MOORE

Convention Between the Government of the Republic of Mozambique and the Government of the Republic of Mauritius

Resolution No. 54/98 of 12 November



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RESOLUTION NO. 54/98 OF 12 NOVEMBER

It is necessary to formalize the existing legal instruments for the entry into force of the Convention between the Republic of Mozambique and the Republic of Mauritius to avoid double taxation and prevent tax evasion in terms of Income Tax;

Using the competence conferred on it by Article 153(f) of the Constitution of the Republic, the Council of Ministers determines:

Article 1. The Convention between the Republic of Mozambique and the Republic of Mauritius for the Avoidance of Double Taxation and Prevention of Tax Evasion in Matters of Income Taxes, signed in Maputo on 14 February 1997, the attached text of which forms an integral part of this Resolution, is hereby ratified.

Article 2. The power conferred in Article 4(2)(d) of the Convention to the competent authorities of the Contracting States is understood to be without prejudice to the fact that in no case shall the Mozambican citizen in the Republic of Mozambique be recognized as having any nationality other than the Mozambican one.

Approved by the Council of Ministers.

Public.

The Prime Minister, Pascoal Manuel Mocumbi.

CONVENTION BETWEEN THE REPUBLIC OF MOZAMBIQUE AND THE REPUBLIC OF MAURITIUS FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF INCOME TAXES

The Government of the Republic of Mozambique and the Government of the Republic of Mauritius,

Desirous of a double taxation convention for the avoidance of income taxes,

Agree as follows:

ARTICLE 1 – Persons concerned

This Convention shall apply to persons resident in one or both of the Contracting States.

ARTICLE 2 – Taxes concerned

1. This Convention shall apply to income taxes received on behalf of a Contracting State or its political subdivisions.

2. All taxes levied 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 capital gains, shall be considered as income taxes.

3. The current taxes to which this Convection applies are, namely:

a) in Mozambique:

(i) Industrial Tax;

(ii) Income Tax.

(iii) Complementary Tax; (hereinafter referred to as the "Mozambican Tax").

b) in Mauritius:

(i) The Income Tax; (hereinafter referred to as the 'Mauritian Tax');

4. The Convention shall also apply to taxes of a similar nature which are established by the Contracting States after the date of signature of the Convention and which may be added to or replace existing taxes.

5. The competent authorities of the Contracting States shall communicate to each other any changes made to their tax laws and, if it is necessary to amend any article of this Convention, without affecting the general principles to be followed, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3 – General definitions

1. In this Convention, unless the context requires a different interpretation:

(a) The term 'Mozambique' means the Republic of Mozambique and includes:

(i) All territories and islands which, according to the laws of Mozambique, constitute the Mozambican State;

(ii) The territorial sea of Mozambique; e,

(iii) Any area outside the territorial sea of Mozambique, in accordance with international law, has been or may hereafter be designated under the laws of Mozambique, as being an area including the continental shelf where Mozambique's rights with respect to the sea, seabed, soil and its natural resources may be exercised.

(b) The term "Mauritius" means the Republic of Mauritius and includes:

(i) All territories and islands which, according to the laws of Mauritius, constitute the State of Mauritius;

(ii) the territorial sea of Mauritius; e,

(iii) Any area outside the territorial sea of Mauritius, under international law, has been or may hereafter be designated under the laws of Mauritius, as being an area including the continental shelf where Mauritius' rights with respect to the sea, seabed, soil and its natural resources may be exercised;

(c) the terms 'a Contracting State' and 'the other Contracting State' shall designate, depending on the context, Mauritius or Mozambique;

(d) the term 'company' means any legal person or any entity which is considered to be a legal person for tax purposes;

(e) The term 'competent authority' means:

(i) in Mozambique, the Minister of Planning and Finance, the National Director of Taxes and Audit or his authorized representative;

(ii) in Mauritius, the Minister of Finance, The Commissioner of Income Tax or their authorised representative;

(f) the terms 'undertaking of a Contracting State' and 'undertaking of the other Contracting State' shall mean an undertaking operated by a resident of a Contracting State and an undertaking operated by a resident of the other Contracting State, respectively;

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

(h) the term 'national' means any natural person holding the nationality of a Contracting State and any legal person, company or association formed in accordance with the law in force in a Contracting State;

(i) the term 'person' means a natural person, a company, a trust and any other group of persons who are treated as an entity for tax purposes; e,

(j) The term 'tax' means Mozambican Tax or Mauritian Tax as the context may be,

2. For the application of this Convention by a Contracting State, any expression not otherwise defined shall, unless the context requires otherwise, have the meaning given to it by the legislation of that Contracting State on the Taxes to which the Convention applies.

