



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 3

1999

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

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 16 July 1993 entered into an agreement with the Government of the Kingdom of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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 KINGDOM OF SWEDEN
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Namibia and the Government of the Kingdom of Sweden, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 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) The taxes to which this Convention shall apply are:
 - (a) In Namibia:
 - (i) the income tax;
 - (ii) the non-resident shareholders' tax; and
 - (iii) the petroleum income tax;
(hereinafter referred to as "Namibian tax");
 - (b) in Sweden:

- (i) the National income tax (den statliga inkomstskatten), including the sailors' tax (sjömansskatten) and the coupon tax (kupongskatten);
- (ii) the special income tax for non-residents (särskild inkomstskatt för utomlands bosatta);
- (iii) the special income tax for non-resident artistes and athletes (den särskilda inkomstskatten för utomlands bosatta artister m.fl.); and
- (iv) the municipal income tax (den kommunala inkomstskatten); (hereinafter referred to as "Swedish tax").

(2) Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

(3) 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 taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any 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 term "Namibia" means the Republic of Namibia as defined in the Constitution of the Republic of Namibia, that is, "The national territory of Namibia shall consist of the whole of the territory recognized by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia". The term "Namibia" further includes its territorial sea as well as the exclusive economic zone and the continental shelf over which Namibia exercises sovereign rights, in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea water, sea-bed and subsoil of these waters;
 - (b) the term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Namibia or Sweden, as the context requires;
 - (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 of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "competent authority" means:
 - (i) in 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 authorized representative;
 - (ii) in Sweden, the Minister of Finance, his or her authorized representative or the authority which is designated as a competent authority for the purposes of this Convention.

(2) As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4 RESIDENT

- (1) (a) 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 does not include any person who is liable to tax in that State in respect only of income from sources in that State. However, in the case of Namibia, the term "resident of a Contracting State" includes any person who is resident in Namibia according to the Namibian Income Tax Act.
- (b) In the case of a partnership or estate this term applies only to the extent that the income derived by such partnership or estate is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners.

(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 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.

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) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months;
 - (h) a farm or a plantation; and
 - (i) a warehouse, where storage facilities are provided to parties other than the enterprise.

(3) The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in

connection therewith, but only where such site, project or activities continue 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 or display 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 or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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.

(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 of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;
- (b) has no such authority but nevertheless maintains habitually in the first-mentioned Contracting State a stock of goods or merchandise from which he or she regularly delivers goods or merchandise on behalf of the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise 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 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.

(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 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, buildings, 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 or her 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 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.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(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.

Article 8 **SHIPPING AND AIR TRANSPORT**

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

(2) With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS) the provisions of paragraph (1) shall apply only to such part of the profits as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

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

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 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 (other than a partnership) which holds directly at least 10 per cent of the share capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

Notwithstanding the provisions of sub-paragraphs (a) and (b) such dividends shall be taxable only in the Contracting State of which the beneficial owner is a resident if the beneficial owner is a company (other than a partnership) which holds directly

more than 50 per cent of the share capital of the company paying the dividends and more than 50 per cent of the share capital of the company, which is the beneficial owner of the dividends, is held by residents of that Contracting State.

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, 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, 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.

(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 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.

(6) If in any Convention for the avoidance of double taxation concluded by Namibia with a third State, being a member of the Organisation for Economic-Cooperation and Development, (OECD), at the time of the signature of this Convention, Namibia after that time would agree to exempt dividends arising in Namibia from Namibian tax on dividends on more favourable conditions or to limit the rates of tax or holding provided in paragraph 2, such exemption or lower rate or holding shall automatically apply as if it had been specified in paragraph 2.

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) interest, mentioned in paragraph (1) shall be taxable only in the Contracting State where the recipient of the interest is resident if -

- (a) the recipient thereof is the government of a Contracting State, the Central Bank of a Contracting State or a local authority thereof or in the case of Namibia its regional authorities, or
- (b) the interest is paid in respect of a loan granted or guaranteed by a financial institution of a public character with the objective of promoting exports and development, if the credit granted or guaranteed contains an element of subsidy, or
- (c) the interest is paid with respect to indebtedness arising on the sale on credit, by an enterprise, of any merchandise or industrial, commercial or scientific equipment, or for services provided, to an enterprise of the other Contracting State, except where the sale, services provided or indebtedness is between related persons, or
- (d) the recipient of the interest is 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 prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, or in the case of Namibia a regional authority, or a 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 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.

