



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 7

1999

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

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 25 February 1998 entered into an agreement with the Government of Romania 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

C O N V E N T I O N

BETWEEN

THE GOVERNMENT OF ROMANIA

AND

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT

TO TAXES ON INCOME AND ON CAPITAL

The Government of Romania and the Government of the Republic of Namibia desiring to promote and strengthen economic relations between the two countries, 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, its political subdivisions, or local authorities or its administrative-territorial units, 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, 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 Romania:
 - the tax on income derived by individuals;
 - the tax on salaries, wages and other similar remuneration;
 - the tax on the profits of bodies and legal persons;
 - the tax on income realized from agricultural activities;
 - the tax on dividends.(hereinafter referred to as "Romanian tax")
 - (b) In the case of Namibia:
 - the income tax (tax on individuals and tax on companies);
 - the non-resident shareholders' tax on dividends;
 - the petroleum income tax.(hereinafter referred to as "Namibian tax").
4. This Convention shall also apply to any identical or substantially similar taxes which are imposed, after the date of entering into force of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Romania or the Republic of Namibia;
 - (b) the term "ROMANIA" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania 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 waters, seabed and subsoil of these waters;
 - (c) the term "NAMIBIA" means the Republic of Namibia and when used in a geographical sense, includes the 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 subject to international law, concerning the exploration and exploitation of the natural resources of the seabed and its subsoil and 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 "nationals" means all individuals having the citizenship of a Contracting State and all legal persons or other entities created under the law in force in a Contracting State;
 - (h) 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 situated in the other Contracting State;
 - (i) the term "competent authority" means:
 - (1) In Romania the Ministry of Economy and Finance;
 - (2) In the Republic of Namibia the Ministry of Finance.
2. As regards the application of the Convention by each of the Contracting States, 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. For the purposes of this Convention:
- (a) the term "resident of Romania" means any person who, under the laws of Romania is liable to tax therein by reason of his or her domicile, residence, place of effective management or any other criterion of a similar nature;
 - (b) the term "resident of Namibia" means any individual who is ordinarily resident in, or has his or her domicile in Namibia and any company or other body of persons who has its place of effective management or incorporation in Namibia.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the status of such individual (he/she) shall be determined as follows:
- (a) he/she shall be deemed to be a resident of the State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in both States, he/she shall be deemed to be a resident of the State with which his/her personal and economic relations are closer (centre of vital interests);
 - ∴ (b) if the State in which he/she has his/her centre of vital interests cannot be

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

- (c) if he/she has an habitual abode in both States or in neither of them, he/she shall be deemed to be a resident of the State of which he/she is a national;
 - (d) if he/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 the 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 other place of extraction of natural resources,
 - (g) a farm, a plantation, an orchard or vineyard,
 - (h) a warehouse, in relation to a person providing storage facilities for others.
3. The term “permanent establishment” includes also:
 - (a) 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 nine months.
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature

continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve-month period.

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 pursuant to a sale contract 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 sale of displayed goods or merchandise belonging to the enterprise in the frame of an occasional temporary fair or exhibition within 30 days after the closing of the said fair or exhibition;
 - (e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (f) the maintenance by an enterprise of a fixed place of business solely for the purpose of advertising, for supply of information, for marketing research, or for similar activities which have a preparatory or auxiliary character, for that enterprise;
 - (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), 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 7 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, unless the activities of such person are limited to those mentioned in paragraph 7 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; or
 - (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. 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 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 wholly devoted on behalf of that enterprise, he/she will not be considered an agent of an independent status within the meaning of this paragraph.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.
2. For the purposes of this Convention the term "immovable property" shall be defined in accordance with 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.

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 determining 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.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.
5. 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.
6. 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.
7. 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. Notwithstanding the provisions of paragraph 1 and of Article 7, the profits derived by an enterprise of a Contracting State from the operation of ships or

aircraft used mainly to transport exclusively between places situated in a Contracting State are taxable in that State.

4. 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 may 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 the 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 15 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, 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.

