

Protocol
to amend the Convention between the Government of Ukraine and
the Government of the Kingdom of Denmark for the avoidance of double taxation
and the prevention of fiscal evasion with respect to taxes on income and on property

The Government of Ukraine and the Government of the Kingdom of Denmark, (hereinafter referred to as “the Contracting States”),

Desiring to conclude a Protocol to amend the Convention between the Government of Ukraine and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property, signed at Copenhagen on March 5, 1996 (hereinafter referred to as “the Convention”),

have agreed as follows:

Article 1

Paragraphs 1, 2 and 3 of Article 2 “Taxes covered” of the Convention shall be worded as follows:

“Article 2
Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

“a) in the case of Ukraine:

- (i) the individual income tax; and
- (ii) the tax on profits of enterprises;
(hereinafter referred to as “Ukrainian tax”);

b) in the case of Denmark:

- (i) the income tax to the State (indkomstskatten til staten);
- (ii) the income tax to the municipalities (den kommunale indkomstskat);
(hereinafter referred to as “Danish tax”).”

Article 2

The following subparagraph j) shall be added to paragraph 1 of Article 3 “General definitions” of the Convention:

“j) the term “pension fund” of a State means an entity or arrangement established in a Contracting State that is treated as a separate person under the taxation laws of that State and:

(i) that is constituted and operated exclusively to administer or provide retirement or similar benefits to individuals and that is regulated as such by that State or one of its political subdivisions; or

(ii) that is constituted and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in clause (i).”

Article 3

Paragraph 1 of Article 4 “Resident” of the Convention shall be worded as follows:

“1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration 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.”.

Article 4

Paragraph 4 of Article 8 “International transport” of the Convention shall be deleted.

Article 5

Paragraph 2 of Article 10 “Dividends” of the Convention shall be worded as follows:

“2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as merger or divisive reorganisation, of the company that holds the shares or that pays the dividends);

b) 15 per cent of the gross amount of the dividends in all other cases.

Notwithstanding the provisions of letters a) and b) above, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is pension fund of the other State.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

Article 6

Paragraph 2 of Article 11 “Interest” of the Convention shall be worded as follows:

“2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.”.

Article 7

Paragraph 2 of Article 12 “Royalties” of the Convention shall be worded as follows:

“2. However royalties arising in a Contracting State may also be taxed in that State 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 payments.”.

Article 8

Paragraph 6 of Article 13 “Capital gains” of the Convention shall be deleted and paragraph 7 shall be renumbered as paragraph 6.

Article 9

Paragraph 4 of Article 15 “Dependent personal services” of the Convention shall be deleted.

Article 10

Paragraph 2 of Article 20 “Students” of the Convention shall be worded as follows:

“2. In respects of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, relief or reductions in respect of taxes as are available to residents of the Contracting State which he is visiting.”.

Article 11

Article 22 “Property” of the Convention shall be deleted. The Articles following Article 22 shall not be renumbered.

Article 12

Article 24 “Elimination of double taxation” of the Convention shall be worded as follows:

“Article 24

Elimination of double taxation

Double taxation shall be eliminated as follows:

1. In the case of Ukraine:

a) Where a resident of Ukraine derives income which, in accordance with the provisions of this Convention, may be taxed in Denmark, Ukraine shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Denmark.

b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Denmark.

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

2. In the case of Denmark:

a) Subject to the provisions of sub-paragraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Ukraine (except to the extent that these provisions allow taxation by Ukraine solely because the income is also income derived by a resident of Ukraine) Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Ukraine.

b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Ukraine.

c) Where a resident of Denmark derives income which, in accordance with the provisions of this Convention, shall be taxable only in Ukraine, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from Ukraine.”.

Article 13

The first sentence of paragraph 1 of Article 26 “Mutual agreement procedure” of the Convention shall be worded as follows:

“1. Where a resident of a Contracting State considers that actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State.”.

Article 14

Article 27 “Exchange of information” of the Convention shall be worded as follows:

“Article 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

4. 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 tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”.

Article 15

Article 28 “Assistance in collection” of the Convention shall be worded as follows:

“Article 28

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. Where a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. Where a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefits to be derived by the other Contracting State.”.

Article 16

A new Article 30A as follows shall be inserted following Article 30 of the Convention:

“Article 30A

Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1.

3. The competent authority of the Contracting State to which the request has been made by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before rejecting the request.”.

Article 17

The Protocol of the Convention shall be deleted.

Article 18

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the domestic law for the bringing into force of this Protocol.

2. This Protocol shall form an integral part of the Convention and shall enter into force on the last day of the month following the month in which the later of the notifications referred to in paragraph 1 of this Article has been received. This Protocol shall have effect:

a) in respect of taxes withheld at source, on amounts paid or credited to non-residents on or after the first day of January of the year next following the entry into force of this Protocol;

b) in respect of other taxes for income years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done at Kyiv this 2 day of February 2021 in duplicate, in the Ukrainian, Danish and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the Ukrainian and the Danish texts, the English text shall prevail.

For
the Government of Ukraine



For
the Government of
the Kingdom of Denmark

