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AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA AND
THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF
DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND CAPITAL

(GN 4 *Government Gazette* 2033 of 25 January 1999)

In terms of Article 32(8) of the Namibian Constitution, read with section 100(1) of the Income Tax Act, 1981 (Act No. 24 of 1981), I hereby announce that the Government of the Republic of Namibia on 29 May 1996 entered into an agreement with the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital.

The agreement, setting out the arrangements made, is published under the Schedule to this Proclamation.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek this 14th day of December, One Thousand Nine Hundred and Ninety-eight.

Sam Nujoma

President

By order of the President-in-Cabinet

SCHEDULE

Convention between the Government of the Republic of Namibia and the Government of the French Republic 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 Namibia and the Government of the French Republic, 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

Personal Scope

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 or of its local authorities, and in the case of Namibia its regional authorities, irrespective of the manner in which they are levied.

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

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

(a) In the case of Namibia:

- (i) the normal tax (income tax on individuals and on companies);
- (ii) the non-resident shareholders' tax on dividends;
- (iii) the petroleum income tax;

and any withholding taxes or advance payment with respect to the aforesaid taxes, (hereinafter referred to as "Namibian tax").

(b) In the case of France:

- (i) the income tax ("l'impôt sur le revenu");
- (ii) the corporation tax ("l'impôt sur les sociétés");
- (iii) the tax on salaries ("la taxe sur les salaires");
- (iv) the wealth tax ("l'impôt de solidarité sur la fortune");

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and any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French 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 State shall notify each other of substantial 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:

- (a) The terms "a Contracting State" and "the other Contracting State" mean France or Namibia, as the context requires;
- (b) The term "Namibia" means the territory of the Republic of Namibia, and, when used for the purpose of this Convention in a geographical sense, the area in which the tax laws of Namibia are in force, as well as the territorial sea, the exclusive economic zone and the continental shelf which are adjacent to the territorial sea, insofar Namibia exercises sovereign rights in accordance with the international law concerning the exploration and exploitation of the natural resources of the sea-bed and its subsoil and the superjacent waters;
- (c) the term "France", means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the sea-bed and its subsoil and the superjacent waters;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) In the case of the Republic of Namibia, the Permanent Secretary in the Ministry of Finance who is the Chief Executive Officer and Administrator of Namibian Tax Laws or his or her authorised representative.
 - (ii) In the case of France, the Minister in charge of the Budget or his or her authorised representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies. The meaning of a term under the taxation law of that State shall have priority over the meaning provided for such term in other branches of law of that State.

ARTICLE 4

Resident

1. For the purposes 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 or her domicile, residence, place of management or any other criterion of a similar nature. But this term 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. Where that State is France, this term also includes a partnership or other group of persons subjected to a substantially similar tax regime under French taxation law,

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whose place of effective management is situated in France and is not liable to corporation tax in France.

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

- (a) He or she shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);
- (b) If the State in which he or she has his or her centre of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;
- (c) If he or she has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the Contracting State of which he or she is a national;
- (d) If he or she is a national of both States or of neither of them, the competent authorities of the Contracting States 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 a resident of the State in which its place of effective management is situated.

4. The term "resident of a Contracting State" shall include that State, its local authorities, and in the case of Namibia its regional authorities, and statutory bodies thereof.

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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse, where storage facilities are provided to parties other than the enterprise; and
- (h) a guest farm in the case of Namibia.

3. A building site or construction or assembly or installation project also constitutes a permanent establishment, but only where such site or project continues for a period of more than six months.

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

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraph (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting State on behalf

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of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such person has and habitually exercises in the first-mentioned State an authority to conclude contracts in the name of the enterprise, unless the activities of such person is limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business, a permanent establishment under the provisions of that paragraph.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting 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 other State.

2. The term "immovable property" shall have the meaning 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 rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by that company or legal person, income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.

ARTICLE 7

Business Profits

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

2. Subject to the provisions of paragraph 3, 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.

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

4. 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.

5. 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.

6. 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.

7.—

(a) In the Contracting State in which the permanent establishment is situated, no profits shall be attributed to a building site or construction or assembly or installation project except those which are the result of such activities themselves. Profits derived from supply of goods connected with, or independent of, such activities and effected by the principal permanent establishment (head office) or any other permanent establishment of the enterprise or by a third party, shall not be attributed to the building site or construction or assembly or installation project.

(b) Income derived from design, planning, engineering or research or from technical services which a resident of a Contracting State performs in that Contracting State shall not be attributed to that permanent establishment.

8. It is understood that payments made in consideration for any services of a managerial, technical or consulting nature shall be regarded as business profits in the meaning of this Article.

