

GAZETTE NOTICE NO. 5583

THE INCOME TAX ACT

(Cap. 470)

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

IN EXERCISE of the powers conferred by section 41A of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning declares that the arrangements made between the Government of the Republic of Kenya and the Government of the Republic of Singapore, in the articles of the agreement set out in the Schedule hereto and signed on the 23rd September, 2024, with a view of affording relief from double taxation in relation to income tax and any rates of similar character imposed by the laws of Kenya, shall, notwithstanding anything contrary in the Act or any other written law, have effect to Income Tax under the Act.

SCHEDULE

The Government of the Republic of Singapore and the Government of the Republic of Kenya,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude an Agreement for the Elimination of Double Taxation with respect to Taxes on Income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

ARTICLE 1 – PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its county governments, political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.

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

- (a) in Kenya, the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470 of the laws of Kenya

(hereinafter referred to as “Kenya tax”);

- (b) in Singapore, the income tax

(hereinafter referred to as “Singapore tax”).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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 that have been made in their taxation laws.

ARTICLE 3 – GENERAL DEFINITIONS

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

- (a) the term “Kenya” means all of the territory of the Republic of Kenya including internal waters, territorial waters and the seabed and subsoil of the territorial waters, the exclusive economic zone and the continental shelf and the seabed and subsoil within such area which has been or may hereafter be designated under her national law, in accordance with international law, as an area over which the Republic of

Kenya has sovereign rights or jurisdiction for purposes of exploring and exploiting natural resources;

- (b) the term “Singapore” means the Republic of Singapore and, when used in a geographical sense, includes its land territory, internal waters and territorial sea (and the seabed and subsoil of the territorial sea), including the airspace above them, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regard to the sea, the sea-bed, the subsoil and the natural resources;
- (c) the term “person” includes an individual, a company, an estate, a trust, a trustee and any other body of persons;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) 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;
- (f) 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;
- (g) the term “competent authority” means:
- (i) in Kenya, the Cabinet Secretary responsible for finance or his authorised representative;
- (ii) in Singapore, the Minister for Finance or his authorised representative;
- (h) the term “national” in relation to a Contracting State, means:
- (i) any individual possessing the nationality or citizenship of that Contracting State; and
- (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

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

ARTICLE 4 – RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any county government, political subdivision, local authority or statutory body thereof.

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

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

- (d) in any other case, 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 only of the State in which its place of effective management is situated. If its place of effective management cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5—PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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; and
- (g) a warehouse, in relation to a person providing storage facilities for others.

3. The term "permanent establishment" also encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities lasts more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days in any 12-month period;
- (c) the carrying on of activities by an enterprise that consist of, or that are connected with, the exploration for or exploitation of natural resources situated in a Contracting State, but only where such activities continue for more than 91 days in any 12-month period;
- (d) an installation or structure used in the exploration for natural resources provided that the installation or structure continues for more than 91 days in any 12-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 of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of 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 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 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. 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 shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

ARTICLE 6—INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

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

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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 – SHIPPING AND AIR TRANSPORT

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include—

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. Interest on funds directly connected with, and integral to, the operations of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraphs 1, 2 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – ASSOCIATED ENTERPRISES

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 accordance with the provisions of paragraph 1, 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 where the competent authorities of the Contracting States agree, upon consultation, that all or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

3. The provisions of paragraph 2 shall not apply where judicial or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

ARTICLE 10 – DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 8% 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. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purpose of paragraph 3, the term “Government”:

- (a) in the case of Kenya, means the Government of Kenya and shall include:
 - (i) a county government, a political subdivision or a local authority;
 - (ii) the Central Bank of Kenya and its wholly-owned (direct or indirect) subsidiaries;
 - (iii) a statutory body; and
 - (iv) any institution wholly or mainly owned by the Government of Kenya as may be agreed from time to time between the competent authorities of the Contracting States;
- (b) in the case of Singapore, means the Government of Singapore and shall include:
 - (i) the Central Bank (the Monetary Authority of Singapore) and its wholly-owned (direct or indirect) subsidiaries;
 - (ii) a statutory body;
 - (iii) entities, including special-purpose investment funds or arrangements, wholly owned (directly or indirectly) by the Government of Singapore, which are set up to invest and manage the assets of the Government of Singapore, and where the dividends paid relate to such assets. For avoidance of doubt, this includes GIC Private Limited, GIC (Realty) Private Limited, GIC (Ventures) Pte. Ltd., Eurovest Pte. Ltd., Euro Mara Private Limited, Fareham Investment Pte. Ltd., Greenview Investment Pte. Ltd., and Magellan Pte Ltd. Any other entities wholly-owned (directly or indirectly) by the Government of Singapore may be agreed from time to time between the competent authorities of the Contracting States; and
 - (iv) any institution wholly or mainly owned by the Government of Singapore as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares,

founders' shares or other rights, not being debt-claims, participating in profits, as well as income 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.