(8) If in any Convention for the avoidance of double taxation concluded by Namibia with a third State, being a member of the Organisation for Economic Co-operation and Development, (OECD), at the time of the signature of this Convention, Namibia after that time would agree to exempt interest arising in Namibia from Namibian tax on interest on more favourable conditions or to limit the rate of tax provided in paragraph 2, such exemption or lower rate shall automatically apply as if it had been specified in paragraph 2.

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 15 per cent of the gross amount of the royalties. Notwithstanding the preceding sentence, if the royalties are paid with respect to any patent, secret formula or process, or for information concerning industrial or scientific experience, 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 cinematograph films and films or tapes 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 involving a transfer of know-how 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, 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.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, or in the case of Namibia a regional authority, or a 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.

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

(7) If in any Convention for the avoidance of double taxation concluded by Namibia with a third State, being a member of the Organisation for Economic Co-operation and Development, (OECD), at the time of the signature of this Convention, Namibia after that time would agree to exempt royalties arising in Namibia from Namibian tax on royalties or to limit the rates of tax provided in paragraph 2, such exemption or lower rate shall automatically apply as if it had been specified in paragraph 2.

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, or from the alienation of shares in a company the assets of which consist principally of such property, 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 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) (a) 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.

(b) With respect to gains derived by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such portion of the gains as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

(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.

(5) Notwithstanding the provisions of paragraph (4), gains from the alienation of shares or other corporate rights of a company which is a resident of one of the

Contracting States derived by an individual who has been a resident of that State and who has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the five years next following the date on which the individual has ceased to be a resident of the first-mentioned State.

Article 14 **INDEPENDENT PERSONAL SERVICES**

(1) Income derived by an individual who is 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. Such income may also be taxed in the other Contracting State if:

- (a) the individual has a fixed base regularly available to him or her in that other State for the purpose of performing his or her activities, but only so much thereof as is attributable to that fixed base, or
- (b) the individual is present in that other State for a period or periods exceeding in the aggregate 183 days within any period of 12 months, but only so much thereof as is attributable to services performed in that State.

(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 12 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 by an enterprise of a Contracting State may be taxed in that State. Where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

Article 16
DIRECTORS' FEES

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.

Article 17
ENTERTAINERS AND SPORTS PERSONS

(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 a sports person, 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 a sports person in his or her capacity as such accrues not to the entertainer or sportsperson him- 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 sportsperson are exercised.

(3) Notwithstanding the provisions of paragraphs (1) and (2) income derived by an entertainer or sportsperson from his or her personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by the other Contracting State, a local authority, or in the case of Namibia a regional authority, or a public institution thereof.

Article 18
PENSIONS, ANNUITIES AND SIMILAR PAYMENTS

(1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration, disbursements under the Social Security legislation and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State. If the pension or annuity or a part thereof, has been financed through deductions from taxable income in Namibia, such pension, annuity or part shall, however, be taxable only in Namibia.

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

Article 19
GOVERNMENT SERVICE

- (1) (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof or in the case of Namibia a regional authority to an individual in respect of services rendered to that State or subdivision or authority 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 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 a local authority thereof or in the case of Namibia a regional authority to an individual in respect of services rendered to that State or subdivision 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 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 a local authority thereof or in the case of Namibia a regional authority.

Article 20
STUDENTS

- (1) 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.
- (2) In respect of grants or scholarships not covered by paragraph (1), a student or business apprentice referred to in paragraph (1) shall be entitled to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State he or she is visiting. This paragraph shall only apply if the student or apprentice stays for more than six months in that State.

Article 21
MANAGEMENTS, CONSULTANCY AND TECHNICAL FEES

- (1) Technical fees arising in a Contracting State which are derived by a

resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 15 per cent of the gross amount of such fees.

(3) The term "technical fees" as used in this Article means payments of any kind from a person who is resident in one of the Contracting States to any person, other than to an employee of the person making the payments, in consideration of any services of an administrative, technical, managerial or consultancy nature performed outside that State.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority thereof, or in the case of Namibia a regional authority, or a resident of that State. Where, however, the person paying the technical fees, whether he or she is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the recipient 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.

(7) If in any Convention for the avoidance of double taxation concluded by Namibia with a third State, being a member of the Organisation for Economic Co-operation and Development, (OECD), at the time of the signature of this Convention, Namibia after that time would agree to exempt technical fees arising in Namibia from Namibian tax on such fees or to limit the rate of tax provided in paragraph 2, such exemption or lower rate shall automatically apply as if it had been specified in paragraph 2.

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, 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.

(3) Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

Article 23 **ELIMINATION OF DOUBLE TAXATION**

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

Subject to the provisions of the law of Namibia regarding the allowance of a credit against Namibian tax of tax payable under the laws of a country outside Namibia, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in Sweden shall be allowed as a credit against any Namibian tax payable in respect of the same profits or income by reference to which the Swedish tax is computed.

(2) In the case of Sweden, double taxation shall be avoided as follows:

- (a) Where a resident of Sweden derives income which under the laws of Namibia and in accordance with the provisions of this Convention may be taxed in Namibia, Sweden shall allow - subject to the provisions of the law of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) - as a deduction from the tax on such income, an amount equal to the Namibian tax paid in respect of such income.
- (b) Where a resident of Sweden derives income which, in accordance with the provisions of this Convention, shall be taxable only in Namibia, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in Namibia.
- (c) Notwithstanding the provisions of subparagraph (a), dividends paid by a company which is a resident of Namibia to a company which is a resident of Sweden, shall be exempt from Swedish tax to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies. This exemption shall not apply unless:

- (i) the profits out of which the dividends are paid have been subjected to either the normal corporate tax in Namibia or, in Namibia or elsewhere, an income tax comparable to the Swedish tax which would have been paid if the profits had been derived by a Swedish company, or
 - (ii) the dividends, in addition to such dividends mentioned in (i) of this sub-paragraph, consist of income which would have been tax exempt in Sweden if it had been derived directly by a company resident in Sweden.
- (d) For the purposes of (a) and (c) of this paragraph the term "Namibian tax paid" and the term "the normal corporate tax in Namibia" shall be deemed to include the Namibian tax which would have been paid but for any exemption or reduction of tax granted under the incentive provisions contained in the Namibian Foreign Investment Act, so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character or any other provision which may subsequently be made granting an exemption or reduction which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
- (e) The provisions of (d) of this paragraph shall apply for the first ten years during which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

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 are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(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.

(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. 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 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.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

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

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 laws 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 laws 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 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, in particular for the prevention of fraud or evasion of such taxes, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. 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 the 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;
- (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

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28
LIMITATION OF BENEFITS

(1) If according to the provisions of Articles 6 to 22 the right of Sweden 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, Sweden may tax such income as if this Convention did not exist.

(2) If according to the provisions of Articles 6 to 22 the right of Namibia to tax income from Namibian sources or deemed to be from Namibian sources is limited and if such income is in accordance to the Swedish tax laws not taxed in Sweden, Namibia may tax such income as if this Convention did not exist.

Article 29
ENTRY INTO FORCE

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Stockholm as soon as possible.

(2) The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect on income derived on or after the first day of January of the year next following that of the entry into force of this Convention.

Article 30
TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such case, the Convention shall cease to have effect on income derived on or after the first day of January of the year next following that in which the notice of termination is given.

In witness whereof the undersigned being duly authorized thereto have signed this Convention.

Done at Windhoek, this 16th day of July 1993, in duplicate in the English language.

G.J. HANEKOM
For the Government of
the Republic of Namibia

S. RYLANDER
For the Government of
the Kingdom of Sweden

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of Namibia and the Government of the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

(1) If in the future a Contracting State will introduce Offshore-legislation, the competent authorities shall by mutual agreement decide how the Convention shall apply to enterprises enjoying privileges according to that legislation.

(2) With reference to the provision of paragraph 6 of Article 5, the term "almost wholly", as used in relation to a person whose activities are devoted on behalf on an enterprise, shall be interpreted accordingly. Where 75 per cent or more of his or her turnover during a fiscal year is attributable to activities devoted on behalf of an enterprise the activities of such a person shall be considered to have been devoted almost wholly on behalf of that enterprise during that fiscal year.

In witness whereof the undersigned being duly authorized thereto have signed this Protocol.

Done at Windhoek, this 16th day of July 1993, in duplicate in the English language.

G.J. HANEKOM
For the Government of
the Republic of Namibia

S. RYLANDER
For the Government of
the Kingdom of Sweden