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TAX CONVENTION WITH BULGARIA WITH PROPOSED PROTOCOL OF AMENDMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, WITH ACCOMPANYING PROTOCOL, SIGNED AT WASHINGTON ON FEBRUARY 23, 2007 (THE "PROPOSED TREATY"), AS WELL AS THE PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT SOFIA ON FEBRUARY 26, 2008

JUNE 4, 2008.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

69–112 WASHINGTON : 2008

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 4, 2008.*

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 the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income, with accompanying Protocol, signed at Washington on February 23, 2007 (the "Proposed Treaty"), as well as the Protocol Amending the Convention Between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income, signed at Sofia on February 26, 2008 (the "Proposed Protocol of Amendment"). The Proposed Treaty and Proposed Protocol of Amendment are consistent with U.S. tax treaty policy. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Proposed Treaty and Proposed Protocol of Amendment.

The Proposed Treaty generally reduces the withholding tax on cross-border dividend, interest, and royalty payments. Importantly, the Proposed Treaty generally eliminates withholding tax on cross-border dividend payments to pension funds and cross-border interest payments made to financial institutions. The Proposed Treaty also contains provisions, consistent with current U.S. tax treaty policy, that are designed to prevent so-called treaty shopping. The Proposed Protocol of Amendment further strengthens these treaty shopping provisions.

I recommend that the Senate give early and favorable consideration to the Proposed Treaty and give its advice and consent to ratification to both the Proposed Treaty and the Proposed Protocol of Amendment.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 7, 2008.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their 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 the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with accompanying Protocol, signed at Washington on February 23, 2007 (the "Proposed Treaty"), and the Protocol Amending the Convention Between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Sofia on February 26, 2008 (the "Proposed Protocol of Amendment"). The Proposed Treaty is the first income tax treaty between our two countries.

The Proposed Treaty generally reduces the rate of withholding tax on cross-border dividends, interest, and royalties. Importantly, however, the Proposed Treaty generally eliminates withholding tax on cross-border dividend payments to pension funds and cross-border interest payments made to financial institutions. The Proposed Treaty also contains provisions, consistent with current U.S. tax-treaty policy, that are designed to prevent so-called treaty shopping. The Proposed Protocol of Amendment further strengthens these treaty shopping provisions.

The Proposed Treaty and Proposed Protocol of Amendment were concluded in recognition of the importance of the United States' economic relations with Bulgaria. The Department of the Treasury and the Department of State cooperated in the negotiation of the Proposed Treaty and Proposed Protocol of Amendment. They have the full approval of both Departments.

Respectfully submitted,

CONDOLEEZZA RICE.

Enclosure: Key Features of Proposed Treaty and Proposed Protocol of Amendment Between the United States and Bulgaria.

KEY FEATURES OF PROPOSED TREATY AND PROPOSED PROTOCOL OF AMENDMENT BETWEEN THE UNITED STATES AND BULGARIA

The Convention Between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion

with Respect to Taxes on Income, with accompanying Protocol, signed at Washington on February 23, 2007 (the "Proposed Treaty"), and the Protocol Amending the Convention Between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Sofia on February 26, 2008 (the "Proposed Protocol of Amendment"), were negotiated to further facilitate the cross-border economic activity between our countries. The Proposed Treaty and Proposed Protocol of Amendment are consistent with current U.S. tax treaty policy. There are, as with all bilateral tax treaties, some variations from these norms. In the Proposed Treaty and Proposed Protocol of Amendment, these differences reflect particular aspects of Bulgarian law and treaty policy, the interaction of U.S. and Bulgarian law, and U.S.-Bulgarian economic relations.

The Proposed Treaty provides for a withholding rate of ten percent on cross-border portfolio dividend payments, and five percent on dividends when the beneficial owner of the dividend is a company that directly owns at least ten percent of the stock of the company paying the dividend. However, no withholding is permitted on dividends paid by a company resident in one of the countries to a pension fund that is a resident in the other country provided the dividend is not derived from the carrying on of a trade or business by such pension fund.

Further, withholding taxes on cross-border interest payments may be imposed at a maximum rate of five percent. No withholding in the source state on a cross-border interest payment is generally permitted, however, when the interest is beneficially owned by the government of the other country (or a bank operated or controlled by that government), a pension fund resident in the other country, or a financial institution (including a bank or insurance company) resident in the other country.

Cross-border royalty payments are generally sourced to the country of the payer of the royalty and may be subject to a maximum withholding tax rate of five percent in that source state.

The Proposed Treaty also provides that the United States and Bulgaria will reconsider the permissible positive withholding rates with respect to interest and royalties when Bulgarian sourced interest and royalty payments made to other members of the European Union are required to be exempt from source state withholding taxes under certain EU Directives.

