

S.I. 40 of 2007

BUSINESS TAX ACT*(Cap 20)***Business Tax (Double Taxation Agreement) Regulations, 2007**

In exercise of the powers conferred by section 187 of the Business Tax Act, the Minister of Finance, hereby makes the following Regulations —

1. These Regulations may be cited as the Business Tax (Double Taxation Agreement) Regulations, 2007.

Citation

2. It hereby declared that the Government of the Republic of Seychelles and the Government of Barbados have entered into the agreement specified in the Schedule for the purposes of avoidance of double taxation and prevention of fiscal evasion and that the agreement shall have effect in relation to the tax imposed under this Act.

Declaration and effect of Agreement

SCHEDULE**CONVENTION****BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES AND THE GOVERNMENT OF BARBADOS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Government of the Republic of Seychelles and the Government of Barbados, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

Article 1**PERSONS COVERED**

This Convention shall apply to persons who are residents of one or both of the Contracting states.

Article 2**TAXES COVERED**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.

3. The existing taxes to which the Convention shall apply are in particular:

(a) in Seychelles:

- (i) the business tax; and
- (ii) the petroleum income tax; (hereinafter referred to as "Seychelles tax").

(b) in Barbados:

- (i) the income tax (including premium income tax);
- (ii) the corporation tax (including the tax on branch profits); and
- (iii) the petroleum winning operations tax; (hereinafter referred to as "Barbados tax").

4. The Convention shall apply also to any identical or substantially similar taxes, which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes, which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

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

- (a) "Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction conformity with the provisions of the United Nations Convention on the Law of the Sea;
- (b) "Barbados" means the island of Barbados and the territorial water thereof, including any area outside such territorial waters which in accordance with international law and the laws of Barbados is an area within which the rights of Barbados with respect to the seabed and subsoil and their natural resources may be exercised;
- (c) "business" includes the performance of professional services and of other activities of an independent character;
- (d) "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- (e) "competent authority" means:
- (i) in the Republic of Seychelles, the Minister responsible for Finance or his authorized representative;
 - (ii) in Barbados, the Minister responsible for Finance or his authorized representative;
- (f) "a Contracting State" or "the other Contracting State" means the Republic of Seychelles or Barbados as the context requires;
- (g) "enterprise" applies to the carrying on of any business;
- (h) "enterprise of a Contracting State" or "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of a Contracting State or an enterprise carried on by a resident of the other Contracting State;
- (i) "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) "national" means:
- (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership or

association deriving its status as such from the laws in force in a Contracting State;

- (k) "person" includes an individual, a company, a trust and any other body of persons.

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

Article 4

RESIDENT

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State. This term however does not include any person who is liable to tax in that state in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting State, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the state with which his personal and economic relations are closer (centre of vital interest);
- (b) if the State in which he has his centre of vital

interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting State shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be resident only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if it lasts for a period of more than six months.

4. The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose constitutes a permanent establishment, but only where activities of that nature continue for the same or a connected project within the Contracting State for a period or periods aggregating more than 182 days within any twelve month period.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of fixed place of business

solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 7 applies, is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that in other State.

2. The term "immovable property" shall have the mean-

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

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

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

2. Notwithstanding the provisions of paragraph 1, where an enterprise of a Contracting State which has a permanent establishment in the other Contracting State carries on business activities in that other State otherwise than through the permanent establishment, of the same or similar kind as the business activities carried on by the permanent establishment, then the profits of such activities may be attributable to the permanent establishment unless the enterprise shows that such activities could not have been reasonably undertaken by the permanent establishment.

3. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated

therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

4. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

Article 8

INTERNATIONAL TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting state, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting state,

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

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax

charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 5% of the gross amount of dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting

State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consists wholly or partly of profits or income arising in such other State.

6. Where a company, which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provisions of the Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittance shall not exceed 5 percent.

Article 11

INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State; but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the

other Contracting State or any agency or instrumentality thereof shall be exempt from tax in the first-mentioned State. For the purposes of this paragraph, the term "Government" shall include the Central Bank of the Republic of Seychelles, the Central Bank of Barbados, and any other similar institution as may be agreed upon from time to time by the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting state when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which

would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

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

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State. Where, however, the person

paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

Article 13

CAPITAL GAINS

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

the Contracting state of which the alienator is a resident.

Article 14

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that State.

Article 15

DIRECTORS' FEES

Directors' fees and other similar payments derived by a

resident of a Contracting state in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

ENTERTAINERS AND SPORTS PERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of the other Contracting State. In such a case the income shall be taxable only in the State of which the entertainer or sportsperson is a resident.

Article 17

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 18 pensions, other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar payments made under the social security legislation of a Contracting State, shall be taxable only

in that State.

