefit of the Contracting States, their political subdivisions or local authorities, to the extent that the taxation provided for therein is not contrary to this Agreement. The exchange of information shall not be restricted by the provisions of Articles 1 and 2.

2. Any information received pursuant to paragraph 1 by a Contracting State shall be considered secret in the same manner as information obtained on the basis of the domestic law of that State, and may be communicated only to persons or authorities (including courts and administrative bodies) charged with the entry or collection of

declaratory or enforcement proceedings or the decision of appeals relating to the taxes referred to in paragraph 1 or the control thereof. Such persons or authorities shall use the information so obtained only for the purposes referred to. Such information may be disclosed in the course of public court hearings or in court decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes where such information may be used for such purposes in accordance with the laws in force in both States and the competent authority of the State providing such information authorizes the use of such information.

3. The provisions of paragraph 1 shall never be interpreted as imposing on the competent authorities of a Contracting State the obligation to:

(a) to take administrative measures contrary to its own legislation and administrative practice or to those of the other Contracting State;

(b) to provide information (including documents or certified copies of documents) which cannot be obtained on the basis of its law or in the context of its normal administrative practice or that of the other Contracting State;

c) To transmit information revealing a business, industrial, commercial or professional secret, or commercial process or information the disclosure of which would be contrary to public policy.

4. If, in accordance with the provisions of this Article, information is requested by a Contracting State, the other Contracting State shall use its powers to obtain the information requested, even if that other State does not need such information for its own tax purposes. The obligation in the preceding sentence shall be subject to the limitations set out in paragraph 3, but such limitations shall in no case be interpreted as permitting a State to refuse to provide such information solely because it is not of interest to it in its domestic context.

5. The provisions of paragraph 3 shall in no case be interpreted as permitting a Contracting State to refuse to provide information solely because it is held by a bank, other financial institution, an agent or a person acting as an agent or trustee, or because such information is connected with the property rights of a person.

ARTICLE 27 – Assistance in Tax Collection

1. The Contracting States shall provide mutual assistance for the purpose of collecting their respective tax claims. Such assistance shall not be restricted by the provisions of Articles 1 and 2 of this Agreement. The competent authorities of the Contracting States may settle by common agreement the manner in which this Article is to be applied.

2. The term "tax credit" as used in this Article means an amount due in respect of taxes of any nature or denomination levied on behalf of the Contracting States, their political subdivisions or local authorities, provided that the corresponding taxation is not contrary to this Agreement or to any other instrument to which the Contracting States are parties,

as well as interest, administrative penalties and collection or retention costs in connection with such taxes.

3. Where a tax credit of a Contracting State is recoverable under the laws of that State and is payable by a person who, on that date and under those laws, is unable to prevent its recovery, that tax credit shall be accepted at the request of the competent authorities of that State for the purpose of its recovery by the competent authorities of the other Contracting State. That tax credit shall be recovered by that other State in accordance with the provisions of its applicable legislation on the collection of its own taxes as if the credit in question constituted a tax credit of that other State.

4. Where a tax claim of a Contracting State constitutes a claim in respect of which that State, by virtue of its legislation, may take precautionary measures in order to ensure its recovery, that claim shall be accepted at the request of the competent authorities of that State, for the purposes of the adoption of precautionary measures by the competent authorities of the other Contracting State. That other State shall take precautionary measures in respect of that tax claim in accordance with the provisions of its legislation as if it were a tax claim of that other State, even if, at the time when those measures are applied, the tax claim is not recoverable in the first State mentioned or is payable by a person who has the right to prevent its recovery.

5. Notwithstanding paragraphs 3 and 4, the limitation periods and priority applicable under the law of a Contracting State to a tax credit, by virtue of its nature as such, shall not apply to a tax credit accepted by that State for the purposes of paragraph 3 or 4. On the other hand, a tax credit accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not be given any priority in that State by virtue of the law of the other Contracting State.

6. Proceedings concerning the existence, validity or amount of a tax credit of one Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State. Nothing in this Article shall be construed as creating or conferring any right until such proceedings are brought before any court or administrative body of the other Contracting State.

7. Where at any time after a claim made by a Contracting State pursuant to paragraph 3 or 4 and before the other Contracting State has collected and transferred the amount of the tax credit in question to the first mentioned State, that tax credit shall cease to constitute:

(a) in the case of a claim made under paragraph 3, a tax claim of the first mentioned State which is recoverable under the laws of that State and is payable by a person who is not at that time able, under the laws of that State, to prevent its recovery; or

(b) in the case of an application made under paragraph 4, a tax claim of the first mentioned State, in respect of which that State may, in accordance with its legislation, take precautionary measures to ensure its recovery. The competent authorities of the first mentioned State shall immediately notify the competent authorities of that State and the

first mentioned State shall suspend or withdraw its application, at the option of the other State.