The Proposed Treaty follows the standard rules for taxation by the source country of the business profits of a resident of the other country. The source country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country. The Proposed Treaty also includes a special rule for certain long-term services not otherwise considered to be provided through a permanent establishment.

The Proposed Treaty includes the "Limitation on Benefits" Article, which is designed to deny "treaty-shoppers" the benefits of the Convention. The Proposed Protocol of Amendment further strengthens the Limitation on Benefits article of the Proposed Treaty. The Proposed Treaty also preserves the U.S. right to tax a former citizen or long-term resident of the United States for the period of ten

years following the loss of such status, in accordance with the laws of the United States.

The Proposed Treaty also provides for an exchange of information between our countries, which will facilitate the enforcement of U.S. domestic tax rules. Specifically, the Proposed Treaty allows the United States to obtain information (including bank information) from Bulgaria whether or not Bulgaria needs the information for its own tax purposes. The Proposed Treaty allows the General Accounting Office and the tax writing Committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws and treaties.

The Proposed Treaty will enter into force on the date of receipt of the later of the notifications exchanged between the parties indicating that their respective requirements for entry into force have been satisfied. It will have effect, with respect to taxes withheld at source, for amounts paid or credited on or after the first day of January next following the year in which the Proposed Treaty enters into force and, with respect to other taxes, for taxable years beginning on or after the first day of January next following the year in which the Proposed Treaty enters into force. The Proposed Protocol of Amendment will enter into force on the date of entry into force of the Proposed Treaty.

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

The Government of the United States of America and the Government of the Republic of Bulgaria, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

GENERAL SCOPE

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in this Convention.

2. This Convention shall not restrict in any manner any benefit now or hereafter accorded:

   a) by the laws of either Contracting State; or

   b) by any other agreement to which the Contracting States are party.

3. a) Notwithstanding the provisions of subparagraph b) of paragraph 2 of this Article:

      i) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 24 (Mutual Agreement Procedure) of this Convention; and

      ii) the provisions of Article XVII (National Treatment) of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 23 (Non-Discrimination) of this Convention.

   b) For the purposes of this paragraph, a "taxation measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action, relating to taxation.

4. a) Notwithstanding any provision of this Convention except paragraph 5 of this Article, a Contracting State may tax its residents (as determined under Article 4

3

(Resident)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect.

b) Notwithstanding the other provisions of this Convention, a former citizen or long-term resident of the United States may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States. This paragraph shall apply only in respect of income from sources within the United States (including income deemed under the domestic law of the United States to arise from such sources).

5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 1 and 2 of Article 17 (Pensions, Social Security Payments, Annuities, Alimony, and Child Support), and Articles 22 (Relief From Double Taxation), 23 (Non-Discrimination), and 24 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 18 (Government Service), 19 (Students, Trainees, Teachers and Researchers), and 26 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

6. An item of income derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income of a resident.

Article 2

TAXES COVERED

1 This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes on total income, or on elements of

4

income, including taxes on gains from the alienation of movable or immovable property, but excluding social security taxes.

3. The existing taxes to which this Convention shall apply are:

a) in the case of Bulgaria:

i) the personal income tax; and

ii) the corporate income tax.

b) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and the Federal taxes imposed on the investment income of foreign private foundations.

4. This Convention shall apply also to any substantially similar taxes that are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes that have been made in their respective taxation or other laws that significantly affect their obligations under this Convention.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

a) the term "Bulgaria" means the Republic of Bulgaria and, when used in a geographical sense, means the territory and the territorial sea over which it exercises its State sovereignty, as well as the continental shelf and the exclusive economic zone over which it exercises sovereign rights and jurisdiction in conformity with international law;

b) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and the sea bed and subsoil of the submarine areas adjacent to that territorial sea, over which the United States exercises sovereign rights in accordance with international

5

law; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

c) the terms "a Contracting State" and "the other Contracting State" mean Bulgaria or the United States, as the context requires;

d) the term "person" includes an individual, a company, and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;

f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State, and an enterprise carried on by a resident of the other Contracting State;

g) the term "enterprise" applies to the carrying on of any business;

h) the term "business" includes the performance of professional services and of other activities of an independent character;

i) the term "business profits" also includes income from the performance of professional services and of other activities of an independent character;

j) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;

k) the term "competent authority" means:

i) in Bulgaria: the Minister of Finance or an authorized representative; and

ii) in the United States: the Secretary of the Treasury or his delegate;

l) the term "national" of a Contracting State means:

i) any individual possessing the citizenship of that State; and

ii) any legal person, partnership or association deriving its status as such from the laws in force in that State;

m) the term "pension fund" means any person established in a Contracting State that

6

is:

i) generally exempt from income taxation in that State; and

ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

2. As regards the application of this Convention at any time 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 24 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which this 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, citizenship, place of management, place of incorporation, 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 from sources in that State.

2. The term "resident of a Contracting State" includes:

a) a pension fund established in that State; and

b) an organization that is established and maintained in that State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes,

notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

3. 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:

7

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (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 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 endeavor to settle the question by mutual agreement.

4. Where by reason of the provisions of paragraphs 1 and 2 of this Article a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to determine the mode of application of this Convention to that person. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by this Convention.

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

8

f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation used for the exploration of natural resources, constitutes a permanent establishment only if it lasts or the activity continues for more than six 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 the activities mentioned in subparagraphs a) through 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 in a Contracting State on behalf of a enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned

9

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; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which such person regularly fills orders or makes deliveries on behalf of the enterprise, and additional activities conducted in that State on behalf of the enterprise have contributed to the conclusion of the sale of such goods or merchandise.

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 as independent agents.

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

8. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State provides services in the other Contracting State, if that enterprise is found not to have a permanent establishment in that other Contracting State by virtue of the preceding paragraphs of this Article, that enterprise shall be deemed to provide those services through a permanent establishment in that other State if and only if:

a) those services are performed in that other State by an individual who is present in that other State for a period or periods aggregating 183 days or more in any twelve month period, and, during that period or periods, more than 50 percent of the gross active business revenues of the enterprise consists of income derived from the services performed in that State by the individual; or

b) the services are provided in that other State for an aggregate of 183 days or more in any twelve month period with respect to the same or connected project for customers

10

who are either residents of that other State or who maintain a permanent establishment in that other State with respect to which the services are provided.

CHAPTER III

TAXATON OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY (REAL PROPERTY)

1. Income derived by a resident of a Contracting State from immovable property (real 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 (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 immovable property (real property), including livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property (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 and aircraft shall not be regarded as immovable property (real 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 (real property).

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property (real property) of an enterprise. However, the provisions of paragraphs 1 and 3 shall not apply if the beneficial owner of the income referred to in paragraph 1 or 3, being a resident of a Contracting State, carries on a business in the other Contracting State through a permanent establishment situated therein and the immovable property (real property) in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. However, as long as a resident of the United States is not entitled under Bulgarian law to make an election to compute the tax on income from immovable property (real property) situated in Bulgaria on a net basis as if such income were business profits attributable to a permanent establishment in Bulgaria, the Bulgarian tax permitted to be charged under paragraph 1 shall not exceed 10 percent of the gross amount of the income.

Article 7

BUSINESS PROFITS

1. The business 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 business profits of the enterprise may be taxed in the other State but only so much of them as are 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 business profits that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

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

4. 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 enterprise.

5. For the purposes of the preceding paragraphs, the business 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.

12

6. Where business profits include items of income that 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

INTERNATIONAL TRAFFIC

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

2. For purposes of this Article, profits from the operation of ships or aircraft include, but are not limited to:

a) profits from the rental of ships or aircraft on a full (time or voyage) basis; and

b) profits from the rental on a bareboat basis of ships or aircraft if the rental income is incidental to profits from the operation of ships or aircraft in international traffic.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that Contracting State, except insofar as those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from 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

13

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 that differ from those that would be made between independent enterprises, then any profits that, but for those conditions, would 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 other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company that 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 dividends are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:

14

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;

b) 10 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. a) Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a U.S. Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and paragraph 4 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and paragraph 4 shall apply only if:

i) the beneficial owner of the dividends is an individual or a pension fund, in either case, holding an interest of not more than 10 percent in the REIT;

ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or

iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

b) The rules of subparagraph a) shall also apply to dividends paid by companies resident in Bulgaria that are similar to the U.S. companies referred to in this paragraph. Whether companies that are residents of Bulgaria are similar to the U.S. companies referred to in this paragraph will be determined by mutual agreement of the competent authorities.

c) For purposes of this paragraph, a REIT or similar company referred to in paragraph 3 b) shall be "diversified" if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property shall not be considered an interest in real property. Where a REIT or such similar company holds an interest in a partnership, it shall be treated as owning

15

directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.

4. Notwithstanding paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if:

a) the beneficial owner of the dividends is a pension fund that is a resident of the other Contracting State; and

b) such dividends are not derived from the carrying on of a trade or business by such pension fund nor from an associated enterprise other than a person referred to in subparagraph a).

5. For purposes of this Article, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payer is a resident.

6. The provisions of paragraphs 1 through 4 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 payer is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

7. A Contracting State may not impose any tax on dividends paid by a resident of the other State, except insofar as the dividends are paid to a resident of the first-mentioned State or the dividends are attributable to a permanent establishment in the first-mentioned State, nor may it impose tax on a corporation's undistributed profits, except as provided in paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

8. a) A company that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from

16

Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention.

b) Such tax, however, may be imposed:

i) on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 (Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains) that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of Bulgaria, is an amount that is analogous to the dividend equivalent amount; and

ii) at a rate not in excess of 5 percent.

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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

a) the interest is beneficially owned by that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution wholly owned by that Contracting State;

b) the interest is beneficially owned by a resident of that other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the

17

Government of that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution wholly owned by that Contracting State;

c) the interest is beneficially owned by a resident of the other Contracting State that is a financial institution (including, for example, a bank or an insurance company), unless the interest is paid as a part of a back-to-back loan or an arrangement that is economically similar to and has the effect of a back-to-back loan; or

d) the interest is beneficially owned by a pension fund that is a resident of that other Contracting State, provided that such interest is not derived from the carrying on of a business, directly or indirectly, by such pension fund.

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 or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

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

18

establishment 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 State, due regard being had to the other provisions of this Convention.

8. Notwithstanding the provisions of paragraph 1:

a) interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed by the United States but, if the beneficial owner of the interest is a resident of Bulgaria, the interest may be taxed at a rate not exceeding 10% of the gross amount of the interest;

b) interest arising in Bulgaria that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person may be taxed in Bulgaria, and according to the laws of Bulgaria, but if the beneficial owner is a resident of the United States, the interest may be taxed at a rate not exceeding 10% of the gross amount of the interest; and

c) Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

9 Where interest expense is deductible in determining the income of a company that is a resident of a Contracting State, being income which:

a) is attributable to a permanent establishment of that company situated in the other Contracting State; or

b) may be taxed in the other Contracting State under Article 6 (Immovable Property

19

(Real Property)) or paragraph 1 of Article 13 (Capital Gains);

and that interest expense exceeds the interest paid by that permanent establishment or paid with respect to the debt secured by immovable property (real property) situated in that other Contracting State, the amount of that excess shall be deemed to be interest arising in that other Contracting State and beneficially owned by a resident of the first-mentioned Contracting State. That deemed interest may be taxed in that other Contracting State at a rate not to exceed the rate provided for in paragraph 2, unless the company is described in paragraph 3 in which case it shall be exempt from such taxation in that other Contracting State.

Article 12

ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means:

a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including cinematographic films and films, tapes or other means of image or sound reproduction for radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and

b) gain derived from the alienation of any property described in subparagraph a), to the extent that such gain is contingent on the productivity, use, or disposition of the property.

20

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 through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated. Where the person paying the royalties is not a resident of either Contracting State, and the royalties are not borne by a permanent establishment in either Contracting State, but 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, the royalties 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 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 that are attributable to the alienation of immovable property (real property) situated in the other Contracting State may be taxed in that other State.

21

2 For the purposes of this Article the term "immovable property (real property) situated in the other Contracting State" shall include:

a) immovable property (real property) referred to in Article 6 (Income from Immovable Property (Real Property));

b) where that other State is the United States, a United States real property interest as defined under U.S. law; and

c) where that other State is Bulgaria,

i) shares, including rights to acquire shares, other than shares regularly traded on an established securities market, deriving more than 50 percent of their value directly or indirectly from immovable property (real property) referred to in subparagraph a) of this paragraph situated in Bulgaria; and

ii) an interest in a partnership or trust to the extent that the assets of the partnership or trust consist of immovable property (real property) situated in Bulgaria, or of shares referred to in clause i) of this subparagraph.

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

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated or used in international traffic or movable property (personal property) pertaining to the operation or use of such ships or aircraft shall be taxable only in that State.

5. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, unless those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.

6. Gains derived by a resident of a Contracting State from the alienation of shares of a company that is a resident of the other Contacting State may be taxed in that other State if the

22

alienation of such shares occurs within 12 months of the date that such shares are acquired and if the recipient of the gain, at any time during the 12-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 percent in the capital of that company. This paragraph, however, shall not apply with respect to the alienation of shares of stock of public companies, traded on an established securities market.

7. Gains described in paragraph 3 of Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12 (Royalties).

8. Gains from the alienation of any property other than property referred to in paragraphs 1 through 7 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15 (Directors' Fees), 17 (Pensions, Social Security Payments, Annuities, Alimony, and Child Support) and 18 (Government Service), salaries, wages, and other 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 taxable year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

23

3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the crew of a ship or aircraft, or as other personnel regularly employed to serve aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

Article 15

DIRECTORS' FEES

Directors' fees and other compensation derived by a resident of a Contracting State for services rendered in his capacity as a member of the board of directors (including the managing board or supervisory board or a functionally similar body) of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 16

ENTERTAINERS AND SPORTSMEN

1. 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, which income would be exempt from tax in that other Contracting State under the provisions of Articles 7 (Business Profits) or Article 14 (Income from Employment) may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed fifteen thousand United States dollars ($15,000) or its equivalent in Bulgarian currency for the taxable year concerned.

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 (Business Profits) and Article 14 (Income from Employment), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, but only in cases in which the

24

contract pursuant to which the personal activities are performed

a) designates (by name or description) the entertainer or sportsman; or

b) allows the other party to the contract (or a person other than the entertainer, sportsman or the person to whom the income accrues) to designate the individual who is to perform the personal activities.

Article 17

PENSIONS, SOCIAL SECURITY PAYMENTS, ANNUITIES, ALIMONY, AND CHILD SUPPORT

1. Pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.

3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

4. Alimony and payments for the support of a child, paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State. However, such payments shall not be taxable in either Contracting State if the individual making such payments is not entitled to a deduction for such payments in computing taxable income in the Contracting State of which he is a resident. The term "alimony" as used in this Article means periodic payments, made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support.

5. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, a pension fund that is a resident of the other State, income earned by the

25

pension fund may be taxed as income of that individual only when, and, subject to the provisions of paragraphs 1 and 2 of this Article, to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other State).

Article 18

GOVERNMENT SERVICE

1. Notwithstanding the provisions of Articles 14 (Income from Employment), 15 (Directors' Fees) and 16 (Entertainers and Sportsmen):

a) Salaries, wages and other remuneration, other than a pension, paid to an individual in respect of services rendered to a Contracting State or a political subdivision or local authority thereof shall, subject to the provisions of subparagraph b), be taxable only in that State;

b) such remuneration, however, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

i) is a national of that State; or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1 of Article 17 (Pensions, Social Security Payments, Annuities, Alimony, and Child Support):

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 (other than a payment to which paragraph 2 of Article 17 applies) shall, subject to the provisions of subparagraph b), be taxable only in that State;

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

26

3. The provisions of Articles 14 (Income from Employment), 15 (Directors' Fees), 16 (Entertainers and Sportsmen) and 17 (Pensions, Social Security Payments, Annuities, Alimony, and Child Support) shall apply to salaries, wages and other 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.

Article 19

STUDENTS, TRAINEES, TEACHERS AND RESEARCHERS

1. a) Payments, other than compensation for personal services, received by a student or business trainee 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 for the purpose of his full-time education at a college, university or other recognized educational institution of a similar nature, or for his full-time training, shall not be taxed in that State, provided that such payments arise outside that State, and are for the purpose of his maintenance, education or training. The exemption from tax provided by this paragraph shall apply to a business trainee only for a period of time not exceeding two years from the date the business trainee first arrives in the first-mentioned Contracting State for the purpose of training.

b) A student or business trainee within the meaning of subparagraph a) shall be exempt from tax by the Contracting State in which the student or trainee is temporarily present with respect to income from personal services in an aggregate amount equal to $9,000 or its equivalent in Bulgarian currency annually. The competent authorities shall, every five years, adjust the amount provided in this subparagraph.

c) For purposes of this paragraph, a business trainee is an individual:

i) who is temporarily in a Contracting State for the purpose of securing training required to qualify the individual to practice a profession or professional specialty; or

ii) who is temporarily in a Contracting State as an employee of, or under

27

contract with, a resident of the other Contracting State, for the primary purpose of acquiring technical, professional, or business experience from a person other than

A) that resident of the other Contracting State, and

B) a person related to such resident of the other Contracting State.

2. 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 the other Contracting State for the purpose of teaching or carrying on research at a school, college, university or other recognized educational or research institution shall be exempt from tax in the other Contracting State, for a period not exceeding two years from the date of the individual's arrival in that other State. This paragraph 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 20

OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property (real property) as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the income is attributable to such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

28

CHAPTER IV

LIMITATION ON BENEFITS

Article 21

LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2.

2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:

a) an individual;

b) a Contracting State, or a political subdivision or local authority thereof;

c) a company, if:

i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either

A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or

B) the company's primary place of management and control is in the Contracting State of which it is a resident; or

ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in paragraph 2 of Article 4 of this Convention, provided that, in the case of a person described in subparagraph a) of that paragraph, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in

29

either Contracting State; or

e) a person other than an individual, if:

i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraphs a), b), c) i) or d) own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and

ii) less than 50 percent of the person's gross income for the taxable year, as determined in that person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i), of subparagraph c), or subparagraph d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. A company that is a resident of a Contracting State shall also be entitled to the benefits of the Convention if:

a) at least 95 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries; and

b) less than 50 percent of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments (but not including arm's length payments in the ordinary course of business for services or tangible property), that are deductible for the purposes of the taxes covered by this Convention in the company's State of residence.

30

4. a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

c) In determining whether a person is "engaged in the active conduct of a trade or business" in a Contracting State under subparagraph a) of this paragraph, activities conducted by persons connected to such person shall be deemed to be conducted by such person. For the purposes of this subparagraph, a person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, for the purposes of this subparagraph, a person shall be considered to be connected to

31

another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. A resident of a Contracting State that is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits under paragraph 3 or, with respect to an item of income, under paragraph 4 of this Article shall, nevertheless, be granted benefits of the Convention if the competent authority of the other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

6. For purposes of this Article:

a) the term "recognized stock exchange" means:

i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

ii) the Bulgarian Stock Exchange – Sofia, and any other stock exchange licensed to trade securities and financial instruments under the Bulgarian law;

iii) any other stock exchange agreed upon by the competent authorities;

b) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company;

32

d) a company's "primary place of management and control" will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conducts more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state;

e) an "equivalent beneficiary" is a resident of a member state of the European Union or of a European Economic Area State or of a party to the North American Free Trade Agreement but only if that resident:

i) A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or European Economic Area State or any party to the North American Free Trade Agreement and the State from which benefits of this Convention are claimed under provisions analogous to subparagraph a), b), clause i) of subparagraph c) or subparagraph d) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be a qualified person under subparagraph a), b), clause i) of subparagraph c) or subparagraph d) of paragraph 2 of this Article if such person were a resident of one of the states under Article 4 (Resident) of this Convention;

B) with respect to income referred to in Article 10 (Dividends), 11 (Interest), or 12 (Royalties) of this Convention, would be entitled under such convention to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

33

ii) is a resident of one of the Contracting States and is a qualified person by reason of subparagraph a), b), clause i) of subparagraph c) or subparagraph d) of paragraph 2 of this Article;

f) with respect to dividends, interest or royalties arising in Bulgaria and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of subparagraph c) ii) B) of this paragraph for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest or royalties arising in Bulgaria and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the income tax convention between Bulgaria and that other member state of the European Union would provide for a higher rate of tax with respect to such payment then the rate of tax applicable to such United States company under Article 10 (Dividends), 11 (Interest), or 12 (Royalties) of this Convention;

g) with respect to paragraph 2, the shares in a class of shares are considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or exchanges during the twelve months ending on the day before the beginning of that taxable year is at least six percent of the average number of shares outstanding in that class during the twelve-month period.

CHAPTER V

RELIEF FROM DOUBLE TAXATION

Article 22

RELIEF FROM DOUBLE TAXATION

1. In the case of Bulgaria, double taxation will be relieved as follows:

a) where a resident of Bulgaria derives income which in accordance with the

34

provisions of this Convention may be taxed in the United States, Bulgaria shall, subject to the provisions of subparagraphs (b) and (c) of this paragraph, exempt such income from tax;

b) where a resident of Bulgaria derives dividends, interest or royalties which in accordance with the provisions of Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) of this Convention may be taxed in the United States, Bulgaria shall allow as a deduction from the tax on the dividends, interest or royalties of that resident an amount equal to the tax paid in the United States. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such dividends, interest or royalties derived from the United States;

c) where in accordance with any provision of this Convention income derived by a resident of Bulgaria is exempt from tax in Bulgaria, Bulgaria may nevertheless, in calculating the amount of the tax on the remaining income of such resident, take into account the exempted income.

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income:

a) the income tax paid or accrued to Bulgaria by or on behalf of such resident or citizen; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of Bulgaria and from which the United States company receives dividends, the income tax paid or accrued to Bulgaria by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 3 a) i) and ii) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.

3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that,

35

under this Convention, may be taxed in Bulgaria shall be deemed to be income from sources in Bulgaria.

