

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF  
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME AND CAPITAL

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 2001

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME AND CAPITAL,  
WITH PROTOCOL, SIGNED AT WASHINGTON ON MARCH 4, 1994

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, September 9, 1994.*

THE PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Washington on March 4, 1994.

The Convention would replace, with respect to Ukraine, the existing income tax convention between the United States and the Union of Soviet Socialist Republics, signed at Washington on June 20, 1973, and would modernize tax relations between the two countries. It is hoped and expected that the Convention will be an important impetus to Ukraine's emergence as a market economy by encouraging and facilitating greater U.S. private sector investment in Ukraine. The Convention will establish a framework that we hope will contribute to the expansion of economic, scientific, technical and cultural cooperation between the two countries.

Like other U.S. income tax conventions, this bilateral Convention provides rules specifying when various categories of income derived by a resident of one country may be taxed by the other country. The Convention also confirms that the residence country will avoid international double taxation by granting a foreign tax credit, and it provides for administrative cooperation to avoid double taxation and prevent fiscal evasion of taxes.

The Convention limits the tax that may be imposed by the country where the income arises (the "source" country) on dividends, branch profits, interest, royalties, and capital gains derived by residents of the other country. These limits are consistent with those in other recent U.S. tax treaties.

Business profits derived by a resident of one country may be taxed by the other country only to the extent that the profits are attributable to a permanent establishment in that other country, and then only on a net basis with deductions for business expenses. The Convention defines a permanent establishment to include, inter alia, offices, factories and mines. A provision of the Protocol (point 7) ensures the deductibility of wage and interest expense in calculating the Ukraine tax on profits. That provision is important to the availability of a U.S. foreign tax credit.

The Convention provides conditions under which each country may tax income derived by individual residents of the other country from independent personal services or as employees, as well as pension income benefits. Social security benefits may be taxed only by the country which pays them. Special relief is granted to visiting students, trainees, and researchers. The provision in the 1973 convention of a two year exemption for visiting teachers and journalists is not retained.

The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately using the Convention. Similar standards are found in other recent U.S. income tax conventions.

The Convention assures that the residence country will avoid double taxation of income that arises in the other country and has been taxed there in accordance with the Convention. In addition, the Convention includes standard administrative provisions that will permit the tax authorities of the two countries to cooperate to resolve issues of potential double taxation and to exchange information relevant to implementing the Convention and the domestic laws imposing the taxes covered by the Convention. The non-discrimination provisions go beyond the standard provisions in including assurances that citizens and residents of one country will not be subjected by the source country to tax treatment more burdensome than that to which citizens and residents of that country or any third state are subjected.

The Convention will enter into force on the date of the exchange of instruments of ratification. The provisions concerning taxes on dividends, interest, and royalties will take effect on the first day of the second month following the exchange of instruments of ratification, and provisions concerning other taxes will take effect for taxable years beginning on or after January 1 following the exchange of instruments of ratification. Upon entry into force of the Convention, the 1973 tax treaty will cease to have effect between the United States and Ukraine. However, a taxpayer may elect to apply the 1973 treaty in full for one additional taxable year if its provisions are more favorable.

A Protocol accompanies the Convention and forms an integral part of it. The Protocol clarifies the operation of certain provisions and denies treaty benefits with respect to dividends and interest paid by certain U.S. investment companies. Most significantly, point 7 of the Protocol guarantees the deductibility of wage costs and interest that might not otherwise be

deductible under Ukraine law.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 14, 1994.*

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, with Protocol, signed at Washington on March 4, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The Convention replaces, with respect to Ukraine, the 1973 income tax convention between the United States of America and the Union of Soviet Socialist Republics. It will modernize tax relations between the two countries and will facilitate greater private sector United States investment in Ukraine.

I recommend that the Senate give early and favorable consideration to the Convention and related Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF  
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES  
ON INCOME AND CAPITAL

The Government of the United States of America and the Government of Ukraine, confirming their desire to develop and strengthen the economic, scientific, technical and cultural cooperation between both States, and desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital,

have agreed as follows:

ARTICLE 1  
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States and to other persons as specifically provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- a) by the laws of either Contracting State; or
- b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax, in accordance with its domestic law, residents (as determined under Article 4 (Residence)) of that State, and in the case of the United States, its citizens and former citizens.