8. The provisions of this Article may in no case be interpreted as imposing on a Contracting State an obligation to:

(a) take administrative measures contrary to its own legislation and administrative practice or those of the other Contracting State;

b) To take measures that are contrary to public order;

(c) provide assistance if the other Contracting State has not taken all reasonable recovery or retention measures, as the case may be, available to it by virtue of its legislation or administrative practice;

(d) provide assistance in the event that the administrative burden on that State is clearly disproportionate to the benefits that the other Contracting State may obtain.

ARTICLE 28 – Limitation of Benefits

Notwithstanding the provisions of any other Article of this Agreement, a resident of a Contracting State shall not be eligible to the provisions of this Agreement if its affairs are dealt with in such a way that the principal purpose or one of the principal objectives is to obtain benefits from this Agreement. The case of legal entities which do not engage in bona fide economic activities shall be covered by the provisions of this Article.

ARTICLE 29 – Members of Diplomatic Missions and Consular Posts

The provisions of this Agreement shall be without prejudice to the tax privileges enjoyed by members of diplomatic missions or consular posts by virtue of general rules of international law or provisions of special agreements.

ARTICLE 30 – Entry into Force

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by their legislation for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of receipt of the last of these notices referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect:

(a) in India, with respect to income generated in any tax year beginning on or after the first day of April immediately following the year in which the Agreement enters into force;

(b) in Mozambique, with respect to income generated in any fiscal year beginning on or after the first day of January immediately following the year in which the Agreement enters into force.

ARTICLE 31 – Denunciation

This Agreement shall remain in force indefinitely as long as it is not terminated by one of the Contracting States. Any of the Contracting States may terminate the Agreement through diplomatic channels, by giving prior notice to another Contracting State, at least six months' notice, before the end of any calendar year, from the fifth year following the entry into force of the Agreement. In such a case, the Agreement shall cease to apply:

(a) in India, with respect to income generated in any tax year beginning on or after the first day of April immediately following the year in which the notification is filed;

(b) in Mozambique, with respect to income generated in any tax year beginning on or after the first day of January immediately following the year in which the notification is filed.

IN WITNESS whereof, the signatories, duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate in New Delhi on 30 September 2010 in Portuguese, Hindi and English, all texts being equally authentic. In the event of a difference of interpretation, the English text shall prevail.

ADDITIONAL PROTOCOL

At the time of signing the Agreement concluded on this date between the Government of the Republic of Mozambique and the Government of the Republic of India, for the Avoidance of Double Taxation and Prevention of Tax Evasion in Matters of Income Taxes, the signatories agree on the following provisions which form an integral part of the Agreement:

1. For the purposes of Article 12 on Royalties, the term "royalty" shall also include payments made as remuneration for technical assistance in connection with the use or granting of the use of the right or property referred to in paragraph 3 of Article 12 of this Agreement.

2. For the purposes of Article 24 on non-discrimination, this provision shall not be construed as preventing a Contracting State from collecting profits from a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

IN WITNESS whereof, the signatories, duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate in New Delhi on 30 September 2010 in Portuguese, Hindi and English, all texts being equally authentic. In the event of a difference of interpretation, the English text shall prevail.

For the Government of the Republic of India, Pranad Mukherjee (Minister of Finance). –

For the Government of the Republic of Mozambique, Oldemiro Marques Baloi (Minister of Foreign Affairs and Cooperation).

WHY MOORE?

Moore in the world

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MOORE



MOORE MOÇAMBIQUE

Moore Mozambique, aligned with the global network, is an auditing and consulting firm recognized for innovation, quality and commitment to the future. Present in Mozambique since 1999, it was initially associated with the BDO network.

We have a team of approximately 100 highly qualified professionals, dedicated to offering solutions adapted to the needs of our customers.

We believe in a personalized service, in which each client is accompanied by a "Client Service Partner", ensuring proximity, efficiency and excellence in the provision of services. By combining technical expertise, experience and innovation, we create value for our clients.

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- Specific training

Auditing

In addition to validating financial information from companies and institutions, we analyze not only the correct application of standards and legislation, but also the internal control system and the continuity of operations.

Our professional performance in this area includes, in particular:

- Full audit of financial statements
- Review of internal control
- Limited review of financial statements
- Examination of forward-looking financial information
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- Internal audit, management, information technology, taxation and others

Accounting Services

Moore Mozambique is the largest accounting service provider in the country, with more than 30 technicians and several client companies.

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- Accounting outsourcing
- Payroll services
- Account consolidation
- Education

Taxation

Moore Mozambique monitors the compliance with tax obligations of companies, institutions and individuals, reviewing strategies to optimize tax solutions and minimize tax risks.

Our services include:

- Monitoring compliance with tax obligations and charges
- Mergers and acquisitions
- Insolvency proceedings
- Complete diagnosis of the fiscal situation
- Tax planning and prevention
- Studies on the tax framework
- Support in the taxation of expatriates
- Preparation of the Transfer Pricing Dossier
- Advice on capital transfer

MOORE

CONTACTS:

Avenida 25 de Setembro, nº 1230, 3º
Andar, Bloco 5, CP 4200

Maputo

Republic of Mozambique

Tel.: +258 21 300720

Email: eferreira@mooremz.co.mz

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