Article 18

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting state or a statutory body thereof to an individual in respect of services rendered to that state shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State, if the services are rendered in that State and the individual is a resident of that State, who:
 - (i) is a national of that state, or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by or out of funds created by a Contracting State or statutory body thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State;
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Article 14, 15, 16 and 17 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State.

Article 19

PROFESSORS AND TEACHERS

1. An individual who has been resident of a Contracting

State immediately before traveling to the other Contracting State, and who, at the invitation of a school, university, or other similar non-profit educational institution, remains in that other State for a period not exceeding two years from the date of his first arrival in that State, for the purpose of teaching or carrying out research, or both, in such educational institutions, shall be exempt from tax in that other State with respect to the remuneration derived for such teaching or research.

2. The provisions of paragraph 1 of this Article shall not be applicable to the remuneration received for teaching or research work if such is not carried out for the public good, but principally for the private benefit of a specified person or specified persons.

Article 20

STUDENTS AND TRAINEES

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

DONATIONS TO CHARITABLE INSTITUTIONS

1. In the computation of the tax liability of a resident of a Contracting State for any taxable year under the income tax laws of that State, there shall be allowed as a deduction, subject to any conditions provided under the income tax laws of that State, donations to any organization qualifying as a charitable institution under the income tax laws of the other Contracting State.

2. The competent authority of a Contracting State may consult the other Contracting State to determine whether an organization qualifies as a charitable institution under the laws

of that other State.

Article 22

OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of an Article 7 shall apply.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. In the case of Seychelles, where a resident of Seychelles derives income from Barbados the amount of tax on that income payable in Barbados in accordance with the provisions of this Convention may be credited against the Seychelles tax imposed on that resident provided that any credit allowed shall not exceed the Seychelles tax, as computed before allowing any such credit, which is appropriate to the profits or income derived from sources within Barbados.

2. In the case of Barbados, subject to the provisions of the laws of Barbados regarding the allowance as a credit against Barbados tax of tax payable in a territory outside Barbados double taxation shall be eliminated as follows:

- (a) tax payable under the laws of Seychelles and in accordance with the Convention, whether directly or by deduction, on profits or income from sources within Seychelles (excluding, in the case of a dividend is paid) shall be allowed

as a credit against any Barbados tax computed by reference to the same profits or income in respect of which the Seychelles tax is computed;

- (b) in the case of a dividend paid by a company that is a resident of Seychelles to a company that is a resident of Barbados and which holds directly at least 10 percent of the capital of the company paying the dividend, the credit referred to in sub-paragraph (a) shall take into account, the Seychelles tax payable by the company paying the dividend is paid; and
- (c) the credit, however, shall in no case exceed the part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in Seychelles.

3. For the purposes of allowances as a credit, the tax payable in Seychelles or Barbados as the context requires, shall be deemed to include the tax which would have been payable in either of the two Contracting States but which has been reduced or waived by either State in order to promote its economic development.

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

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

obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

4. The provisions of this Article shall not be construed to prevent Barbados from applying its tax on branch profits at the rate specified under the Income Tax Act.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. This Article shall apply to the taxes which are the subject of this Convention.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under the paragraph 1 of Article 24 to that of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State

of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as it necessary relevant for carrying out the provisions of this Convention or the administration or enforcement of the domestic laws concerning taxes covered by this Convention in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including

courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

Article 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of

members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other of the completion of the procedures required by its law for the entering into force of this Convention. This Convention shall enter into force on the date of the later of the two notifications.

2. The provisions of the Convention shall apply:

(a) in the Republic of Seychelles, in respect of income tax, on taxable income derived on or after the first day of January of the year following that of the entry into force of this Convention; on the date of the later of the two notifications.

(b) in Barbados, in respect of income tax, on taxable income derived on or after the first day of January of the year following that of the entry into force of this Convention.

Article 29

TERMINATION

This Convention shall remain in force indefinitely but either of the Contracting States until may terminate the Convention through diplomatic channels, by giving to the other Contracting State written notice of termination not later than the thirtieth day of June of any calendar year starting five years after the year in which the Convention entered into force. In such event, the Convention shall cease to have effect:

(a) in the Republic of Seychelles, on income for any income year beginning on or after the first day of January immediately following the calendar year in which the notice of termination is given; and

(b) in Barbados, in respect of taxes on income derived during any calendar year, or fiscal period, as the case may be, beginning on or after the first day of January immediately

following the date on which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done at Washington D.C. this 19th day of October 2007 in duplicate in the English language.

**For the Government
of the Republic of Seychelles**

**For the Government
of Barbados**

**Danny Faure
Minister of Finance**

**Billie A. Miller
Minister of Foreign
Affairs and Foreign
Trade**

MADE this 7th day of December, 2007.

**DANNY FAURE
MINISTER OF FINANCE**