4. The following benefits shall be conferred by a Contracting State notwithstanding the provisions of paragraph 3:

- a) under paragraph 2 of Article 9 (Associated Enterprises), paragraph 1 of Article 19 (pensions) and Articles 24 (Relief from Double Taxation), 25 (Non-discrimination) and 26 (Mutual Agreement Procedure) and
- b) under Articles 18 (Government Service), 20 (Students, Trainees and Researchers), and 28 (Diplomatic Agents and Consular Officers) for individuals who are neither citizens of that State nor, in the case of the United States of America, individuals having immigrant status therein.

ARTICLE 2  
Taxes Covered

1. The taxes to which this Convention shall apply are:

a) in the United States of America: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes) and the excise taxes imposed with respect to the investment income of private foundations (hereafter referred to as U.S. tax).

b) in Ukraine: the tax on income (profits) of enterprises and the income tax on citizens of Ukraine, foreign citizens, and stateless persons.

2. The Convention shall apply also to any substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes, including taxes which are substantially similar to those currently imposed by one Contracting State but not by the other Contracting State and which are subsequently imposed by the other State. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material

concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

3. The Convention shall also apply to any tax on property described in subparagraph (h) of paragraph 1 of Article 3 (General Definitions) which is imposed by either Contracting State after the date of signature of the Convention, but only if such tax is provided by the legislation of such Contracting State.

### ARTICLE 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term "Contracting State" means the United States of America (the United States) or Ukraine, as the context requires;
  - b) the term "United States" means the United States of America, but does not include Puerto Rico, the virgin Islands, Guam, or any other United States possession or territory. When used in a geographical sense, the term "United States" includes the territorial sea, and any area outside the territorial sea which in accordance with international law has been or may hereafter be designated an area in which the United States may exercise rights with respect to the seabed and subsoil and their natural resources;
  - c) the term "Ukraine," when used in a geographical sense, includes the territorial sea, and any area outside the territorial sea which in accordance with international law has been or may hereafter be designated an area in which Ukraine may exercise rights with respect to the seabed and subsoil and their natural resources;
  - d) the term "national" means:
    - i) any individual possessing the nationality of a Contracting State;
    - ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
  - e) the term "person" means an individual, an estate, a trust, a partnership, a company and any other body of persons;
  - f) the term "company" means any entity or organization which is treated as a body corporate for tax purposes. In the case of Ukraine, this term means a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;
  - g) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in one of the Contracting States;
  - h) the term "property" means movable and real property, and includes (but is not limited to) cash, stock or other evidences of ownership rights, notes, bonds or other evidences of indebtedness, and patents, trademarks, copyrights or other like right or property;
  - i) 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;

j) the term "competent authority" means:

- i) in the United States: the Secretary of the Treasury or his authorized representative; and
- ii) in Ukraine: the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

#### ARTICLE 4

##### Residence

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, Citizenship, place of incorporation, or any other criterion of a similar nature. However, 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 or property situated therein.

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 (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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 citizen;

d) if each State considers him as its citizen or if he is a citizen 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, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person.

#### ARTICLE 5

##### Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed

place of business through which a resident of a Contracting State, whether or not a legal entity, either wholly or in part carries on its business activities in the other Contracting State.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources; and
- g) a store or any premises used as a sales outlet.

3. A building site or construction, installation or assembly project, or an installation or drilling rig or ship used for the exploration or development of natural resources, 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 resident;
- b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display, or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another person;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the resident;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) through a).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a resident of a Contracting State carries on activities in the other Contracting State through an agent, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which the agent undertakes for that resident, if the agent meets each of the following conditions:

- a) he has an authority to conclude contracts in that other State in the name of the resident;
- b) he habitually exercises that authority;
- c) he is not an agent of an independent status to whom the provisions of paragraph 6 apply; and
- d) his activities are not limited to those mentioned in paragraph 4.

6. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

## ARTICLE 6 Income from Real Property

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

2. The term "real 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 real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real 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 real property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

5. A resident of a Contracting State who is liable to tax in the other contracting State on income from real property situated in that other State may elect, subject to the procedures of the domestic law of that other State, to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in that other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless revoked pursuant to the procedures under the domestic law of the contracting State in which the property is situated.

## ARTICLE 7 Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on or has carried on business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of

them as is attributable to the assets or activities of that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on or has carried 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 that it might be expected to make if it were a distinct and independent person 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 and any other enterprise that is an associated enterprise within the meaning of Article 9 (Associated Enterprises).

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. 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 by way of interest on moneys lent to the permanent establishment.

4. The business profits attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

5. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the resident.

6. For purposes of this Article, the term "business profits" means profits derived from the active conduct of business. It includes, for example, profits from manufacturing, mercantile, fishing, transportation, communication, or extractive activities, from the rental of tangible movable property, and from the furnishing of services of another person. It does not include income received by an individual for his performance of personal services (either as an employee or in an independent capacity). Income of an individual from the performance of services as an employee is dealt within Article 15 (Dependent personal Services). Income of an individual from the performance of services in an independent capacity is dealt within Article 14 (Independent personal Services).

7. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## ARTICLE 8 Shipping and Air Transport

1. Income of a resident of a Contracting State from the operation of ships or aircraft in

international traffic shall be taxable only in that State.

2. Income of a resident of a Contracting State from the following activities shall be taxable only in that State:

a) income from the rental of ships or aircraft operated in international traffic by the lessee;

b) income from the rental of ships and aircraft, whether or not operated in international traffic, if such rental activity is incidental to the operation of ships or aircraft in international traffic by the lessor;

c) income (including demurrage) from the use, or rental for use, of containers in international traffic (including trailers, barges, and related equipment for the transport of containers), and gain from the alienation of such containers and related equipment, if such gain is incidental to the income described in this subparagraph (c); and

d) gain from the alienation of ships or aircraft operated in international traffic, if such gain is incidental to income from the operation of ships or aircraft in international traffic.

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

## ARTICLE 9 Associated Enterprises

1. Where:

a) a person which is a resident of a Contracting State participates directly or indirectly in the management, control or capital of a person which is a resident of the other Contracting State; or

b) the same persons participate directly or indirectly in the management, control or capital of a resident of a Contracting State and any other person;

and in either case conditions are made or imposed between the two persons in their commercial or financial relations which differ from those which would be made between independent persons, then any income which would have accrued to one of the persons, but by reason of those conditions has not so accrued, may be included in the income of that person 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 paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit either Contracting State in applying its

domestic law to make adjustments to income, deductions, credits, or allowances between persons, whether or not residents of a Contracting State, when necessary to prevent evasion of taxes or clearly to reflect the income of any such persons.

## ARTICLE 10 Dividends

1. Dividends that are paid by a company that is a resident of a contracting State and that are beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the first Contracting State, and according to the laws of that State, but the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends, if the beneficial owner is a company that owns at least 10 percent of the voting stock (or, if the company does not have voting stock, at least 10 percent of the authorized capital) and, in the case of Ukraine, nonresidents of Ukraine own at least 20 percent of the voting stock (or if the company does not have voting stock, at least 20 percent of the authorized capital);

b) 15 percent 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 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. The term "dividends" also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises. In the case of Ukraine, this term includes income transmitted abroad to the foreign participants of a joint venture created under the laws of Ukraine.

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 or has carried 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 or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. A company that is a resident of a Contracting State and that has a permanent establishment in the other Contracting State or that is subject to tax on a net basis in that other State under Article 6 (Income from Real Property) or paragraphs 1. or 2 of Article 13 (Gains from the Alienation of Property) may be subject in that other State to a tax in addition to the tax on profits. Such tax, however, may not exceed 5 percent of the portion of the profits after deducting the

taxes imposed on profits imposed thereon in that other State and after adjustment for increases or decreases in the assets of the company subject to tax in the other Contracting State that represents the "dividend equivalent amount" of such profits.