4. For the purposes of applying the preceding paragraphs of this Article, where the United States taxes, in accordance with paragraph 4 of Article 1 (General Scope), a citizen, or a former citizen or long-term resident, of the United States who is a resident of Bulgaria:

a) Bulgaria shall take into account for the purposes of computing the credit to be allowed under paragraph 1 only the amount of tax, if any, that the United States may impose on income under the provisions of this Convention that is derived by a resident of Bulgaria who is neither a citizen, nor a former citizen nor long-term resident, of the United States;

b) for purposes of computing the United States tax on income referred to in subparagraph a), the United States shall allow as a credit against the United States tax the Bulgarian tax after the credit referred to in that subparagraph; the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Bulgarian tax in accordance with that subparagraph; and

c) for the exclusive purpose of allowing the credit by the United States provided for under subparagraph b), income referred to in subparagraph a) shall be deemed to arise in Bulgaria to the extent necessary to allow the United States to grant the credit provided for in subparagraph b).

CHAPTER VI

SPECIAL PROVISIONS

Article 23

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 that is 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 also apply to

36

persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as nationals of Bulgaria who are not residents of the United States.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. The provisions of paragraphs 1 and 2 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 that it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 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 purpose 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 purpose 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.

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 that is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 8 of Article 10 (Dividends) or paragraph 9 of Article 11 (Interest).

37

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

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for such person in taxation not in accordance with the provisions of this Convention, it may, irrespective of the remedies provided by the domestic law of those States, and the time limits prescribed in such laws for presenting claims for refund, present its case to the competent authority of either Contracting State.

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

38

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term; and

g) to advance pricing arrangements.

4. The competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments.

5. 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 25

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State insofar as the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. The exchange of information is not restricted by paragraph 1 of Article 1 (General Scope) or Article 2 (Taxes Covered).

2. 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 unedited original documents (including books, papers, statements, records, accounts, and writings).

3. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the

39

oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

4. In no case shall the provisions of the preceding paragraphs 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 that 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 that 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).

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

6. In no case shall the provisions of paragraph 4 be construed to permit a Contracting State to decline to supply information because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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.

40

CHAPTER VII

FINAL PROVISIONS

Article 27

ENTRY INTO FORCE

1. The Contracting States shall notify each other, through diplomatic channels, when their respective requirements for the entry into force of this Convention have been satisfied. This Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall have effect in both Contracting States:

a) in respect of taxes withheld at source, on income paid or credited on or after the first day of January in the calendar year next following the year in which this Convention enters into force;

b) in respect of other taxes on income, for any taxable period beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force.

Article 28

TERMINATION

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than June 30th of any calendar year.

2. In such event the Convention shall cease to have effect in both Contracting States:

a) in respect of taxes withheld at source, on income paid or credited on or after the first day of January in the calendar year next following the year in which the notice has been given;

41

b) in respect of other taxes on income, for any taxable period beginning on or after the first day of January in the calendar year next following the year in which the notice has been given.

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

DONE at Washington in duplicate, in the English and Bulgarian languages, both texts being equally authentic, this twenty-third day of February, 2007.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF BULGARIA:

Protocol

At the signing of the Convention concluded today between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (hereinafter referred to as the "the Convention"), the undersigned have agreed upon the following additional provisions which shall form an integral part of the Convention.

1. With respect to paragraph 4 of Article 1 (General Scope)

The term "long-term resident" as used in subparagraph b) shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Bulgaria under this Convention, or as a resident of any country other than the United States under the provisions of any other tax treaty of the United States, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

2. With respect to paragraph 3 of Article 2 (Taxes Covered)

The personal income tax and corporate income tax referred to in subparagraph a) i) and ii) include the patent tax.

3. With respect to paragraph 1 of Article 3 (General Definitions)

The term "any other body of persons" as used in subparagraph d) includes an estate, trust, and partnership.

4. With respect to Article 4 (Resident)

A company that is or would be a resident of a Contracting State pursuant to that State's domestic law will not be treated as a resident of that State for purposes of the Convention if it is treated as a resident of a third state pursuant to an income tax convention between that State

and the third state.

A person who is liable to tax in respect only of profits attributable to a permanent establishment in a Contracting State is not liable to tax therein by reason of domicile, residence, citizenship, place of management, place of incorporation or a criterion of a similar nature.

5. *With respect to Article 7 (Business Profits)*

For this purpose, the business profits to be attributed to the permanent establishment shall include only the business profits derived from the assets used, risks assumed and activities performed by the permanent establishment.

The principles of the OECD Transfer Pricing Guidelines will apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods described therein as acceptable methods for determining an arm's length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In determining the amount of business profits attributable to a permanent establishment, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institution's risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment.

In applying Article 7, paragraph 4 of Article 6 (Income from Immovable Property (Real Property)), paragraph 6 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), paragraph 3 of Article 13 (Capital Gains) and paragraph 2 of Article 20 (Other Income), any income or gain attributable to a permanent establishment

during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

6. *With respect to Article 8 (International Traffic)*

Profits derived by an enterprise from the transport of tangible property or passengers within either Contracting State shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.

