

A G R E E M E N T

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA

AND

THE GOVERNMENT OF THE STATE OF KUWAIT

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME AND CAPITAL

AND FOR THE FOSTERING OF ECONOMIC RELATIONS.

The Government of the Republic of Austria and the Government of the State of Kuwait;

DESIRING to promote their mutual economic relations by removing fiscal obstacles,

HAVE AGREED AS FOLLOWS:

Article 1

Personal Scope

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 and on capital imposed on behalf of a Contracting State, a political subdivision or local authority thereof, 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 this Agreement shall apply are in particular:

a) in Austria :

- (1) the income tax (die Einkommensteuer);
 - (2) the corporation tax (die Koerperschaftsteuer);
 - (3) the land tax (die Grundsteuer);
 - (4) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben); and
 - (5) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstuecken);
- (hereinafter referred to as "Austrian tax");

- b) in Kuwait:
- (1) the corporate income tax;
 - (2) the contribution from the net profits of shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
 - (3) the Zakat; and
 - (4) the tax subjected according to the supporting of national employee law;
- (hereinafter referred to as "Kuwaiti tax").

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

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) The term "Kuwait" means the State of Kuwait and includes any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area in which Kuwait may exercise sovereign rights or jurisdiction;
 - b) the term "Austria" means the Republic of Austria;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Austria or Kuwait, as the context requires;
 - d) the term "person" includes an individual and 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 "national" means:
 - (1) in respect of Austria all individuals possessing the nationality of Austria and any legal person, partnership and association deriving its status as such from the laws in force in Austria;
 - (2) in respect of Kuwait any individual possessing the nationality of Kuwait and any legal person, partnership and association deriving its status as such from the law in force in Kuwait;
- 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 in the other Contracting State;
- i) the term "competent authority" means:
 - (1) in the case of Austria the Federal Minister of Finance or his authorised representative;
 - (2) in the case of Kuwait the Minister of Finance or his authorised representative.

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

Article 4

Resident

1. For the purpose of this Agreement, the term "resident of a Contracting State" means:
 - a) in the case of Austria, any person who, under the tax laws of Austria is liable to taxation therein by reason of his domicile, habitual abode, place of management or any other criterion of a similar nature;
 - b) in the case of Kuwait, an individual who has his domicile in Kuwait and a company which is incorporated in Kuwait.

2. For the purposes of paragraph 1 above:
 - a) The Republic of Austria and its political subdivisions shall be deemed to be a resident of Austria;
 - b) The State of Kuwait shall be deemed to be a resident of Kuwait;
 - c) government institutions shall be deemed, according to affiliation, to be a resident of Austria or of Kuwait. Any institution shall be deemed to be a government institution which has been created by the government of public functions and which is recognized as such by mutual agreement of the competent authorities of the Contracting States.

3. Where by reason of the provisions of paragraph 1 of this Article 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;
- b) 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);
- c) 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;
- d) 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.

4. Where by reason of the provisions of paragraph 1 of this Article 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 Contracting State in which its place of effective management is situated.

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; and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, construction, installation, erection or assembly project constitutes a permanent establishment only if it lasts more than nine months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- d) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- e) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to d), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 6 applies - shall be deemed to be a permanent establishment in the first-mentioned State, if

- a) he has, and habitually exercises, in the first-mentioned State a general authority to negotiate and conclude contracts for or on behalf of such enterprise, or
- b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to such enterprise from which such person regularly delivers goods or merchandise for or on behalf of such enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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 industrial or commercial profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, notwithstanding any limitation domestic law, provided that the expenses are deducted in accordance with international practice.

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

Article 9

Associated Enterprises

1. Where
 - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

2. Where one of the Contracting States includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the 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 shall be taxable only in that other State.
2. The term "dividends" as used in this Article means:
 - a) dividends on shares including income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other shares rights, not being debt-claims, participating in profits, and

- b) other income 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.

3. The provisions of paragraph 1 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.

4. 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. Any interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. 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 premium and prizes attaching to such securities, bonds or debentures.

3. The provisions of paragraph 1 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.

4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. 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 law of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of such 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, any patent, trade mark, design or model, plan, secret formula or process.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 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 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

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

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

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

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

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 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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 shall be taxed only in the first-mentioned State.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 7, 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 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 capacity as such accrues not to the entertainer or athlete himself 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. The provisions of paragraphs 1 and 2 shall not apply if the visit of entertainers or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, a political subdivision or a local authority thereof.

Article 18

Pensions and Annuities

1. Subject to the provisions of paragraph 1 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. Annuities shall only be taxed in the Contracting State in which the beneficiary is a resident.
3. As used in this Article:

- a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment including payments from social security funds of a Contracting State;
- b) the term "annuity" means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

Government Service

1. Remuneration including pensions paid by a Contracting State, a political subdivision, a local authority or a corporation of public law thereof to an individual in respect of services rendered to that State, subdivision, authority or public law corporation shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State, if the services are rendered in that State, if the individual is a resident of that State, a national of that State and not a national of the first-mentioned State.
2. 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 a corporation of public law thereof.
3. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political subdivision or a local authority, out of funds exclusively supplied by that State, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

Article 20

Teachers, Students and Trainees

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of 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 remuneration for such activity, provided that such remuneration is derived by him from outside that State.

2. An individual who is present in a Contracting State solely

- a) as a student at a university, college or school in that Contracting State,
- b) as a business apprentice,
- c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation, or
- d) as a member of a technical cooperation programme entered into by the Government of that Contracting State,

and who is, or was immediately before visiting that State, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training.

3. Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship.

Article 21

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22

Capital

1. 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 services, 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 or 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 23

Elimination of Double Taxation

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting States except where provisions to the contrary are made in this Agreement.
2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
3. In the case of Austria, double taxation shall be avoided as follows:
 - a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Kuwait, Austria shall, subject to the provisions of sub-paragraphs b) and c), exempt such income or capital from tax.
 - b) Where a resident of Austria derives items of income which, in accordance with the provision of paragraph 2 of Article 12 may be taxed in Kuwait, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Kuwait. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Kuwait.

- c) Where in accordance with any provision of this Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
- d) For the purposes of sub-paragraph b), the Kuwaiti tax Zakat mentioned in paragraph 3 of Article 2 shall be considered an income tax.
4. In the case of Kuwait double taxation shall be avoided as follows:

If a resident of Kuwait owns items of income and capital which are taxable in Austria, Kuwait may tax these items of income and may give relief for the Austrian taxes suffered in accordance with the provisions of its domestic law.

In such a case, Kuwait may deduct from the taxes so calculated the income tax paid in Austria but in an amount not exceeding that proportion of the aforesaid Kuwaiti tax which such items of income bear to the entire income.

Article 24

Non-Discrimination

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

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, nothing in this Article shall affect the right of either Contracting State to grant an exemption or reduction of taxation in accordance with its domestic laws, regulations or administrative practices to its own nationals who are residents of that Contracting State. Such exemption or reduction, however, shall not apply in respect of such proportion of the capital of companies owned by persons who are nationals of the other Contracting State.

5. Nothing in this Article shall be construed as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any other Contracting State or its residents by virtue of the formation of a customs union, economic union, special agreements, a free trade area or by virtue of any regional or sub-regional arrangement relating wholly or mainly to movement of capital and/or taxation to which the first-mentioned Contracting State may be a party.

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

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him 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.

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 this 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.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. 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 this Agreement. 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 practices of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27

Diplomatic and Consular Privileges

1. Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4 an individual who is a member of a diplomatic mission or a consular post of a Contracting State which is situated in the other Contracting State or in a third state shall be deemed for the purposes of this Agreement to be a resident of the sending State if:
 - a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and
 - b) he is liable in the sending State to the same obligations in relation to tax on his world income as are residents of that State.

Article 28

Miscellaneous

1. The competent authorities of the Contracting States shall mutually agree on arrangements concerning the manner in which the limitations and exemptions contained in the foregoing Articles are to be implemented.
2. This Agreement shall not affect the right of the residents of a Contracting State to benefit from tax and investment incentives, exemptions and allowances provided for by the other Contracting State in accordance with its domestic laws, regulations and administrative practices.

Article 29

Regulations

The competent authorities of each Contracting State, in accordance with the practices of that State, may prescribe regulations necessary to carry out the provisions of this Agreement.

Article 30

Entry into Force

1. This Agreement shall be subject to ratification in accordance with the constitutional requirements of the two Contracting States and the instruments of ratification shall be exchanged at Kuwait.
2. This Agreement shall enter into force on the first day of the third month next following that in which the exchange of the instruments of ratification takes place and shall have effect:

- a) in respect of taxes withheld at source, for amounts paid on or after the first day of January of the year next following that in which the Agreement enters into force ;
- b) in respect of other taxes for taxable periods, beginning on or after the first day of January of the year next following that in which the Agreement enters into force.

Article 31

Duration

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate the Agreement. In such event, the Agreement shall cease to have effect:

- a) in respect of taxes withheld at source, to amounts payable after 31st of December of the year in which the notice is given;
- b) in respect of other taxes for taxable periods, beginning after 31st of December of the year in which the notice is given.

In WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done at Vienna in two originals, 13th day of June 2002, corresponding to this day of 2nd Rabi II 1423 H, in the German, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

**For the Government of
the Republic of Austria**

**For the Government of
the State of Kuwait**

Benita Ferrero-Waldner

Youssef Hamad Al-Ibrahim

PROTOCOL

The Government of the Republic of Austria and the Government of the State of Kuwait on signing at Vienna on 13th day of June 2002, corresponding to 2nd day of Rabi II 1423 H, the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital and for the Fostering of Economic Relations have agreed upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 4:

It is agreed that government institutions of Kuwait within the meaning of sub-paragraph c) of paragraph 2 of this Article are the following corporate entities created under public law which are wholly owned and controlled by the State of Kuwait:

- the Central Bank of Kuwait,
- public corporations,
- authorities,
- government agencies,
- foundations,
- development funds.

Subject to the provisions of sub-paragraph c) of paragraph 2 of this Article further institutions can be recognized as government institutions.

2. With respect to Article 5:

a) It is understood that, with reference to paragraph 5 of this Article an independent agent is a person who does business and signs contracts in his own name and does not act on behalf of an enterprise in whatsoever manner; and an authority to conclude contracts in the name of an enterprise is also exercised where different persons are acting under an authority for the enterprise.

b) A person in the meaning of paragraph 6 must be both legally and economically independent of the enterprise and must act in the ordinary course of his business when acting on behalf of the enterprise.

3. With reference to Articles 5, 7 and 9

Only those profits may be attributed to a building site, construction, installation, erection or assembly project in the Contracting State in which the building site, construction, installation, erection or assembly project is located which result from the activity of the building site, construction, installation, erection or assembly project itself. This means that in particula

a) profits which arise from a delivery of goods made. whether in connection with this activity or independently of it, by the principal permanent establishment or another permanent establishment of the enterprise or a third party shall not be attributed to the building site, construction, installation, erection or assembly project;

b) profits arising from planning, project work, design or research as well as technical services which a resident of one Contracting State performs for the building site, construction, installation, erection or assembly project located in the other Contracting State shall, so far as these activities are performed outside the other Contracting State, not be attributed to that building site, construction, installation erection or assembly project.

4. With respect to Article 7:

In respect of paragraph 1 of this Article, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply.

5. With respect to Article 8:

Profits from the operation of vessels engaged in fishing, dredging or hauling activities shall be treated as income falling under paragraph 1 of this Article.

6. With respect to Article 9:

Article 9 is applicable irrespective of the provisions of the internal laws, provided that acceptable substantial evidence is given and the determining of the profits is in accordance with international practice.

7. With respect to Article 15 and 19:

Employees of Kuwait Airways and government owned ships who are nationals of Kuwait shall be exempt from Austrian tax levied on their remuneration earned in Austria; employees of Austrian enterprises engaged in international air transport shall be exempt from Kuwaiti tax levied on their remuneration earned in Kuwait, provided they are Austrian nationals.

In WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

Done at Vienna in two originals, 13th day of June 2002, corresponding to this 2nd day of Rabi II 1423 H, in the German, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

**For the Government of
the Republic of Austria**

**For the Government of
the State of Kuwait**

Benita Ferrero-Waldner

Youssef Hamad Al-Ibrahim