## ARTICLE 11

### Interest

1. Interest derived and beneficially owned by a resident of a Contracting State may be taxed only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage and unless described in paragraph 3 of Article 10 (Dividends), 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 or prizes attaching to such securities, bonds, or debentures as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other state independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent personal Services), as the case may be, shall apply.

4. 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 be taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

## ARTICLE 12

### Royalties

1. Royalties beneficially owned by a resident of a contracting State may be taxed in that 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 is a resident of the other contracting State the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention 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 computer programs, videocassettes, and cinematograph films and tapes for radio and television broadcasting; any patent, trademark, design or model, plan, secret formula or process, or other like right or property; or 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 or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. a) 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. However, where 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 that State in which the permanent establishment or fixed base is situated.

b) where subparagraph a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States any property or right described in paragraph 3, they shall be deemed to arise in that State.

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 be taxable according to the laws of each contracting State, due regard being had to the other provisions of the Convention.

## ARTICLE 13

### Gains from the Alienation of Property

1. Gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 (Income from Real Property) and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of:

a) shares of the stock of a company (whether or not a resident of a Contracting

State) the property of which consists principally of real property situated in a Contracting State; or

b) a participation in a partnership, trust, or estate (whether or not a resident of a Contracting State) to the extent attributable to real property situated in a Contracting State

may be taxed in that State. For the purposes of this paragraph, the term "real property" includes the shares of company referred to in subparagraph (a) or a participation in a partnership, trust, or estate referred to in subparagraph (b), and in the case of the United States includes a United States real property interest, as defined in section 897 of the Internal Revenue Code (or any successor statute).

3. Gains from the alienation of personal property that are attributable to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or that are attributable 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, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. Gains from the alienation of any property other than property referred to in paragraphs 1 through 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 an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless

a) such services are performed or were performed in the other Contracting State;

and

b) the income is attributable to a fixed base that the individual has or had regularly available to him in that other State.

In such a case, the income attributable to that fixed base may be taxed in that other State in accordance with principles similar to those of Article 7 (Business profits) for determining the amount of business profits and attributing business profits to a permanent establishment.

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

#### ARTICLE 15

##### Dependent Personal Services

1. Subject to the provisions of Articles 18 (Government Service) , and 19 (pensions) , 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 of this Article, 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 163 days in the taxable 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 that the employer has in the other State.

3. Remuneration derived by a resident of a Contracting State that would otherwise be taxable in the other Contracting State under the preceding provisions of this Article may be taxed only in' the first-mentioned State when the remuneration is in respect of employment as a member of the regular complement of a ship or aircraft operated in international traffic.

#### ARTICLE 16 Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or similar body of a company that is a resident of the other Contracting State may be taxed in that other State except to the extent that they are remuneration for services rendered in the first-mentioned State.

#### ARTICLE 17 Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theater, 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 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 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised. or purposes of the preceding sentence, income of an entertainer or sportsman shall be deemed not to accrue to another person if it is established that neither the entertainer or sportsman, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the



receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsman shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof or is made pursuant to a specific arrangement agreed to by the Governments of the Contracting States.

## ARTICLE 18 Government Service

1.
  - a) Remuneration, Other than a pension, paid from the public funds of a Contracting State, a political subdivision or local authority thereof to an individual in respect of services rendered in the discharge of functions of a governmental nature 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 citizen of that State, or
    - ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
  - a) Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or local authority of that State to an individual in respect of services rendered to that State, subdivision, or authority shall be taxable only in that State.
  - b) However, such pension may also be taxed in the other Contracting State if the individual is a resident of, and a citizen of, that other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, the provisions of Article 14 (Independent Personal Services), Article 15 (Dependent Personal Services), or Article 19 (Pensions), as the case may be, shall apply to remuneration paid in respect of services rendered in connection with a business.

## ARTICLE 19 Pensions

1. Social security benefits and other public pensions paid by a Contracting State, other than in consideration of past employment, may be taxed only in that State.

2. Subject to the provisions of Article 18 (Government Service), pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment may be taxed only in that State.

ARTICLE 20  
Students, Trainees and Researchers

1. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other State for the primary purpose of:

a) studying at a university or other accredited educational institution in that other State, or

b) securing training required to qualify him to practice a profession or professional specialty, or

c) studying or doing research as a recipient of a grant, allowance, or other similar payments from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other State with respect to payments from abroad for the purpose of his maintenance, education, study, research, or training, and with respect to the grant, allowance, or other similar payments.

2. The exemption in paragraph 1 shall apply only for such period of time as is ordinarily necessary to complete the study, training or research, except that no exemption for training or research shall extend for a period exceeding five years.

3. This Article 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.

ARTICLE 21  
Other Income

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

2. The provisions of paragraph 1 shall not apply to income if the beneficial owner of the income, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State personal services in an independent capacity from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 22  
Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other

State only if such person is:

- a) an individual;
- b) engaged in the active conduct of business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from that other State is connected with, or is incidental to, that business;
- c) a company the shares of which are traded in the first-mentioned State' on a substantial and regular basis on an officially recognized securities exchange or a company which is wholly owned, directly or indirectly, by another company that is a resident of the first-mentioned State and the shares of which are so traded;
- d) a not-for-profit organization that is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or
- e) a person that satisfies both of the following conditions:
  - i) more than 50 percent of the beneficial interest in such person, or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares; is owned directly or indirectly by persons entitled to the benefits of this Convention under subparagraphs a), c) or d), and
  - ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs a), c) or d).

2. A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines.

3. For purposes of subparagraph (e) (ii) of paragraph 1, the term "gross income" means gross receipts, or where a person is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

## ARTICLE 23

### Property

1. Real property referred to in Article 6 (Income from Real Property) owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Movable property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Ships, aircraft, and containers owned by a resident of a Contracting State and operated in international traffic, and movable property pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.

4. All other elements of property of a resident of a Contracting State shall be taxable only in that State.

#### ARTICLE 24 Relief from Double Taxation

In accordance with the provisions and subject to the limitations of the law of each Contracting State (as it may be amended from time to time without changing the general principle hereof), each State shall allow to its residents (and, in the case of the United States, its citizens), as a credit against the tax on income, the income tax paid to the other Contracting State by such residents (and, in the case of the United States, also such citizens).

#### ARTICLE 25 Non-discrimination

1. A citizen 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 a citizen of that other State or of a third State, who is in the same circumstances, is or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States.

2. A resident of a Contracting State that has a permanent establishment in the other Contracting State shall not, in that other State and with respect to income attributable to that permanent establishment, be subjected to more burdensome taxes than are generally imposed on residents of that other State or of a third State that are carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. A company that is a resident 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 that is more burdensome than the taxation and connected requirements to

which other similar companies that are residents of the first-mentioned State (whether owned by residents of that State or of a third State) are or may be subjected.

5. Nothing in this Article shall prevent a Contracting State from imposing the tax described in paragraph 5 of Article 10 (Dividends).

6. This provision shall not be construed as obliging a Contracting State to grant to citizens or residents of the other Contracting State tax benefits granted by special agreements to citizens or residents of a third State.

7. The provisions of this Article, notwithstanding the provisions of Article 2 (Taxes Covered), shall apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

## ARTICLE 26

### 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 citizen.

2. The competent authority shall endeavor, 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 or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

- a) to the same attribution of income, deductions, credits, or allowances of a resident of a Contracting State to its permanent establishment situated in the other Contracting State;
- b) to the same allocation of income, deductions, credits, or allowances between persons;
- c) to the same characterization of particular items of income;
- d) to the same application of source rules with respect to particular items of income; and
- e) to a common meaning of a term.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27  
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). 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) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of complete original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

ARTICLE 28  
Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular officers or employees of a consular establishment under the general rules of international law or under the provisions of special agreements.

ARTICLE 29  
Entry into Force

1. This Convention shall be subject to ratification in each Contracting State and instruments of ratification shall be exchanged at Kiev as soon as possible.

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of taxes withheld at source on dividends, interest or royalties, for amounts paid or credited on or after the first day of the second month following the month in which the Convention enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first of January following the date on which the Convention enters into force.

3. The Convention between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation, signed on June 20, 1973, ("the 1973 Convention") shall cease to have effect when the provisions of this Convention take effect in accordance with this Article.

4. Where any greater relief from tax would have been afforded to a person entitled to the benefits of the 1973 Convention under that Convention than under this Convention, the 1973 Convention shall, at the election of such person, continue to have effect in its entirety for the first taxable year with respect to which the provisions of this Convention would otherwise have effect under paragraph 2; or, in the case of a person claiming the benefits of Article III (1) (d) of the 1973 Convention at the time of entry into force of this Convention, the 1973 Convention shall, at the election of such person continue to have effect, in its entirety, for the duration of the period of benefits provided by that subparagraph.

ARTICLE 30  
Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, by giving, through diplomatic channels, at least 6 months prior notice of termination in writing. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first of January following the expiration of the 6-month period;

b) in respect of other taxes, for taxable periods beginning on or after the first of January following the expiration of the 6 month period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective

Governments, have signed this Convention.

DONE at Washington, this fourth day of March, 1994, in duplicate, in the English and Ukrainian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

(s) William J. Clinton

FOR THE GOVERNMENT OF  
UKRAINE:

(s) Leonid Kravchuk

## PROTOCOL

At the signing today of the Convention between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With regard to Article 4,

In the case of income derived by a partnership, trust, or estate, residence is determined in accordance with the residence of the person liable to tax with respect to such income.

2. With regard to Article 7,

(a) A Contracting State's right to impose tax under Article 7 on a resident of the other Contracting State extends only to profits attributable to a permanent establishment in the first State. A resident of the other State may earn income from more than one investment or activity; under Article 7, income from any particular investment or activity, whether from a source in the first State or elsewhere, must be separately tested to determine whether it may be included in profit attributable to a permanent establishment in the first State.

Whether profits are attributable to a permanent establishment is determined on the basis of the actual facts of an investment. In particular, profits are attributable to a permanent establishment only if the profits are derived from the assets employed by, or the activities engaged in by, the permanent establishment. Profits derived from other assets or activities are not attributable to the permanent establishment.

Example. A company resident in a contracting State is engaged in oil and gas exploration, development and production activities on a worldwide basis. The company is producing oil and gas through wells located in the other Contracting State. The company is also engaged in exploration in the other State. The exploration activities are not carried on at the site of the wells, are not conducted by the employees of the well sites, do not use assets from the well site and are concluded within 6 months. The company also occasionally rents drilling equipment not currently being used in its exploration activities to third parties for use in the other State. Under subparagraph 2(f) of Article 5, the wells located in the other State constitute a permanent establishment; the profits attributable to



that permanent establishment may be taxed by the other State under Article 7. Under paragraph 3 of Article 5, the exploration activities do not constitute a permanent establishment in the other State, and the expenses associated with such activities may not be deducted in determining the profits from the wells taxable in the other State. The rental of the drilling equipment does not constitute a permanent establishment in the other State, and the income from such rental is not derived from the assets or activities of the well site. The rental income is therefore not taxable in the other State.

(b) A resident of a Contracting State maintaining a permanent establishment in the other Contracting State may also maintain offices in other countries, including a home office in the first State and offices in third countries. In computing the profits of the permanent establishment, properly substantiated payments to third parties by the home office or by offices in third countries should be taken into account to the extent such payments relate to the assets or activities of the permanent establishment, or to the extent that such payments relate to the assets or activities of the resident as a whole and are reasonably allocable to the permanent establishment. It is not necessary that such payments actually be reimbursed by the permanent establishment to the home offices or the office in the third country.

3. With regard to Article 10,

In the case of dividends from a United States Regulated Investment Company, subparagraph (b), and not subparagraph (a), of paragraph 2 shall apply. In the case of dividends from a United States Real Estate Investment Trust, the rate of tax applicable under domestic law shall apply.