ARTICLE 4 – Resident

1. For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, by virtue of the law of that State, is subject to tax in that State by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, this expression 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, pursuant to paragraph 1, a natural person is resident of both Contracting States, his or her situation shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent residence at his disposal. If he has a permanent residence at his disposal in both States, he shall be deemed to be a resident 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 in any of the States, he shall be deemed to be a resident of the State in which he habitually resides;

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

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

3. 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 a resident of the State in which his effective management is situated.

ARTICLE 5 – Permanent establishment

1. For the purposes of this Convention, 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' shall include:

a) A place of direction;

b) A branch;

c) An office;

d) A factory

e) A workshop;

f) A warehouse for the purpose of storage of third-party goods;

g) A mine, oil or gas well, quarry or any other place of extraction of natural resources;

h) A facility or structure used for the exploitation of natural resources.

3. The term 'permanent establishment' shall also include:

(a) a building site or a construction, installation or assembly of a project, or supervision of activities in connection in the case only if the project site or activities last longer than six months;

(b) the provision of services, including consultancy services, by an undertaking of a Contracting State through employees or other personnel of the other Contracting State, provided that such activities continue for the same or a related project for a period or periods totalling more than six months within a twelve-month period.

4. Notwithstanding the foregoing provisions of that article, the term 'permanent establishment' shall not include:

(a) premises used solely for storing and displaying goods belonging to the undertaking;

(b) a warehouse of goods belonging to the undertaking, kept solely for the purpose of storing and displaying or delivering them,

(c) a warehouse of goods belonging to the undertaking, kept solely for processing by another undertaking;

(d) a fixed installation, maintained solely for the purpose of purchasing goods or gathering information for the undertaking;

(e) a fixed installation, maintained solely for the purposes of advertising, information, scientific research or any other similar activity, which is preparatory to or ancillary to the undertaking; e,

(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 this combination is of a preparatory or ancillary nature.

5. Notwithstanding paragraphs 1 and 2, where a person (other than a self-employed agent, to whom paragraph 6 of this Article applies) acts on behalf of an undertaking in the other Contracting State, despite not having a fixed place of business in the first Contracting State referred to, a permanent establishment in that State shall be deemed to be a permanent establishment in that State if:

(a) he has and habitually exercises a general authority in the first mentioned State to sign contracts on behalf of the undertaking, unless his activities are limited to the acquisition of goods for the undertaking; or

(b) he maintains in the first mentioned State a stock of goods or merchandise belonging to the undertaking in which he regularly supplies goods and merchandise on behalf of the undertaking.

6. An undertaking of a Contracting State shall not be deemed to have a permanent establishment in another 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.

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

ARTICLE 6 – Real estate income

1. Income which a resident of a Contracting State receives from immovable property, including income from agricultural or forestry holdings, may be taxed in the State in which such property is situated.

2. The term 'immovable property' shall have the meaning given to it by the legislation 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 concession of the exploitation of mineral deposits, springs and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provision 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 also apply to income derived 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, where an undertaking of a Contracting State carries on its business in the other Contracting State through a permanent establishment situated there, 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 shall be charged to that Contracting State in each Contracting State.

3. In determining the profit of a permanent establishment, it shall be permissible to deduct expenditure incurred for the attainment of the purposes pursued by that permanent establishment, including management and general administration expenses, incurred for that purpose, whether 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 (in a manner other than the current reimbursement of expenses) by the permanent establishment to the offices of an undertaking or any of its offices, in the form of royalties, emoluments or other similar payment in return for the use of patents or other rights, or through commissions, for specific services performed or by management, or except in the case of banking undertakings, by interest on loans to a permanent establishment. Similarly, in determining the profits of a permanent establishment, the amounts of taxation (other than reimbursement of current expenses) by the permanent establishment to the head of the company or any of its offices, in the form of royalties, emoluments or other similar payments in return for the use of patents or other rights, or through commissions, for specific services performed or by management, or, except in the case of banking companies, by interest on loans to the head of the company or other officers, shall not be taken into account.

4. Where it is customary in 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 provision 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 the same result in accordance with the principles set out in this Article.

5. No profit shall be charged to a permanent establishment merely by purchasing goods for the undertaking by that permanent establishment.

6. For the purposes of the preceding paragraphs, the profits to be allocated 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 Convention, the provisions thereof shall not be affected by those of this Article.

ARTICLE 8 – Maritime and Air Navigation

1. Profits arising from the operation or leasing of ships or aircraft in international traffic and the hiring of containers and equipment ancillary to the operation of ships or aircraft in international traffic may be taxed only in the Contracting State in which the effective management of the undertaking is situated.

2. Where the effective management of a shipping undertaking is situated on board a vessel, the effective management shall be deemed to be situated in the Contracting State in which the port where that ship is registered is located or, in the absence of a port of registry, in the Contracting State of which the person operating the ship is resident,

3. The provisions of paragraph 1 shall also apply to profits from participation in a pool, in a joint operation of 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 participate, directly or indirectly, in the management, control or capital of an undertaking of one Contracting State and of an undertaking of the other 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 have been established between independent undertakings, profits which, in the absence of those conditions, would have been obtained by one of the undertakings, but were not because of those conditions, may be included in the profits of the undertaking and consequently taxed.

2. Where a Contracting State includes in the profits of an undertaking of that State — and taxes accordingly — the profits on which an undertaking 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 undertaking of the first State, if the conditions agreed between the two undertakings had been those which would have been established between independent undertakings, the other State shall make an appropriate adjustment to the amount of tax levied therein on the profits referred to, if that other

State considers the adjustment to be justified. In determining this adjustment, the other provisions of this Convention 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. Such dividends may, however, 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 person receiving the dividends is the beneficial owner of the dividends, the tax thus provided for shall not exceed:

(a) 8 per cent of the gross amount of the dividends if the beneficial owner is a company which holds more than 25 per cent of the capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds less than 25 per cent of the capital of the company paying the dividends;

c) 15 per cent of the gross amount of dividends in other cases.

The competent authorities of the Contracting States shall determine by common accord how this limit is to be applied.

This figure does not affect the taxation of the company on the profits from which the dividends are paid.

3. The term 'dividends' as used in this article means income from shares or other rights, other than credits, which enable them to participate in profits, and income derived from other units subject to the same tax regime as income from shares under the legislation of the State of which the company distributing them is resident.

4. Paragraphs 1 and 2 shall not apply if the actual recipient of the dividends, who is resident in a Contracting State, carries on an activity in another 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 connected with that permanent establishment or fixed facility. In such a 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 connected with a permanent establishment or fixed facility situated in that other State, or subject the undistributed profits of the company to a tax on retained profits, 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, subject to paragraph 3, such interest may also be taxed in the Contracting State from which it originates and in accordance with the legislation of that State, but if the person receiving the interest is the beneficial owner of the interest, the tax so established shall not exceed 8 per cent of the gross amount of interest.

3. Interest accruing from one of the Contracting States shall be exempt from tax in that State if:

(a) the person liable for payment of the interest is the government of that Contracting State, a political subdivision or one of its local authorities;

(b) the interest is paid to any institution or body wholly owned by the Government or to one of its local authorities in the Contracting State; or,

(c) the interest of any bank resident in the other Contracting State.

4. The term 'interest' as used in this Article means income from government debt, from bonds secured or unsecured by a mortgage and entitled or not to share in profits and other claims of any kind, as well as any other income treated as income from sums lent under the tax legislation of the State from which the income originates. Fines for late payment shall not be considered as interest for the purposes of this Article. The term 'interest' shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

5. Paragraphs 1, 2 and 3 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 accrues, through a permanent establishment situated there, or pursues in that other State a self-employed profession, through a fixed facility situated there, and the claim on which the interest is paid if it is actually connected with that permanent establishment or fixed facility. 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 resident of that State. However, where the person liable for interest, whether or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment or a fixed facility in respect of which an obligation has been entered into whereby the obligation whereby interest is paid to that permanent establishment or fixed facility bears the payment of that interest, such interest shall be deemed to accrue from the Contracting 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 of the interest or between them 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 Convention.

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 Royalties, the tax so established shall not exceed 5 per cent of the gross amount of the Royalties. The competent authorities of the Contracting States shall determine by mutual agreement how this limit is to be applied.

3. The term Royalty used in this article means the consideration of any kind attributed for the use or grant of use of a copyright in a literary, artistic or scientific work (including cinematographic films, or recordings for radio or television broadcast), a patent, a trade mark, a design or model, a computer program, a plan, a formula or a secret process, as well as for the use or grant of use of 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 shall apply if the beneficial owner of the Royalty, 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 other State a self-employed profession, by means of a fixed installation situated there, the right or property in respect of which the Royalty is paid if it is actually connected with 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. Royalties 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, whether or not a resident of a Contracting State, has a permanent establishment or fixed installation in a Contracting State in respect of which the obligation giving rise to the payment of the royalty has been entered into and that permanent establishment or fixed installation bears the payment of that royalty, such royalty shall be deemed to come from the Contracting State in which the permanent establishment or fixed installation is situated.

6. Where, by reason of 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 performance for which it is 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 such a 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 Convention.

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 holds in the other Contracting State or movable property 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 such fixed installation, may be taxed in that other State.

3. Gains from the disposal of ships or aircraft used in international trade or movable property used in the operation of such ships or aircraft may be taxed only in the Contracting State in which the effective management of the undertaking is situated.

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

ARTICLE 14 – Independent Professions

1. Income received by a resident of a Contracting State by pursuing a profession or other activities of a self-employed nature may be taxed in that State only in the following cases:

(a) if that resident habitually has a fixed installation in the other Contracting State for the purpose of carrying on his activities; in such a case, only the income attributable to that fixed installation may be taxed in the other Contracting State; or,

(b) if the resident remains in the other Contracting State for a period or periods in the calendar year reaching or exceeding a total of one hundred and eighty-three days beginning or ending in the taxable year in question; in that case, only income derived from activities carried out in that other State may be taxed in that other State.

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

ARTICLE 15 – Dependent Professions

1. Subject to Articles 16, 18, 19 and 20, 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.

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

(a) the beneficiary remains in the Contracting State for a period or periods which, in the tax year in question, do not exceed a total of one hundred and eighty-three days;

(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 by a fixed establishment that the employer has in the other State.

3. Notwithstanding the foregoing provisions of this Article, remuneration for employment carried out on board a ship or aircraft operated in international traffic, or on board a vessel used for inland waterways, may be taxed in the Contracting State in which the effective management of the undertaking is situated.

ARTICLE 16 – Percentages of Council Members

Percentages and other similar remuneration received by a resident of a Contracting State as a member of the board of directors or of the supervisory board of a company resident in the other Contracting State may be taxed in that State.

ARTICLE 17 – Artists and Sportsmen

1. Notwithstanding Articles 14 and 15, income received by a resident of a Contracting State as an entertainment professional, such as theatre, cinema, radio or television performers, or musicians, as well as sportsmen, arising from his personal activities pursued 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 the activity personally carried on by entertainment professionals or sportsmen and sportsmen in that capacity, attributed to another person, may be taxed in the Contracting State in which the activities of the entertainment professionals or sportspeople are carried out.

3. Notwithstanding paragraphs 1 and 2, the income from the activity referred to in paragraph 1 carried out under a Cultural Agreement between the Contracting States shall be exempt from taxes in the Contracting State in which it is carried out if the visit to that State is wholly or substantially supported by funds of the Contracting State, a local authority or a public institution.

ARTICLE 18 – Pensions

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

2. Notwithstanding paragraph 1, pensions paid and other payments made under public schemes which are part of the social security system of a Contracting State, a political subdivision or a local authority existing therein shall be taxed only in that State.

ARTICLE 19 – Public Remuneration

1. (a) salaries and similar remuneration, other than pensions, paid by a Contracting State or by one of its political or administrative subdivisions or local authorities 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) Such remuneration may, however, be taxed in the other Contracting State only if the services are supplied in that State and if the natural person is a resident of that State:

(i) is a national of that State; or,

(ii) that he did not become a resident in that State only to provide services.

2. (a) Any pension paid by a Contracting State or by one of its subdivisions or local authorities, out of funds set up by them, to a natural person as a result of services rendered to that State or subdivision or local authority may be taxed only in that State.

