

No. 12 of 1998.

Income Tax (International Agreements) (Amendment) Act 1998.

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Operation : 1.1.99

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

Income Tax (International Agreements) (Amendment) Act 1998.

ARRANGEMENT OF SECTIONS.

1. Interpretation (Amendment of Section 1).
2. New Section 3G.
 "3G. AGREEMENT WITH KOREA".
3. New Schedule 8.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

AN ACT

entitled

Income Tax (International Agreements) (Amendment) Act 1998,

Being an Act to amend the *Income Tax (International Agreements) Act 1987,*

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1(1) of the Principal Act is amended by inserting after the definition "the Germany Agreement" the following new definition:-

"the Korean Agreement' means the agreement between the Government of the Independent State of Papua New Guinea and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which is set out in Schedule 8;"

2. NEW SECTION 3G.

The Principal Act is amended by inserting after Section 3F the following new section:-

"3G. AGREEMENT WITH KOREA.

Subject to this Act, on and after the date of entry into force of the Korean Agreement, the provisions of the agreement so far as those provisions affect Papua New Guinea tax, have the force of law according to their tenor."

3. NEW SCHEDULE 8.

The Principal Act is amended by inserting after Schedule 7 the following new schedule:-

SCHEDULE 8

AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF KOREA

AND

THE GOVERNMENT OF
THE INDEPENDENT STATE OF PAPUA NEW GUINEA

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

The Government of Republic of Korea and the Government of the Independent State of Papua New Guinea, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article I

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. The taxes which are the subject of this Agreement are :
 - (a) In the case of Korea:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the inhabitant tax; and
 - (iv) the special tax for rural development, (hereinafter referred to as "Korean tax");
 - (b) In the case of Papua New Guinea:
 - (i) the taxes imposed under the Papua New Guinea Income Tax Act (1959) (as amended); and
 - (ii) taxes or tax incentives imposed or granted by the State of Papua New Guinea with the object of providing or fostering economic development for the benefit of its nationals (hereinafter referred to as "Papua New Guinean tax").
2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1. The competent authorities of the Contracting State shall notify each other of any substantial changes which have been made in their respective taxation laws as soon as practicable.

Article 3

GENERAL DEFINITIONS

- I. In this Agreement unless the context otherwise requires:
- (a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;
 - (b) the term "Papua New Guinea" means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea-bed and sub-soil;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Korea and Papua New Guinea as the context requires;
 - (d) the term "tax" means Korean tax or Papua New Guinean tax, as the context requires; but does not include any penalty or interest imposed under the laws of either Contracting State;
 - (e) the term "person" includes an individual, a company and any other body of persons, but does not include partnerships;
 - (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- (g) 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;
- (h) the term "national" means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State; and
 - (ii) any other legal entity deriving its status as such from the law in force in a Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of Korea, the Minister of Finance and Economy or his authorised representative;
 - (ii) in the case of Papua New Guinea, the Commissioner General of Internal Revenue Commission or an authorised representative of the Commissioner General of Internal Revenue;
- (j) 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.

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 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 head or main office, place of management, place of incorporation, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 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 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 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 of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 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 of the State in which the place of effective management of its business is situated. However, where such a person has the place of effective management of its business in one of the Contracting States and the place of head office of its business in the other Contracting State, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the company shall be deemed to be a resident for the purposes of this 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 including timber or other forestry product;
 - (g) an installation or structure used for the exploitation of natural resources;
 - (h) a place where agricultural or pastoral activity is carried on.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:
 - (a) it carries on supervisory activities in that State for more than 6 months in any 12 month period in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;

- (b) substantial equipment is being used in that State for more than 183 days by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

5. 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.

6. Notwithstanding the provisions of paragraph 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 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.

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 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 or the right to explore for, mineral deposits, oil or gas deposits, quarries or other places for the extraction of natural resources including timber and other forestry products; provided that 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. Any interest or right referred to in paragraph 2 shall be regarded as situated in the Contracting State in which the land to which the interest or right relates is situated.
5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far, as the information available to the competent authority permits, consistent with the principles of this Article and internationally accepted rules.

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

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

3. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistent with the principles of this Article and internationally accepted rules.

Article 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of the Government or local authority.

4. The reference to the Government, local authority and their related agency or instrumentality in paragraph 3 shall include:

(a) in the case of Korea:

- (i) the Bank of Korea;
- (ii) the Korea Export-Import Bank;
- (iii) the Korea Development Bank; and
- (iv) such other financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting State;

(b) in the case of Papua New Guinea:

- (i) the National Government;
- (ii) the Provincial Governments;
- (iii) the Local Level Governments;

- (iv) the Statutory bodies; and
- (v) such institutions, the capital of which is wholly owned by the State or Provincial Governments, Local Level Governments or statutory bodies thereof, as may be agreed upon from time to time in letters exchanged 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, includes income from government securities and income from bonds or debentures. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 10.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of the 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.

7. 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.

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.

9. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

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 where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.

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

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 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.

6. In this Article, a reference to royalties paid or to the payment of royalties may include royalties payable.

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 that other State.

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

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:

- (a) a permanent establishment or fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities, in which case, so much of the income as is attributable to activities exercised from that permanent establishment or fixed base may be taxed in the other State;
- (b) income is derived by the individual from a resident of that other Contracting State and exceeds an amount of US\$10,000 or its equivalent in Papua New Guinean currency or Korean currency in any 365 day period, in which case so much of the income as is derived from the activities in that other Contracting State may be taxed in that State; or
- (c) an individual's stay in that other Contracting State exceeds 6 months in any 365 day period, in which case so much of the income as is derived from activities in that other Contracting State may be taxed in that State.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 twelve month period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that 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 SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a special programme of cultural exchange agreed upon between the governments of both Contracting States, shall be exempt from tax in that other State.

Article 18

PENSIONS

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.

Article 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision, a local authority or statutory body thereof to an individual in respect of services rendered in the discharge of government functions to that State or political subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that other 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 political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision, a local authority or statutory body thereof.

4. The State, political subdivision, local authority or statutory body to which the provisions of paragraphs 1 and 2 shall apply in respect of remuneration or pensions paid by them shall include

(a) in the case of Korea:

- (i) the Bank of Korea;
- (ii) the Korea Export-Import Bank;
- (iii) the Korea Development Bank;
- (iv) the Korea Trade Promotion Corporation; and
- (v) such other institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;

(b) in the case of Papua New Guinea:

- (i) the National Government;
- (ii) the Provincial Governments;
- (iii) the Local Level Governments;
- (iv) their respective statutory bodies; and
- (v) such other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

Article 20

STUDENTS

Payments which a student, business or technical 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 21

PROFESSORS AND TEACHERS AND RESEARCHERS

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, at the invitation of any university, college, school or other similar educational institution, which is recognized as non-profitable by the Government of that other State, visits that other State a period not exceeding two years from the date of his first arrival in that other State, solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on his remuneration for such teaching or research.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

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 shall not apply to income derived by a resident of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Papua New Guinean tax payable (excluding, in the case of dividends, tax payable in respect of profits out of which the dividends are paid) under the laws of Papua New Guinea and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Papua New Guinea shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Papua New Guinea bears to the entire income subject to Korean tax.

2. In the case of a resident of Papua New Guinea, double taxation shall be avoided as follows:

Subject to the provisions of Papua New Guinean tax law regarding the allowance as a credit against Papua New Guinean tax of tax paid in any country other than Papua New Guinea (which shall not affect the general principle hereof), the Korean tax paid (excluding, in the case of dividends, tax payable in respect of profits out of which the dividends are paid) under the laws of Korea and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Korea shall be allowed as a credit against Papua New Guinean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Papua New Guinean tax which the income from sources within Korea bears to the entire income subject to Papua New Guinean tax.

3. For the purposes of paragraph 1 of this Article the term "Papua New Guinean tax payable" shall be deemed to include any amount which would have been payable as Papua New Guinean tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under the Papua New Guinea Income Tax Act (1959) (as amended).

4. For the purposes of paragraph 2 of this Article, the term "Korean tax paid" shall be deemed to include any amount which would have been payable as Korean tax for any year but for an exemption or reduction of tax granted for that year or any part thereof in the name of the income tax, the corporation tax, the inhabitant tax and the special tax for rural development.

5. For the purposes of paragraphs 1 and 2 profits or income of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement, shall be deemed to arise from sources in that other Contracting State.

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 or connected requirements to which nationals of that other State in the same circumstances, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one of both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible, under the same conditions as if they had been paid to a resident of the first-mentioned State are or may be subjected.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

6. Nothing in this article shall be construed so as to prevent either Contracting State from limiting to its nationals the benefit of tax incentives to provide economic development in that State.

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 three 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.

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 applying the provisions of this Agreement.

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 or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the 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 practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27

DIPLOMATIC MISSIONS AND CONSULAR OFFICERS

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

Article 28

ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at as soon as possible. The Agreement shall enter into force on the sixtieth day after the date of the exchange of the instruments of ratification.

2. This Agreement shall have effect:

(a) in Korea:

- (i) in respect of taxes withheld at source on or after the first day of January in the year following that in which this Agreement enters into force; and
- (ii) in respect of other taxes for the taxable year beginning on or after the first day of January in the year following that in which this Agreement enters into force;

(b) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of January in the calendar year next following that in which this Agreement enter into force;
- (ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force.

Article 29

TERMINATION

This Agreement shall remain in force indefinitely but either of the Contracting State may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

- (a) in Korea:
 - (i) in respect of taxes withheld at source, on or after the first day of January in the year following that in which the notice is given; and
 - (ii) in respect of other taxes for the taxable year beginning on or after the first day of January in the year following that in which the notice is given;
- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of January in the calendar year next following that in which the notice is given; and
 - (ii) in respect of other Papua New Guinean tax, in relation to income of any year of income beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

Done in duplicate at this day of 199..... in the Korean and English languages, both texts being equally authentic.

For the Government of
Independent State of Papua
New Guinea

For the Government of the
Republic of Korea

Income Tax (International Agreements) (Amendment)

PROTOCOL

At the signing of the Agreement between the Government of the Independent State of Papua New Guinea and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "The Agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. In respect of paragraph 5 of Article 7 and paragraph 3 of Article 9, it is understood that "internationally accepted rules" means the taxation principles adopted by the OECD Model Tax Convention or the UN Model Tax Convention.

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

Done in duplicate at this day of in the Korean and English languages, both texts being equally authentic.

.....
For the Government of the Independent
State of Papua New Guinea

.....
For the Government of the
Republic of Korea

I hereby certify that the above is a fair print of the *Income Tax (International Agreements) (Amendment) Act 1998* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Income Tax (International Agreements) (Amendment) Act 1998* was made by the National Parliament on 17 March 1998.

Speaker of the National Parliament.