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 Contracting 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 15 per cent of the gross amount of interest. The provisions of paragraph 2 of this Article shall not apply on interest paid in respect of a loan made and guaranteed, directly or indirectly by a Government of a Contracting State, its political subdivisions, local authorities, its administrative-territorial units or by the National or Central Banks of the Contracting States.
3. 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 debtors 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 payments shall not be regarded as interest for the purpose of this Article.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in

the other Contracting State in which the interest arises, through a permanent establishment situated therein, 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, an administrative-territorial unit or a resident of that State. Where, however, the person paying the interest, whether he/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 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.
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 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 that 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 15 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 or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment or 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 political subdivision, a local authority, an administrative-territorial unit or a resident of that State. Where, however, the person paying the royalties, whether he/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 Contracting 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 that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in paragraph 2 of Article 6, situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 together with the whole enterprise) or of such a fixed base, may be taxed in the other State.
3. Gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State where, pursuant to the provisions of Article 8, the profits from such activities are taxable.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 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 independent activities of a similar character shall be taxable only in that State unless he/she has a fixed base available to him/her in the other Contracting State for the purpose of performing his/her activities. If he/she has such a fixed base, the income may be taxed in the other Contracting 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 in the tax year concerned, 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 by a resident of a Contracting State 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 AND REMUNERATION OF TOP-LEVEL
MANAGERIAL OFFICIALS**

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

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his/her capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

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/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/her capacity as such accrues not to that entertainer or athlete himself/ 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. However, such income shall not be taxed in the State mentioned in paragraph 1 if the underlying activities are exercised during a visit, within the framework of cultural exchanges established under cultural agreements concluded between the two Contracting States, to that State by a resident of the other Contracting State and where such visit is financed directly or indirectly by that other State, a political subdivision, a local authority or an administrative-territorial unit thereof or by an organization which in the other State is recognized as a charitable organization.

Article 18 **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision, a local authority or an administrative-territorial unit thereof shall be taxable only in that State.

Article 19 **GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision, a local authority or an administrative-territorial unit thereof to an individual in respect of services rendered to that State, political subdivision, local authority or administrative-territorial unit 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 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, a political subdivision, a local authority, or an administrative-territorial unit thereof to an individual in respect of services rendered to that State, political subdivision, local authority or administrative-territorial unit 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 paid in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision, a local authority or an administrative-territorial unit thereof.

Article 20

TEACHERS

An individual who visits a Contracting State at the invitation of that State or of an university, college, school, or other educational institution of that State or under an official programme of educational exchange solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his/her remuneration for such activity, provided that such remuneration is derived by him/her from outside that State.

Article 21

STUDENTS AND TRAINEES

1. Payments which a student or a 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 education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. In respect of payments and remuneration from employment not covered in paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he/she is visiting, providing that the employment is directly connected with the purpose of the visit and the income is used for maintenance, education and training.

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 may be taxed 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 also be taxed in that other State.

Article 23 TAXATION OF CAPITAL

1. 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.
2. 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 service, may be taxed in that other State.
3. 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.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24 METHODS FOR ELIMINATION OF DOUBLE TAXATION

Double Taxation shall be avoided as follows:

1. In the case of Romania, taxes paid by Romanian residents in respect of income or capital taxable in Namibia, in accordance with the provisions of this

Convention, shall be deducted from the Romanian taxes due according to the Romanian fiscal laws.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given which is attributable to the income or the capital which may be taxed in that other State.

2. In the case of Namibia, taxes paid by Namibian residents in respect of income or capital taxable in Romania, in accordance with the provisions of this Convention, shall be deducted from the Namibian taxes due under the laws of Namibia.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given which is attributable to the income or the capital which may be taxed in that other State.

Article 25 **NON-DISCRIMINATION**

1. Nationals of a Contracting State, who are residents of one or both of the Contracting States, 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.
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 6 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 paid by 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. In this Article the term "taxation" means taxes of every kind and description.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him/her in taxation not in accordance with the provisions of this Convention, he/she may, irrespective of the remedies provided by the domestic law of those States, present his/her case to the competent authority of the Contracting State of which he/she is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. 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.

Article 27

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 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 28

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 29

ENTRY INTO FORCE

1. This Convention shall be ratified in accordance with the constitutional provisions in force in each of the Contracting States and shall enter into force on 31st day upon the exchange of instruments of ratification.
2. The provision of this Convention shall have effect:
 - (a) in the case of Romania regarding taxes on income and on capital for taxable periods starting from 1st of January of the next calendar year after the date of entering into force of this Convention;
 - (b) in the case of Namibia regarding taxes on income and on capital for taxable periods starting from 1st of March of the next calendar year after the date of entering into force of this Convention.

Article 30

TERMINATION

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

- (a) in the case of Romania regarding taxes on income and on capital for taxable periods starting from 1st of January of the next calendar year after the date of giving the written notice of termination;
- (b) in the case of Namibia regarding taxes on income and on capital for taxable

periods starting from 1st of March of the next calendar year after the date of giving the written notice of termination.

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

DONE at WINDHOEK this 25th day of February 1998 in two originals, each in the Romanian and English languages, both texts being equally authentic.

DAN RADU RUSANU
For the Government
of Romania

N. MBUMBA
For the Government
of the Republic of Namibia