(b) Such pensions may, however, 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 shall apply to remuneration and pensions paid in respect of services rendered in connection with a commercial or industrial activity carried on by a Contracting State or by one of its political subdivisions or local authorities.

ARTICLE 20 – Teachers

A person who is, or has been immediately before, a resident of a Contracting State and who travels to the other Contracting State at the invitation of a university or other

institution of scientific education or research, and recognized by the Government of that Contracting State, for the sole purpose of teaching or carrying out scientific research in those institutions, or pursuant to an official cultural exchange programme, for a period not exceeding two years, shall be exempt from tax in the other Contracting State in respect of remuneration received as a result of such teaching or research.

ARTICLE 21 – Students and interns

Sums which a student or trainee who, prior to his stay in a Contracting State, was resident of the other Contracting State; and whose stay in the first State has the sole purpose of pursuing his studies or training there, receives in order to meet the costs of his maintenance, studies or training, shall not be taxed in the first State mentioned.

ARTICLE 22 – Other income

1. Subject to paragraph 2 of this Article, the elements of the income of a resident of a Contracting State and from which it originates not dealt with in the preceding Articles of this Convention may be taxed only in that State.

2. The provisions of paragraph 1 shall not apply to income where the recipient of the income carries on in the other Contracting State an activity by means of which a permanent establishment or self-employed profession is carried out by means of a fixed facility to which the right or property generating the income is definitively attached. In such a case, the provisions of Article 7 or Article 14 shall apply, as the case may be.

ARTICLE 23 – Elimination of Double Taxation

Double taxation will be eliminated as follows:

1. In the case of Mozambique;

(a) Where a resident of Mozambique receives income from Mauritius the amount of income tax taxable in Mauritius in accordance with the provisions of this Convention, the Mozambican tax levied on that resident shall be deducted;

(b) Where a company which is a resident of Mauritius pays dividends to a resident of Mozambique who controls, directly or indirectly, at least 5 per cent of the capital of the company paying the dividends, the deduction shall take into account (in addition to any imputed Mauritian Tax which may be accepted under subparagraph (a) of this paragraph) the Mauritian Tax payable by the first mentioned company in respect of the profits obtained from which the dividend is paid. Any deduction made under subparagraphs (a) and (b) shall not, however, exceed the Mozambican Tax (calculated before the deduction) corresponding to income from a source within Mauritius;

(c) Where, in accordance with the provisions of this Convention, the income obtained by a resident of Mozambique is exempt from tax in that State, Mozambique may, when calculating the amount of tax on the rest of the income of that resident, take into account the exempt income.

2. In the case of Mauritius:

(a) Where a resident of Mauritius receives income from Mozambique, the amount of tax on income taxable in Mozambique in accordance with the provisions of this Convention shall be deducted from the Mauritian tax levied on that resident;

(b) Where a company which is a resident of Mozambique pays dividends to a resident of Mauritius which controls, directly or indirectly, at least 5 per cent of the capital of the company paying the dividends, the deduction shall take into account (in addition to any Mozambican Tax imputed which may be accepted under subparagraph (a) of this paragraph) the Mozambican Tax payable by the first mentioned company in respect of the profits obtained from which the dividend is paid. Any deduction made under subparagraphs (a) and (b) shall not, however, exceed the Mauritian Tax (calculated before the deduction) corresponding to income from a source within Mozambique.

3. For the purposes of the deduction (provided for in paragraphs 1 and 2 of this article) of the tax due in Mozambique or Mauritius, as the case may be, such taxes shall be considered to include any amount that could have been paid as Mozambican Tax or Mauritian Tax, but which was not paid by virtue of exemption or reduction of the rate granted by virtue of legislation aimed at the economic development of Mauritius or Mozambique, namely the promotion of investment.

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 those to which nationals of that other State who are in the same situation, particularly as regards residence, are or may be subject. Notwithstanding the provisions of Article 1 of this provision, it 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.

3. 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 State first mentioned, to any taxation or related obligation other than or more onerous than those to which similar undertakings of the first State are or may be subject.

4. Nothing in this article shall be interpreted as requiring a Contracting State to grant to residents of the other Contracting State the personal deductions, allowances and reductions for tax purposes granted on the basis of marital status or family expenses granted to its own residents.

5. For the purposes of this article, the term 'taxation' refers to the taxes subject to this Convention.

ARTICLE 25 – Mutual Settlement Procedure

1. Where a person considers that the measures taken by a Contracting State or by both Contracting States lead or may lead to taxation against him which is not in accordance with the provisions of this Convention, he may, independently of the remedies provided for by the national law of those States, refer his case to the competent authority of the Contracting State of which he is a resident or, if his case falls within Article 24(1), to that of the Contracting State of which he is a national, The case shall be brought within two years of the date of the first notification of the measure giving rise to taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour to settle any case by amicable agreement with the competent authority of the other Contracting State in order to avoid taxation not in accordance with the Convention.

Any agreement reached must be implemented despite the deadline provided for in the domestic legislation of the contracting states.

3. The competent authorities of the Contracting States shall endeavour to resolve, by mutual agreement, any difficulties or doubts which may give rise to the interpretation or application of the Convention. They shall also consult with a view to the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate directly with each other, including through joint committees, in order to reach agreement as set out in the preceding paragraphs.

ARTICLE 26 – Exchange of information

1. The competent authorities of the Contracting States shall exchange with each other the information necessary to apply the provisions of this Convention or of the domestic laws of the Contracting States relating to the taxes covered by this Convention, to the extent that the taxation provided for therein is in accordance with this Convention. The exchange of information shall not be limited by the provisions of Article 1. Any information received by a Contracting State shall be considered secret in the same way as information obtained on the basis of the domestic legislation of that State and may be communicated only to the persons or authorities (including courts and administrative bodies) responsible for the levying or collection of taxes covered by this Convention, for the proceedings relating to such taxes or for decisions on appeals relating to such taxes. Such persons or authorities shall use the information only for the purposes referred to. They may use such information during public court hearings or trials.

2. The provisions of paragraph 1 shall never be interpreted as requiring a Contracting State and the obligation:

(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 which cannot be obtained on the basis of the law or in the context of its normal administrative practice or that of the other Contracting State;

c) to transmit information revealing secrets or commercial, industrial, or professional secrecy processes, or information the communication of which would be contrary to public order.

ARTICLE 27 – Diplomatic agents and consular officials

The provisions of this Convention shall be without prejudice to the tax privileges enjoyed by diplomatic agents or consular officers by virtue of general rules of international law or the provisions of special agreements.

ARTICLE 28 – Entry into force

1. Each of the Contracting Parties shall notify the other of the procedures required by its legislation for the entry into force of this Convention. The Convention shall enter into force one month after the date of the last notification.

2. The provisions of this Convention shall apply:

a) In Mozambique:

(i) taxes payable at source the chargeable event arising after 1 January of the year in which this Convention enters into force; e,

(ii) other taxes, in relation to income produced in the tax period beginning after 1 January of the year in which this Convention enters into force.

(b) in Mauritius, the income of any financial year beginning on or after the first day of July, after the date on which this Convention enters into force.

ARTICLE 29 – Denunciation

1. This Convention shall be in force indefinitely, but any of the Contracting States may denounce the Convention through diplomatic channels, by giving at least six months' notice before the end of any calendar year, from the fifth year following its entry into force.

2. In such a case, this Convention shall cease to apply:

a) In Mozambique:

(i) with regard to taxes collected by means of withholding, to sums attributed or paid, after 1 January of the year of the denunciation, after the end of the six months referred to in paragraph 1;

(ii) in respect of such income taxes produced, the taxes applicable for the taxable periods commencing after 1 January of the year of termination after the end of the six months referred to in paragraph 1.

(b) in Mauritius in respect of the income of any financial year beginning on or after the first day of July, after the date of expiry of the six-month period referred to in paragraph 1.

Done at Maputo, in duplicate in Portuguese and English, both texts being equally authentic, fourteenth day of February in the year one thousand nine hundred and ninety-seven. — The Minister of Planning and Finance, Tomaz Augusto Salomão (For the Republic of Mozambique)

(For the Republic of Mauritius)

WHY MOORE?

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MOORE



MOORE MOÇAMBIQUE

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- Full audit of financial statements
- Review of internal control
- Limited review of financial statements
- Examination of forward-looking financial information

- Specific audits (incentives, due diligence, accounting, research, statistics)
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- Payroll services
- Account consolidation
- Education

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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

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