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

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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.

8. Notwithstanding any other provision of this Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits taxable under paragraph 1 of Article 7 may be subject to an additional tax in that other State in accordance with its laws but the additional charge shall not exceed 8% of the amount of those profits.

ARTICLE 11 – INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purpose of paragraph 3, the term "Government":

- (a) in the case of Kenya, means the Government of Kenya and shall include:
 - (i) a county government, a political subdivision or a local authority;
 - (ii) the Central Bank of Kenya and its wholly-owned (direct or indirect) subsidiaries;
 - (iii) a statutory body; and
 - (iv) any institution wholly or mainly owned by the Government of Kenya as may be agreed from time to time between the competent authorities of the Contracting States;
- (b) in the case of Singapore, means the Government of Singapore and shall include:
 - (i) the Central Bank (the Monetary Authority of Singapore) and its wholly-owned (direct or indirect) subsidiaries;
 - (ii) a statutory body;
 - (iii) entities, including special-purpose investment funds or arrangements, wholly owned (directly or indirectly) by the Government of Singapore, which are set up to invest and manage the assets of the Government of Singapore, and where the interest paid relate to such assets. For avoidance of doubt, this includes GIC Private Limited, GIC (Realty) Private Limited, GIC (Ventures) Pte. Ltd., Eurovest Pte. Ltd., Euro Mara Private Limited, Fareham Investment Pte. Ltd., Greenview Investment Pte. Ltd., and Magellan Pte Ltd. Any other entities wholly-owned (directly or indirectly) by the Government of Singapore may be agreed

from time to time between the competent authorities of the Contracting States; and

- (iv) any institution wholly or mainly owned by the Government of Singapore as may be agreed from time to time between the competent authorities of the Contracting States.

5. 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.

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

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

8. 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 Agreement.

ARTICLE 12 – ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10% 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 computer software, patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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

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

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

ARTICLE 13 – TECHNICAL FEES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article 7 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the fees.

3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, contractual, technical, agency, professional or consultancy nature, unless the payment is made—

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution; or
- (c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligations to pay the fees was incurred, and such fees are borne by the permanent establishment.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent establishment situated in that other State or the third State and such fees are borne by that permanent establishment.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 – CAPITAL GAINS

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

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

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

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

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

ARTICLE 15 – INCOME FROM EMPLOYMENT

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 any 12-month period commencing or ending in the fiscal 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 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 shall be taxable only in that State. However, if the remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

ARTICLE 16 – DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 – ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 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 sportsperson, 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 or in connection with personal activities exercised by an entertainer or a sportsperson accrues not to the entertainer or sportsperson himself or herself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State by an artiste or a sportsperson if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or county governments or political subdivisions or local authorities or statutory bodies thereof. In such case, the income shall be taxable only in the Contracting State in which the artiste or the sportsperson is a resident.

ARTICLE 18 – PENSIONS AND SOCIAL SECURITY PAYMENTS

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 or a county government or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 19 – GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a county government, a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State or government, subdivision, authority or body shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a county government, a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State or government, subdivision, authority or body shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, or a county government, a political subdivision, a local authority or a statutory body thereof.

ARTICLE 20 – PROFESSORS AND TEACHERS

1. An individual who visits a Contracting State at the invitation of that State or of a county government or a political subdivision or a local authority thereof or of a university, college, school, museum or other educational or cultural institution of that State or under an official programme of educational or cultural exchange for a period not exceeding two years 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 income or remuneration for such activity, provided that such income or remuneration is paid to him from outside that State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 21 – STUDENTS

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

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

ARTICLE 23 – ELIMINATION OF DOUBLE TAXATION

1. In Kenya, double taxation shall be avoided as follows:

Where a resident of Kenya derives income which in accordance with the provisions of this Agreement may be taxed in Singapore, Kenya shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Singapore, provided that such deduction shall not exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be to the income which may be taxed in Singapore.

2. In Singapore, double taxation shall be avoided as follows:

Where a resident of Singapore derives income from Kenya which, in accordance with the provisions of this Agreement, may be taxed in Kenya, Singapore shall, subject to its laws regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, allow the Kenya tax paid, whether directly or by deduction, as a credit against the Singapore tax payable on the income of that resident. Where such income is a dividend paid by a company which is a resident of Kenya to a resident of Singapore which is a company owning directly or indirectly not less than 10% of the share capital of the first-mentioned company, the credit shall take into account the Kenya tax paid by that company on the portion of its profits out of which the dividend is paid.

ARTICLE 24 – NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to—
 - (a) residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes which it grants to its own residents; or
 - (b) nationals of the other Contracting State those personal allowances, reliefs and reductions for tax purposes which it grants to its own nationals who are not residents of that State or to such other persons as may be specified in the taxation laws of that 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. Where a Contracting State grants tax incentives to its nationals designed to promote economic or social development in accordance with its national policy and criteria, it shall not be construed as discrimination under this Article.
6. The provisions of this Article shall apply to the taxes which are the subject of this Agreement.

ARTICLE 25 – MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
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 Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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 of this Article.

ARTICLE 26 – EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their county governments or political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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).

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

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27 – MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 – ENTITLEMENT TO BENEFITS

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of

income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

ARTICLE 29 – ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Agreement.

2. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect:

- (a) In Kenya:
 - (i) with regard to taxes withheld at source, on amounts paid or accrued on or after the first day of January of the calendar year next following the year upon which this Agreement enters into force;
 - (ii) with regard to other taxes chargeable (other than taxes withheld at source) in respect of year of income beginning on or after the first day of January of the calendar year next following the year upon which this Agreement enters into force; and
 - (iii) in respect of Article 26, for requests made and, in any other case, for assistance provided on or after the date of entry into force of this Agreement concerning information for taxes relating to taxable periods beginning on or after the first day of January of the calendar year next following the year in which this Agreement enters into force; or where there is no taxable period, for all charges to tax arising on or after the first day of January of the calendar year next following the year in which this Agreement enters into force.
- (b) In Singapore:
 - (i) with regard to taxes withheld at source, in respect of amounts paid, deemed to be paid or liable to be paid (whichever is the earliest) on or after the first day of January of the calendar year next following the year in which this Agreement enters into force;
 - (ii) with regard to taxes chargeable (other than taxes withheld at source) in respect of income for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force; and
 - (iii) in respect of Article 26, for requests made and, in any other case, for assistance provided on or after the date of entry into force of this Agreement concerning information for taxes relating to taxable periods beginning on or after the first day of January of the calendar year next following the year in which this Agreement enters into force; or where there is no taxable period, for all charges to tax arising on or after the first day of January of the calendar year next following the year in which this Agreement enters into force.

ARTICLE 30 – TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least 6 months before the end of any calendar year after the expiration of a period of 5 years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- (a) In Kenya:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year immediately following the calendar year in which the notice of termination is given;
 - (ii) with regard to other taxes chargeable (other than taxes withheld at source), in respect of year of income beginning on or after the first day of January of year of income immediately following the year of income in which the notice of termination is given; and

- (iii) in all other cases, including requests made under Article 26, after the end of that calendar year in which the notice of termination is given.
- (b) In Singapore:
 - (i) with regard to taxes withheld at source, in respect of amounts paid, deemed to be paid or liable to be paid (whichever is the earliest) after the end of that calendar year in which the notice of termination is given;
 - (ii) with regard to taxes chargeable (other than taxes withheld at source), in respect of income for any year of assessment beginning on or after the first day of January of the second calendar year following that calendar year in which the notice of termination is given; and
 - (iii) in all other cases, including requests made under Article 26, after the end of that calendar year in which the notice of termination is given.

PROTOCOL

At the moment of signing the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Kenya for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. With reference to paragraph 3 of Article 4 (Resident):

It is understood that the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.

2. With reference to paragraph 1 of Article 9 (Associated Enterprises):

It is understood that a Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 of Article 9 after the expiry of the time limits provided in its national laws. This provision shall not apply in the case of fraud or wilful default.

3. With reference to Article 26 (Exchange of Information):

The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request—

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature, the relevance of the information to the request, and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information;
- (g) a statement that the request is in conformity with the law and administrative practices of the State of the competent authority, and that the competent authority is authorised to obtain the information under the laws of that State or in the normal course of administrative practice;
- (h) the details of the period within which the applicant State wishes the request to be met; and
- (i) any other information that may assist in giving effect to the request.

Dated the 8th April, 2025.

JOHN MBANDI NG'ONGO,
Cabinet Secretary for The National Treasury
and Economic Planning.