4. With regard to Article 11,

Notwithstanding the provisions of paragraph 1, the United States may tax an excess inclusion with respect to a Real Estate Mortgage Investment Conduit ("REMIC") in accordance with its domestic law.

5. With regard to Article 14,

Taxes withheld at the source in a Contracting State at the rates provided by domestic law will be refunded in a timely manner on application by the taxpayer if the right to collect the said taxes is limited by the provisions of the Convention, including Article 14.

6. With regard to Article 22,

The term "officially recognized securities exchange" means the NASDAQ System owned by the National Association of Securities Dealers, Inc., of the United States, any stock exchange registered with the U.S. Securities Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934, and any other exchanges agreed to by the competent authorities of both Contracting States.

7. With regard to Article 24,

(a) Ukraine agrees that:

i) an entity that is a resident of Ukraine and at least 20 percent beneficially owned by residents of the United States and that has total corporate capital of at least \$100,000 (or the equivalent in Ukrainian currency),

ii) a permanent establishment in Ukraine of a United States resident, or  
iii) an individual who is a U.S. citizen or resident and who carries on  
activities in Ukraine as an entrepreneur (other than as a juridical person),  
shall, in computing the taxes covered in paragraph 1(b) of Article 2 (Taxes Covered), be  
permitted deductions for interest (whether paid to a bank or another person and without regard to  
the term of the loan) and for actual wages and other remuneration for personal services (provided  
by persons other than an entrepreneur referred to in subparagraph (iii), above). Based on the  
above, the United States agrees that such taxes are income taxes for purposes of Article 24  
(Relief from Double Taxation).

b) The 20 percent beneficial ownership requirement referred to in subparagraph  
(a) (i) may be owned indirectly by residents of the United States but only if the indirect  
ownership is through residents of the United States or Ukraine.

c) For purposes of this Article, the U.S. recipient of a dividend, interest, or a  
royalty that may be taxed by Ukraine in accordance with Articles 10 (Dividends), 11  
(Interest) or 12 (Royalties) shall be deemed to be liable for such tax if such recipient  
elects to include in his (or its) gross income for the purposes of United States tax the  
amounts of such tax paid to Ukraine.

d) Both sides agree that a "fictitious" or "tax sparing" credit shall not be required  
for taxes that were forgiven as part of an incentive program under which one Contracting  
State grants a tax holiday to a resident of the other Contracting State. However, the  
Convention shall be promptly amended to incorporate a tax sparing credit provision if the  
United States hereafter amends its laws to authorize the provision of such credits, or if the  
United States reaches agreement on the provision of a tax sparing credit with any other  
country. It is understood that such amendment would be subject to ratification by each  
Contracting State.

## NOTES OF EXCHANGE

### EXCHANGE OF NOTES RELATING TO THE TAX CONVENTION WITH UKRAINE

#### MESSAGE

#### FROM

THE PRESIDENT OF THE UNITED STATES

#### TRANSMITTING

AN EXCHANGE OF NOTES DATED AT WASHINGTON MAY 26 AND JUNE 6, 1995,  
RELATING TO THE CONVENTION (SEE TREATY DOC. 10-30)  
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME AND CAPITAL, TOGETHER WITH A RELATED PROTOCOL,  
SIGNED AT WASHINGTON ON MARCH 4, 1994

## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, June 10, 1995.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you an exchange of notes, dated at Washington May 26 and June 6, 1995, with a view to transmission of these notes to the Senate for advice and consent to ratification in connection with the Senate's consideration of the Convention between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Washington on March 4, 1994 (the "Taxation Convention"). This exchange of notes addresses the interaction between the Taxation Convention and other treaties and agreements that have provisions affecting taxes.

The United States is a party to the General Agreement on Trade in Services ("GATS"), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. GATS entered into force on January 1, 1995. Although the United States is a party to GATS, the Government of Ukraine is not yet a party. The exchange of notes ensures first that, if Ukraine accedes to the GATS and GATS obligations become applicable between the United States and Ukraine, the dispute resolution mechanisms of the Taxation Convention would govern national treatment disputes regarding taxation measures. The exchange of notes further provides that the non-discrimination provisions of the Taxation Convention, rather than the national or most-favored-nation treatment obligations of any other agreement (except for the General Agreement on Tariffs and Trade, if it applies between the United States and Ukraine, and the Agreement on Trade Relations Between the United States and Ukraine, signed on May 6, 1992) will apply to taxation measures except those outside the scope of the Taxation Convention.

Provisions similar to those in this exchange of notes are included in the taxation conventions between the United States and Portugal, Sweden, and France, which have been transmitted to the Senate.

The Department of Treasury and the Department of State cooperated in the negotiation of the Convention and the most recent exchange of notes. The notes have the full approval of both Departments.

Respectfully submitted,

PETER TARNOFF.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 28, 1995.*

*To the Senate of the United States:*

I transmit herewith an exchange of notes dated at Washington May 26 and June 6, 1995, for Senate advice and consent to ratification in connection with the Senate's consideration of the Convention Between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Washington on March 4, 1994 ("the Taxation Convention"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the exchange of notes.

This exchange of notes addresses the interaction between the Taxation Convention and other treaties that have tax provisions, including in particular the General Agreement on Trade in Services (GATS), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994.

I recommend that the Senate give favorable consideration to this exchange of notes and give its advice and consent to ratification in connection with the Taxation Convention.

WILLIAM J. CLINTON.

DEPARTMENT OF STATE,  
*Washington, May 26, 1995.*

His Excellency YURIY SHCHERBAK,  
*Ambassador of Ukraine.*

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Washington on March 4, 1994 ("Taxation Convention") and the General Agreement on Trade in Services ("GATS").

The Government of the United States is a Party to the GATS, annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. The Government of Ukraine is not yet a party to the GATS. The United States and Ukraine have, however, considered the relationship between the Taxation Convention and the GATS in the event that the GATS applies between them, particularly with regard to the Consultation provision in Article XXII of the GATS and the Most-Favored-Nation and National Treatment provisions in Articles II and XVII of the GATS. In addition, the United States and Ukraine have considered the relationship between the Taxation Convention and other agreements that apply between them and that have provisions concerning national treatment or most-favored-nation treatment.

To address these issues, I have the honor to propose that:

(1) notwithstanding Article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Ukraine, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 26 (Mutual Agreement Procedure) of the Taxation Convention by the competent authorities of the United States and Ukraine as defined in subparagraph 1(j) of Article 3 (General Definitions); and

(2) unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other agreement (including GATS in the event that it applies between the United States and Ukraine) shall not apply a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Ukraine, signed on May 6, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Ukraine.

If this proposal is acceptable to the Government of Ukraine, I have the further honor to propose that this note, and your Government's note in reply, shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

ALAN LARSON.

EMBASSY OF UKRAINE

# 430

June 6, 1995

His Excellency  
Warren CHRISTOPHER,  
Secretary of State

*Excellency:*

*I have the honor to refer to your note of May 26, 1995, concerning the Convention between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Washington on March 4, 1994 ("Taxation Convention") and the General Agreement on Trade in Services ("GATS")*

*The proposal as contained in your aforementioned note reads as follows:*

*"(1) Notwithstanding article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Ukraine, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 26 (Mutual Agreement Procedure) of the Taxation Convention by the competent authorities of the United States and Ukraine as defined in Subparagraph 1(J) of Article 3 (General Definitions); and*

*(2) Unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other Agreement (including GATS in the event that it applies between the United States and Ukraine) shall not apply to' a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Ukraine, signed on May 6, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Ukraine".*

*I am pleased to confirm that this proposal is acceptable to the Government of Ukraine and that your note and this note in reply shall constitute an Agreement which shall enter into force on the date the Taxation Convention enters into force.*

*Accept; Excellency, the renewed assurances of my highest consideration.*

(s) For the Ambassador of Ukraine

Valeri Kuchinsky