ARTICLE 8

Shipping and Air 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. Those profits shall include profits derived by the enterprise from activities which are incidental to such operation, and in particular from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic.

2. If the place of effective management of a shipping enterprise is aboard a ship or a boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 shall also apply to profits derived 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.

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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 where that other State considers the adjustment justified. 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

3.—

- (a) A resident of Namibia who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal) shall be entitled to a payment from the French Treasury equal to such tax credit (avoir fiscal), subject to the deduction of the tax provided for in sub-paragraph (b) of paragraph 2;

- (b) The provisions of sub-paragraph (a) of this paragraph shall apply only to a resident of Namibia who is:

- (i) an individual; or
- (ii) a company which holds directly or indirectly less than 10 per cent of the capital of the company paying the dividends;

- (c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the beneficial owner of the dividends is not subject to Namibian tax in respect of such dividends and the payment from the French Treasury.

- (d) The gross amount of the payment mentioned in sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Convention.

4. Unless he is entitled to the payment from the French Treasury referred to in paragraph 3, a resident of Namibia who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (précompte) effectively paid, if any, by the company in respect of such dividends. The gross amount of the prepayment (précompte) refunded shall be deemed to be dividends for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2.

5. 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 considered as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. The term “dividends” shall not include income mentioned in Article 16.

6. The provisions of paragraphs 1, 2, 3 and 4 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

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situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. 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 or a fixed base 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 consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if one of the following conditions is fulfilled:

- (a) Such recipient is a Contracting State, one of its local authorities, or in the case of Namibia one of its regional authorities, or a statutory body thereof; or such interest is paid by one of those entities; or
- (b) Such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or with the sale on credit of any merchandise or the furnishing of any services by one enterprise to another enterprise; or
- (c) Such interest is paid on any loan of whatever kind granted by a bank.

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 prices attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item of income which is considered as a dividend under the provisions of Article 10.

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

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, and in the case of Namibia a regional authority, or a statutory body thereof or any other resident of that State. Where, however, the person paying the interest, whether he or she is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

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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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, any royalty as is mentioned in paragraph 1, which consists of payments of any kind received as a consideration for the use of, or the right to use, any copyright or similar right, shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the payments.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for a 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.

5. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority and in the case of Namibia a regional authority, a statutory body thereof or another resident of that State. Where, however, the person paying the royalties, whether he or she is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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.—

- (a) 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.
- (b) Gains from the alienation of shares or rights in a company or legal person the assets of which consist, principally, directly or through the interposition of one or more other companies or legal persons, of immovable property situated in a Contracting State or of

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rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or legal person or to the performance of its independent personal services shall not be taken into account.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains 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 the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property, other than that referred to in preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he or she has a fixed base regularly available to him or her in the other Contracting State for the purpose of performing his or her activities. If he or she has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a 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 State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months; and
- (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 or a fixed base 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' Fees

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his or her 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.

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ARTICLE 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her 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 an athlete in his or her capacity as such accrues not to the entertainer or athlete himself or herself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State as an entertainer or an athlete from his or her personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned State if those activities in the other State are supported mainly by public funds of the first-mentioned State, its local authorities, and in the case of Namibia its regional authorities, or statutory bodies thereof.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete, resident of a Contracting State, in his or her capacity as such in the other Contracting State accrues not to the entertainer or athlete himself or herself but to another person, that income, notwithstanding the provisions of Articles 7, 14 and 15, shall be taxable only in the first-mentioned State, if that other person is supported mainly by public funds of that Contracting State, its local authorities, and in the case of Namibia its regional authorities, or statutory bodies thereof.

ARTICLE 18

Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such resident shall be taxable only in that State.

ARTICLE 19

Public Remuneration

1.—

- (a) Remuneration, other than a pension, paid by a Contracting State or its local authority, and in the case of Namibia its regional authority, or a statutory body thereof to an individual in respect of services rendered to that State or authority or statutory body shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of, and a national of, that other State without being also a national of the first-mentioned State.

2.—

- (a) Any pension paid by, or out of funds created by, a Contracting State or its local authority, and in the case of Namibia its regional authority, or a statutory body thereof to an individual in respect of services rendered to that State or authority or statutory body 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 without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or its local authority, and in the case of Namibia its regional authority, or by a statutory body thereof.

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ARTICLE 20

Students

Payments which a student or business 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 or her education or training receives for the purpose of his or her maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 22

Capital

1.—

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

(b) Shares or rights in a company or legal person the assets of which consist principally, directly or through the interposition of one or more other companies or legal persons, of immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or legal person or to the performance of its independent personal services shall not be taken into account.