7. *With respect to Articles 11 (Interest) and 12 (Royalties)*

The Convention permits positive rates of taxation on interest and royalties. With respect to interest and royalties deemed to arise in Bulgaria where the beneficial owner of the income is a resident of the United States under the Convention, the Contracting States agree to reconsider the provisions of Articles 11 and 12 at an appropriate time, consistent with the conclusion of the transition period applicable to interest and royalties deemed to arise in Bulgaria that are beneficially owned by a resident of the European Union pursuant to Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

8. *With respect to paragraph 3 of Article 11 (Interest)*

The term "back to back loan" as used in subparagraph c) means a loan structured to obtain the benefits of subparagraph c) in which the loan is made to a financial institution that in turn lends the funds directly to the intended borrower.

9. *With respect to paragraph 2 c) and paragraph 6 of Article 13 (Capital Gains)*

The term "established securities market" means a national securities exchange which is officially recognized, sanctioned, or supervised by a governmental authority as well as an over the counter market. An over the counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general

circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

10. With respect to paragraph 2 of Article 24 (Mutual Agreement Procedure)

An agreement reached would not affect any court proceedings or any final court decisions or final tax assessment acts, unless, in the case of final court decisions or final tax assessment acts, the requirements under Bulgarian law for revision or repeal of final acts are fulfilled.

If an examination is completed and closed (and is not a matter pending before a court or for which a settlement or court decision has been reached) in a Contracting State, that Contracting State's competent authority may nonetheless accept a request for assistance if an adjustment causing double taxation is made in the other Contracting State.

11. With respect to Article 27 (Entry into Force)

The provisions of Article 25 (Exchange of Information and Administrative Assistance) shall have effect from the date of entry into force of the Convention without regard to the taxable period to which the matter relates.

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

DONE at Washington in duplicate, in the English and Bulgarian languages, both texts being equally authentic, this twenty-third day of February, 2007.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE REPUBLIC OF BULGARIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Republic of Bulgaria, desiring to amend the Convention Between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on February 23, 2007 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

With respect to Article 1 (General Scope), subparagraph a) of paragraph 5 shall be amended to read as follows:

"5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2 and 5 of Article 17 (Pensions, Social Security Payments, Annuities, Alimony, and Child Support), and Articles 22 (Relief From Double Taxation), 23 (Non-Discrimination), and 24 (Mutual Agreement Procedure); and"

ARTICLE II

With respect to Article 11 (Interest), paragraph 8, the reference to "paragraph 1" shall be changed to "paragraphs 2 and 3" as follows:

"8. Notwithstanding the provisions of paragraphs 2 and 3:"

ARTICLE III

With respect to Article 19 (Students, Trainees, Teachers and Researchers), paragraph 2 shall be amended to read as follows:

"2. 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 the other Contracting State for the purpose of teaching or carrying on research at a school, college, university or other recognized educational or research institution shall be exempt from tax in the other Contracting State, for a period not exceeding two years from the date of the individual's arrival in that other State on the remuneration received in consideration of teaching or carrying on research. This paragraph 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 IV

With respect to Article 21 (Limitation on Benefits), paragraphs 5 and 6 shall be renumbered as paragraphs 6 and 7, respectively, and a new paragraph 5 shall be added to read as follows:

"5. Notwithstanding the preceding provisions of this Article, where an enterprise of Bulgaria derives interest, or royalties from the United States, and the income consisting of such interest, or royalties is exempt from taxation in Bulgaria because it is attributable to a permanent establishment which that enterprise has in a third state, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to such income if the tax that is actually paid with respect to such income in the third state is less than 60 percent of the tax that would have been payable in Bulgaria if the income were earned in Bulgaria by the enterprise and were not attributable to the permanent establishment in the third state. Any interest or royalties to which the provisions of this paragraph apply may be taxed in the United States at a rate that shall not exceed 15 percent of the gross amount thereof. The provisions of this paragraph shall not apply if:

a) in the case of interest, as defined in Article 11 (Interest), the income from the United States is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making, managing, or simply holding investments for the enterprise's own account, unless these activities are banking, or securities activities carried on by a bank, or registered securities dealer); or

b) in the case of royalties, as defined in Article 12 (Royalties), the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself."

ARTICLE V

1. This Protocol shall enter into force on the date of entry into force of the Convention.

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

DONE at Sofia, in duplicate, this [illegible] day of [illegible], 2008, in the English and Bulgarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA: