

2005 Income and Capital Gains Tax Convention

Treaty Partners: Belgium; Ghana

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CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF GHANA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The Government of the Kingdom of Belgium and the Government of the Republic of Ghana, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, have agreed as follows:

Chapter I. Scope of the Convention

Article 1 Persons Covered

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) in the case of Belgium:
 - 1) the individual income tax;

- 2) the corporate income tax;
- 3) the income tax on legal entities;
- 4) the income tax on non-residents;
- 5) the supplementary crisis contribution,

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax,

(hereinafter referred to as "Belgian tax");

b) in the case of Ghana:

- 1) the income tax;
- 2) the capital gains tax;
- 3) the petroleum income tax;
- 4) the minerals and mining tax,

(hereinafter referred to as "Ghana tax").

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

Chapter II. Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a)
 - 1) the term "Belgium" means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
 - 2) the term "Ghana" means the Republic of Ghana; used in a geographical sense, it means the territory of the Republic of Ghana, including the territorial sea and any area outside the territorial sea

within which, in accordance with international law, the Republic of Ghana has sovereign rights for the purposes of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

- b) the terms "a Contracting State" and "the other Contracting State" mean Belgium or Ghana as the context requires;
 - c) the term "person" includes an individual, a company and any other body of persons;
 - d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise 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;
 - g) the term "competent authority" means:
 - 1) in the case of Belgium, the Minister of Finance or his authorised representative, and
 - 2) in the case of Ghana, the Commissioner of Internal Revenue or his authorised representative;
 - h) the term "national" means:
 - 1) any individual possessing the nationality of a Contracting State;
 - 2) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains 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 only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - d) 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;

- b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- 3.
- a) A building site or a construction project constitutes a permanent establishment only if such site or project lasts more than 6 months;
 - b) an assembly or installation project or a supervisory activity in connection with a building site, a construction, assembly or installation project constitutes a permanent establishment only if such project or activity lasts more than 6 months; where such project or activity is incidental to the sale of machinery or equipment, such project or activity constitutes a permanent establishment only if it lasts more than 6 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 purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. 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.
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.

Chapter III. Taxation of Income

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 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.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are wholly, exclusively and necessarily incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. For the purpose of this Article, profits from the operation of ships or aircraft shall include in particular:
 - a) profits derived from the rental on a full basis of ships or aircraft operated in international traffic;
 - b) supplementary or incidental profits derived from the rental on a bareboat basis of ships or aircraft operated in international traffic by an enterprise mentioned in paragraph 1;
 - c) supplementary or incidental profits derived from the use, maintenance or rental of containers operated in international traffic by an enterprise mentioned in paragraph 1.
3. 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.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

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

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

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

Article 10 **Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:
 - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

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 beneficial owner of the interest is a resident of the other Contracting State 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 shall be exempted from tax in the Contracting State in which it arises if it is:
 - a) interest on commercial debt-claims -including debt-claims represented by commercial paper- resulting from deferred payments for goods, merchandise or services supplied by an enterprise; or
 - b) interest paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by public entities the objective of which is to promote the export (competent authorities shall communicate to each other a list of the entities covered by this provision); or
 - c) interest paid to the other Contracting State or a political subdivision or a local authority thereof.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government

securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

However, the term "interest" shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debtclaim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a 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.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for television or

radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, 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 State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 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:
 - a) 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 Contracting State but only so much of it as is attributable to that fixed base; or
 - b) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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, 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, may be taxed in the Contracting State in which the place of effective management of the enterprise operating the ship or aircraft is situated.

Article 16
Directors' Fees and Remunerations of Company Managers

1. 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 or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision.
2. Remuneration derived by a person referred to in paragraph 1 from a company which is a resident of a Contracting State in respect of the discharge of day-to-day functions of a managerial or technical nature shall be taxed in accordance with the provisions of Article 15.
3. Remuneration received by a resident of a Contracting State in respect of his personal activity as a member of a company which is a resident of a Contracting State shall be taxed in accordance with the provisions of Article 15, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company.
4. For the purposes of paragraph 3, the term "member of a company" shall not include members of a company with share capital established under the relevant laws of either Contracting 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. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised in a Contracting State are substantially supported from public funds of the other Contracting State or a political subdivision or a local authority thereof. In such case, income derived from such activities shall be taxable only in that other Contracting State.

Article 18 Management Fees

1. Management fees 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 management fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the management fees is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the management fees.
3. The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature, but the term "management fees" shall not include any payments in consideration for supervisory activities in connection with a building site or construction, assembly or installation project or for supervisory activities in connection with installation incidental to the sale of machinery or parts thereof and remuneration referred to in paragraphs 2 and 3 of Article 16.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the management fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the obligation in respect of which the management fees 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. Management fees 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 management fees, 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 obligation to pay the management fees was incurred, and such management fees are borne by such permanent establishment or fixed base, then such management fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where there is evidence of a special relationship between the payer and the beneficial owner or between both of them and some other person and that by reason of such special relationship the amount of the management fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 19
Pensions

1. Subject to the provisions of paragraph 2 of Article 20, 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. However, pensions and other allowances, periodic or non periodic, paid under the social security legislation of a Contracting State shall be taxable only in that State. This provision also applies to pensions and allowances paid under a public scheme organised by a Contracting State in order to supplement the benefits of that legislation.

Article 20
Government Service

1.
 - a) Salaries, wages and other similar remuneration, other than a pension, paid 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 salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - 1) is a national of that State; or
 - 2) 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, 17 and 19 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.
4. The provisions of paragraph 1 shall also apply to salaries, wages and other similar remuneration paid by a Contracting State to an individual in respect of an activity exercised in the other Contracting State within the framework of cooperation agreements concluded between both Contracting States.

Article 21
Professors and Students

1.
 - a) Any remuneration paid to professors and other teachers who are residents of a Contracting State and who are present in the other Contracting State for the purpose of teaching or carrying on scientific research at a university or other officially recognized educational institution shall be exempt from tax in that other State for a period not exceeding two years from the date of arrival of these persons in that other State for that purpose, provided that such remuneration arises from sources outside that State.
 - b) The provisions of sub-paragraph a) shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.
2.
 - a) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
 - b) In respect of grants, scholarships and remuneration from employment not covered by subparagraph a), a student or business apprentice referred to in subparagraph a) shall in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

Article 22
Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention and which are taxed in that State 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.

Chapter IV. Methods for Elimination of Double Taxation

Article 23

1. In the case of Belgium, double taxation shall be avoided as follows:

- a) Where a resident of Belgium derives income or capital gains which are taxed in Ghana in accordance with the provisions of this Convention, other than those of paragraph 2 of Article 10, of paragraphs 2 and 7 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income or capital gains from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

Notwithstanding the provisions of this Convention, Belgium reserves the right to impose a tax on any income which may be exempted from tax in Ghana. Accordingly income which is exempted from tax under Ghana law shall not be treated under Belgian law as income on which tax was paid.

- b) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends not exempt from Belgian tax according to subparagraph c) hereinafter, interest, or royalties, the Ghana tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.
- c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Ghana, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Ghana, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Ghana by reason of compensation for the said losses.

2. In the case of Ghana, double taxation shall be avoided as follows:

- a) Belgian tax payable under the laws of Belgium and in accordance with the provisions of this Convention, whether directly (by assessment) or by deduction (withholding), on profits, income or chargeable gains from sources within Belgium (excluding in the case of dividends, tax payable in respect of profits out of which the dividends are paid) shall be allowed as a credit against any Ghana tax computed by reference to the same profits, income or chargeable gains by reference to which Belgian tax is computed;
- b) In the case of dividends paid by a company which is a resident of Belgium to a company which is resident in Ghana and which controls directly at least 10 per cent of the capital of the company paying the dividends, the credit shall take into account (in addition to any Belgian tax for which credit may be allowed under the provisions of sub-paragraph a)) the Belgian tax payable by the company in respect of the profits out of which such dividends are paid;
- c) In any case the amount of tax credit to be granted under this paragraph shall not exceed the proportion of Ghana tax which such profits, income or chargeable gains bear to the entire profits, income or chargeable gains as the case may be chargeable to Ghana tax.

Chapter V. Special Provisions

Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances are or may be subjected.
3. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. 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.
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 Convention, 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 Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.
4. The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Convention and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions in tax provided for in the Convention.

5. The competent authorities of the Contracting States shall communicate directly with each other 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 relevant for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in the first sentence. 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

Aid in Recovery

1. The Contracting States shall lend aid and assistance to each other in order to notify and recover the taxes referred to in Article 2 as well as surcharges, additions, interest, costs and fines of a non penal nature.
2. At the request of the competent authority of a Contracting State, the competent authority of the other Contracting State shall secure, in accordance with the legal provisions and regulations applicable to the notification and recovery of the said taxes of the latter State, the notification and the recovery of tax claims referred to in paragraph 1 which are due in the first mentioned State. Such claims shall not have any priority in the requested State and that State shall not be obliged to apply any

means of enforcement which are not authorised by the legal provisions or regulations of the applicant State.

3. Requests referred to in paragraph 2 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.
4. With regard to tax claims which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the laws of that other State; the provisions of paragraphs 1 to 3 shall apply mutatis mutandis to such measures.
5. The provisions of paragraph 1 of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

Article 28 **Members of Diplomatic Missions and Consular Posts**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
2. For the purposes of the Convention, persons who are members of diplomatic missions or consular posts of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and on capital gains as are residents of that State.
3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of diplomatic missions or consular posts of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and on capital gains.

Chapter VI. Final Provisions

Article 29 **Entry Into Force**

Each Contracting State shall notify the other Contracting State of the completion of the procedures required by its laws for the bringing into force of this Convention. The Convention shall enter into force on the day on which the later of these notifications is received and shall have effect:

- a) in the case of Belgium,

- 1) with respect to taxes due at source on income credited or payable on or after January 1 of the year next following the year in which the Convention entered into force;
 - 2) with respect to other taxes charged on income of taxable periods beginning on or after January 1 of the year next following the year in which the Convention entered into force;
- b) in the case of Ghana,
- in respect of income tax, capital gains tax, the petroleum income tax and the minerals and mining tax, on or after January 1 in the calendar year next following the year in which the Convention entered into force.

Article 30 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving to the other Contracting State, written notice of termination not later than the 30th June of any calendar year after the fifth year from which the Convention entered into force. In such event the Convention shall cease to have effect:

- a) in the case of Belgium,
 - 1) with respect to taxes due at source on income credited or payable on January 1 of the year next following the year in which the notice of termination was given;
 - 2) with respect to other taxes charged on income of taxable periods beginning on January 1 of the year next following the year in which the notice of termination was given;
- b) in the case of Ghana,

in respect of income tax, capital gains tax, the petroleum income tax and the minerals and mining tax, for the year of assessment beginning on or after January 1 in the calendar year next following the year in which the notice of termination was given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Brussels, this 22nd day of June 2005, in the English language.

**FOR THE GOVERNMENT OF THE KINGDOM OF
BELGIUM:**

*Mark Geleyn,
Director-General Bilateral Affairs*

**FOR THE GOVERNMENT OF THE REPUBLIC OF
GHANA:**

*George Y. Djan-Baffour,
Deputy Minister of Finance and
Economic Planning*



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