2. Capital represented by shares or rights (other than shares or rights referred to in subparagraph (b) of paragraph 1) forming part of a substantial interest in a company which is a resident of a Contracting State may be taxed in that State. A substantial interest shall be deemed to exist when a person, alone or together with related persons, holds directly or indirectly shares or rights the total of which gives right to at least 25 per cent of the profits of the company.

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

4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23

Elimination of Double Taxation

1. In the case of Namibia, double taxation shall be avoided as follows:

(a) where a resident of Namibia derives income or owns capital which, in accordance with any provision of this Convention, is taxed in France, Namibia shall allow as a deduction

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from the tax on the income of that resident an amount equal to the income tax paid in France; and, as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in France. Such deduction, in either case, shall not, however, exceed that part of the income tax or capital tax as computed before the deduction is given, which is attributable, as the case may be, to such income or capital which is taxed in France;

- (b) where, in accordance with any provision of this Convention, income derived or capital owned by a resident of Namibia is exempt from tax in Namibia, Namibia may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital;
 - (c) as regards the provisions of subparagraph (a) it is understood that the term "amount of Namibian tax attributable to such income or capital" means:
 - (i) where the tax on such income or capital is computed by applying a proportional rate, the amount of the net income or capital concerned multiplied by the rate which actually applies to that income or capital;
 - (ii) where the tax on such income or capital is computed by applying a progressive scale, the amount of the net income or capital concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income or capital taxable in accordance with Namibian law to the amount of that total net income or capital.
2. In the case of France, double taxation shall be avoided as follows:
- (a) Income arising in Namibia, which may be taxed or shall be taxable only in that State in accordance with the provisions of the Convention, shall be taken into account for the computation of the French tax where the beneficiary of such income is a resident of France and where such income is not exempted from corporation tax according to French law. In that case, the Namibian tax shall not be deductible from such income, but the beneficiary shall be entitled to a tax credit against French tax. Such tax credit shall be equal:
 - (i) in the case of income other than income mentioned in subparagraph (ii), to the amount of French tax attributable to such income;
 - (ii) in the case of income referred to in Articles 10, 11, 12, 13 paragraph 1, 15 paragraph 3, 16 and 17 paragraphs 1 and 2 to the amount of tax paid in Namibia in accordance with the provisions of the Convention; however, such tax credit shall not exceed the amount of French tax attributable to such income. It is understood that the term "amount of tax paid in Namibia" means the amount of Namibian tax effectively and definitively borne in respect of the income concerned, in accordance with the provisions of the Convention, by the beneficiary who is a resident of France.
 - (b) As regards the application of subparagraph (a) to income referred to in Articles 11 and 12, where the amount of tax paid in Namibia in accordance with the provisions of those Articles exceeds the amount of French tax attributable to such income, the resident of France who is the beneficiary of such income may present his or her case to the French competent authority. If it appears to it that such a situation results in taxation which is not comparable to taxation on net income, that competent authority may, under the conditions it determines, allow the non-credited amount of tax paid in Namibia as a deduction from the French tax levied on other income from foreign sources derived by that resident.
 - (c) Where, according to its legislation, France in determining the taxable profits of its residents takes into account the profits of associated companies which are residents of Namibia or of permanent establishments situated in Namibia, under a tax regime allowing the deduction of losses or providing for the avoidance of double taxation, the provisions of the Convention shall not prevent the application of that legislation.
 - (d) A resident of France who owns capital which may be taxed in Namibia according to the provisions of Article 22 shall also be taxable in France in respect of such capital. The French tax shall be computed by allowing a tax credit equal to the amount of the tax paid in Namibia on such capital. That tax credit shall not exceed the amount of the French tax attributable to such capital.
 - (e) As regards the provisions of subparagraph (a), it is understood that the term "amount of French tax attributable to such income" means:

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- (i) where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;
 - (ii) where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.
- (f) As regards the provisions of subparagraph (d), the interpretation in subparagraph (e) shall apply *mutatis mutandis* to the term “amount of French tax attributable to such capital”.

ARTICLE 24

Non-discrimination

1. Individuals possessing the nationality 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 individuals possessing the nationality 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, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

4. 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 requirements 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.

5. Payments made by an individual who is a resident of a Contracting State to a pension scheme established in the other Contracting State may be relieved from tax in the first-mentioned State provided that the pension scheme is accepted by the competent authority of that State as corresponding to a pension scheme recognised as such for tax purposes by that State. In such case relief from tax shall be given in the same way as if the pension scheme was recognised as such by that State.

6. Subject to mutual agreement between the competent authorities, the exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that Contracting State or its local authorities, and in the case of Namibia its regional authorities, or statutory bodies thereof which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or its local authorities, and in the case of Namibia its regional authorities, or to statutory bodies thereof, which carry on the same or similar activity. Notwithstanding the provisions of paragraph 7, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

8. If any treaty, agreement or convention between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is

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understood that only the provisions of this Convention, to the exclusion of such clauses, shall apply in tax matters.

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 or her in taxation not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided by the domestic law of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or, if his or her case comes under paragraph 1 of Article 24, to that of the Contracting State of which he or she 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. In particular they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

5. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reductions or exemptions and other advantages provided for by the Convention. Those requirements may include the presentation of a form of certification of residence providing in particular the nature and the amount or value of the income or capital concerned, and including the certification of the tax administration of the first-mentioned State.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

ARTICLE 27

Diplomatic Agents and Consular Officers

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members or consular posts, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he or she is liable in the sending State to the same obligations in relation to tax on his or her total income or on capital as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in either Contracting State to the same obligations in relation to tax on their total income or on capital as are residents of those State.

ARTICLE 28

Miscellaneous Rules

1.—

- (a) If according to the provisions of Articles 11, 12, 13, 18 or 21 the right of France to tax income is limited and according to the Namibian tax laws the income is regarded as income from foreign sources and therefore exempted from Namibian tax, France may tax such income as if this Convention did not exist.
- (b) If according to the provisions of Articles 11, 12, 13, 18 or 21 the right of Namibia to tax income from Namibian sources or deemed to be Namibian sources is limited and if such income is in accordance to the French tax laws exempted from tax in France, Namibia may tax such income as if this Convention did not exist.
- (c) It is understood that the provisions of subparagraphs (a) and (b) shall not apply where the beneficial owner of the income is a Contracting State, one of its local authorities, and in the case of Namibia its regional authorities, and statutory bodies thereof.

2. Nothing in the Convention shall prevent France from applying the provisions of Article 209B or Article 212 of its tax code (code général des impôts), or any substantially similar provisions enacted in France which may amend or replace the provisions of those Articles.

3. In respect of Articles 10 and 11, an investment company or fund, which is situated in a Contracting State where it is not subject to a tax mentioned in subparagraphs (a)(i) or (ii) or in subparagraph (b)(i) or (ii) of paragraph 3 of Article 2, and receives dividends or interest arising in the other State can ask for the aggregate amount of the tax reductions or exemptions or other advantages provided by the Convention in the proportion of such income which corresponds to the rights in the company or fund held by residents of the first-mentioned State and which is taxable in the hands of those residents.

ARTICLE 29

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other local authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including

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conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner, in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory and local authority to which it has been extended under this Article.

ARTICLE 30

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the second month following the day when the later of those notifications has been received.

2. The provisions of the Convention shall have effect:

(a) in the case of Namibia:

- (i) in respect of taxes withheld at source and taxes on capital, for amounts taxable on or after the first day of the calendar year following the entry into force of the Convention;
- (ii) in respect of other taxes on income, for income relating to periods beginning on or after the first day of March of the calendar year following the entry into force of the Convention.

(b) in the case of France:

- (i) in respect of taxes withheld at source, for amounts taxable on or after the first day of the calendar year following the entry into force of the Convention;
- (ii) in respect of other taxes on income, for income relating to any calendar year or accounting period following the calendar year in which the Convention enters into force;
- (iii) in respect of the capital tax, for capital taxable on or after the first day of January of the year following the calendar year in which the Convention enters into force.

ARTICLE 31

Termination

1. This Convention shall remain in force indefinitely. However, after a period of five calendar years from the date on which the Convention enters into force, either Contracting State may terminate it through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year.

2. In such event the Convention shall cease to have effect:

(a) in the case of Namibia:

- (i) in respect of taxes withheld at source and taxes on capital for amounts taxable on or after the first day of the calendar year following the year in which the notice is given;
- (ii) in respect of other taxes on income for income relating to periods beginning on or after the first day of March of the calendar year following the year in which the notice is given.

(b) in the case of France:

- (i) in respect of taxes withheld at source, for amounts taxable on or after the first day of the calendar year in which the notice is given;
- (ii) in respect of other taxes on income, for income relating to any calendar year or accounting period following the calendar year in which the notice is given;
- (iii) in respect of the capital tax, for capital taxable on or after the first day of January of the calendar year beginning after the calendar year in which the notice is given.

FRANCE

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

DONE at Windhoek this 29th day of May 1996, in two originals, both in the English and French languages, both texts being equally authentic.

H ANGULA

FOR THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

F BALEINE DU LAURENS

FOR THE GOVERNMENT OF THE FRENCH REPUBLIC

