

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

The Government (Cabinet of Ministers) of Ukraine and the Government of the United Mexican States,

DESIRING to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property,

Have agreed as follows:

ARTICLE 1

Persons Covered

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

ARTICLE 2

Taxes Covered

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

2. There shall be regarded as taxes on income and on property all taxes imposed on total income, on value of property, or on elements of income or of property, including taxes on gains from the alienation of movable or immovable property.

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

a) in case of Ukraine:

- (i) the tax on profits of enterprises; and
- (ii) the individual income tax;

(hereinafter referred to as "Ukrainian tax");

b) in case of Mexico:

- (i) the federal income tax; and
- (ii) the business flat rate tax;

(hereinafter referred to as "Mexican tax").

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

ARTICLE 3

General Definitions

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

- a) the term "Ukraine" when used in geographical sense, means the territory of Ukraine, its continental shelf and its exclusive (maritime) economic zone, including any area outside the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated, as an area within which the rights of Ukraine with respect to the seabed and subsoil and their natural resources may be exercised;
- b) the term "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration

and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters, and the air space of the national territory to the extent and under conditions established by international law;

- c) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- d) the terms "a Contracting State" and "the other Contracting State" mean Ukraine or Mexico as the context requires;
- e) the term "person" includes an individual, a company and any other body of persons;
- f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "competent authority" means, in case of Ukraine, the Ministry of Finance of Ukraine or its authorized representative, and, in case of Mexico, the Ministry of Finance and Public Credit or its authorized representative;
- j) the term "enterprise" applies to the carrying on of any business;
- k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes

to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

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

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (center of vital interests);
- b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

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;
- f) an installation or structure for the exploration of natural resources; and
- g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” likewise encompasses:

- a) a building site or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six (6) months;
- b) the furnishing of services by an enterprise, including consultancy services, through its employees or other personnel engaged by the enterprise for such purpose if such activities continue within a Contracting State for a period or periods exceeding in the aggregate six (6) months within any twelve (12) month period; and

- c) professional services or other activities of an independent nature are furnished by an individual within a Contracting State if such person is present in the territory of such Contracting State for a period or periods exceeding in the aggregate one hundred and eighty three (183) days within any twelve (12) month period.

For the purposes of computing the time limits referred to in this paragraph, the activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 of this Convention shall be aggregated with the period during which the activities are carried on by the associated enterprise, if the activities of both enterprises are identical or substantially similar.

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 or display 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 or display;
- 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 advertising, supplying information, scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 7 of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this

Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 of this Article applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise conditions are not made or imposed that differ from those generally agreed to by independent agents.

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

ARTICLE 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to

variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3 The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4 The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

- a) that permanent establishment;
- b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

ARTICLE 8

International Transport

1. Profits derived by a resident of a Contracting State from the operation of ships, boats or aircraft in international traffic shall be taxable only in that State.

2. Profits referred to in paragraph 1 of this Article shall not include profits from the provision of accommodation.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- a) income from the rental on a bareboat basis of ships or aircraft; and
- b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

ARTICLE 9

Associated Enterprises

1. Where:

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, in accordance with paragraph 2 of Article 26 of this Convention, 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 which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein 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 of this Convention shall apply.

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

ARTICLE 11

Interest

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, interest referred to in paragraph 1 of this Article shall be taxable only in the Contracting State in which the beneficial owner is a resident if:

- a) the beneficial owner is a Contracting State, a political subdivision or the Central Bank of the Contracting State;
- b) the interest is paid by any of the entities mentioned in sub-paragraph a);
- c) the interest arises in Ukraine and is paid in respect of a loan for a period of not less than three (3) years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured, by Banco de México, Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C. or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States;
- d) the interest arises in Mexico and is paid in respect of a loan for a period of not less than three (3) years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured by an authorized organ of Ukraine or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government

securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the laws of the Contracting State in which the income arises. The term "interest" shall not include any item of income which is considered as a dividend under the provisions of paragraph 3 of Article 10 of this Convention.

5. The provisions of paragraphs 1 and 2 of this Article 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 of this Convention 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent 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, and the amount of the interest, for whatever reason, 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.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

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 10 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

- a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process;
- b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- c) the supply of information concerning industrial, commercial or scientific experience;
- d) the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting;
- e) the reception of, or the right to receive, visual images or sounds, or both, for the purpose of transmission by:
 - (i) satellite;
 - (ii) cable, optic fibre or similar technology; or

f) the use of, or the right to use, in connection with television or radio broadcasting, visual images or sounds, or both, for the purpose of transmission to the public by:

(i) satellite; or

(ii) cable, optic fibre or similar technology.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein 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 of this Convention shall apply.

5. For purposes of this Article, royalties shall be treated as arising in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a Contracting State a permanent establishment and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains derived by a resident of a Contracting State from the alienation of:

- a) shares or other similar rights in a company the property of which consists directly or indirectly principally of immovable property situated in the other Contracting State, or
- b) a contribution in a partnership the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in sub-paragraph a) above,

may be taxed in that other State.

3. In addition to gains taxable in accordance with the provisions of the preceding paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

4. 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.

5. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

6. Gains from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, 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, 17 and 18 of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if all the following conditions are met:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate one hundred and eighty three (183) days in any twelve (12) month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by a resident of a Contracting State in international traffic, may be taxed in that State.

ARTICLE 15

Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14 of this Convention, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

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

ARTICLE 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18 of this Convention, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such resident shall be taxable only in that State.

2. The term "annuity" means a stated sum payable to an individual periodically at stated times during his life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1 of this Article, pensions and other similar remuneration, and any annuity paid under State Pension Plan as a part of social security system of a Contracting State, its political subdivision or local authority, shall be taxed only in that State.

ARTICLE 18

Government Service

1.
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (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. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14, 15, 16 and 17 of this Convention shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 20

Professors, Teachers and Researchers

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution which is recognised by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two (2) years solely for the purpose of teaching or researching or both at such educational institution shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research.

2. The provisions of paragraph 1 of this Article shall not apply to income from researching if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

ARTICLE 21

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 22

Limitation on Benefits

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

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

- (i) more than 50 percent of the beneficial interest in such person, or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares is owned directly or indirectly by persons entitled to the benefits of this Convention under subparagraphs a), c) or d) of this paragraph, and
- (ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs a), c) or d) of this paragraph.

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

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

Article 23

Property

1. Property represented by immovable property referred to in Article 6 of this Convention, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Property represented by 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, may be taxed in that other State.

3. Property represented by ships and aircraft operated by an enterprise of a Contracting State in international traffic or by boats engaged in inland waterways

transport, and by movable property pertaining to the operation of such ships, aircraft and boats shall be taxable only in that Contracting State.

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

ARTICLE 24

Elimination of Double Taxation

1. In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:

- a) the Ukrainian tax paid on income arising in Ukraine, in an amount not exceeding the tax payable in Mexico on such income; and
- b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Ukraine and from which the first-mentioned company receives dividends, the Ukrainian tax paid by the distributing company with respect to the profits out of which the dividends are paid.

2. In the case of a resident of Ukraine, double taxation shall be eliminated as follows:

Where a resident of Ukraine derives income or owns property which, in accordance with the provisions of this Convention, may be taxed in Mexico, Ukraine shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Mexico; and as a deduction from the tax on the property of that resident, an amount equal to the property tax paid in Mexico. Such deduction in either case shall not, however, exceed that part of the income tax or property tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the property which may be taxed in Mexico.

3. Where in accordance with any provision of the Convention income derived or property owned by a resident of a Contracting State is exempt from tax in

that State, such State may nevertheless, in calculating the amount of tax on the remaining income or property of such resident, take into account the exempted income.

ARTICLE 25

Non-Discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 of this Convention, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable property of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other

Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. In no case shall the provisions of this Article be construed as preventing either Contracting State from applying the provisions of its domestic law as regards thin capitalization.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 of this Convention apply to taxes of every kind and description.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25 of this Convention, to that of the Contracting State of which he is a national. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention, provided that the competent authority of the other Contracting State is notified of the case within three (3) years from the due date or the date of filing of the return in that other State, whichever is later. In such case, any agreement reached shall be implemented within ten (10) years from the due date or the date of filing of the

return in that other State, whichever is later, or a longer period if permitted by the domestic law of that other State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

ARTICLE 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is 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 of this Convention.

2. Any information received under paragraph 1 of 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) 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 of this Article, 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.

3. In no case shall the provisions of paragraphs 1 and 2 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 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 of this Article 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 of this Article 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 28

Assistance in Collection

1. Each of the Contracting States shall endeavor to aid and assist the other Contracting State in the collection of the taxes of that other State, in as much as is necessary to prevent persons not entitled to the tax exemptions or reductions provided for in this Convention to benefit from such exemptions and reductions.

2. Nothing in this Article shall be construed as the State receiving the application to apply any means of enforcement which are not authorized by the laws or regulations of either Contracting State or to carry out measures which are contrary to public policy.

ARTICLE 29

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.

ARTICLE 30

Entry into Force

Each of the Contracting States shall notify each other, through the diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Convention. This Convention shall enter into force on the thirtieth (30th) day following the date of receipt of the later of these notifications and its provisions shall have effect:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January in the calendar year next following that in which the Convention enters into force;
- b) in respect of other taxes, for any taxable year beginning on or after 1st January in the calendar year next following that in which the Convention enters into force.

ARTICLE 31

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through the diplomatic channels, by giving notice of termination at least six (6) months before the end of any calendar year following the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January in the calendar year next following that in which the notice is given;
- b) in respect of other taxes, for any taxable year beginning on or after 1st January in the calendar year next following that in which the notice is given.

IN WITNESS whereof the undersigned, duly authorised thereto have signed this Convention.

Done in duplicate at Mexico City on this twenty-third day of two thousand and twelve, in the Ukrainian, Spanish and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.



FOR THE GOVERNMENT OF
UKRAINE



FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES

Protocol

At the signing of the Convention between the Government of Ukraine and the Government of the United Mexican States for the Avoidance of double taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Property (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

It is understood that:

1. With reference to Article 2, the provisions of this Convention shall not apply to penalties and fines for infringement of the tax legislation of the Contracting States.
2. With reference to paragraph 2 of Article 5, the term "permanent establishment" also includes a warehouse or other structure used as a sales outlet.
3. With reference to paragraph 5 of Article 5, if the person other than an agent of an independent status maintains a stock of goods or merchandise belonging to the enterprise, from which regular sale of such goods and merchandise is carried on in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise.
4. With respect to anti abuse of the Convention, the provisions of this Convention shall not prevent a Contracting State from applying its provisions regarding controlled foreign corporation (in the case of Mexico, preferential tax regimes).
5. With respect to paragraph 3 of article 12, it is understood that the term "royalties" includes payments derived from the alienation of any right or property

which are calculated upon a future uncertain event based on the productivity, use or disposition thereof.

6. The Contracting States shall endeavor to apply the provisions of this Convention in accordance with the Commentaries on the Articles of the Model Tax Convention on Income and on Capital drawn up from time to time by the Organisation for Economic Cooperation and Development Committee on Fiscal Affairs to the extent that the provisions contained in the Convention correspond to those set forth under such Model.

IN WITNESS thereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at Mexico City on this twenty-third day of two thousand and twelve, in the Ukrainian, Spanish and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.



**FOR THE GOVERNMENT OF
UKRAINE**



**FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES**