

Protocol
amending
the Convention
between
the Government of Ukraine
and
the Government of the Czech Republic
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 Czech Republic,

desiring to conclude a Protocol amending the Convention between the Government of Ukraine and the Government of the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property signed at Kyiv on 30 June 1997 (hereinafter referred to as "the Convention"),

have agreed as follows:

Article 1

Sub-paragraph a) of paragraph 3 of Article 2 of the Convention shall be modified as follows:

"a) in the case of Ukraine:

(i) the tax on profit of enterprises; and

(ii) the individual income tax;

(hereinafter referred to as "Ukrainian tax");"

Article 2

Paragraph 2 of Article 3 of the Convention shall be modified as follows:

“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 3

Paragraph 1 of Article 4 of the Convention shall be modified 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 effective management, place of registration or any other criterion of a similar nature, and also includes that State and any political-administrative 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.”

Article 4

1. Sub-paragraph b) of paragraph 3 of Article 5 of the Convention shall be modified by replacing the phrase “three months” by the phrase “six months”.
2. Sub-paragraph e) of paragraph 4 of Article 5 of the Convention shall be modified as follows:

“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;”

Article 5

1. Paragraph 1 of Article 8 of the Convention shall be modified as follows:

“1. Profits derived by an enterprise of a Contracting State from the operation of ships, boats, aircraft, road or railway vehicles in international traffic shall be taxable only in that State.”

2. Paragraph 2 of Article 8 of the Convention shall be modified by replacing the words “For the purposes of this Article” by the words “For the purposes of this Convention”.

Article 6

Paragraph 3 of Article 10 of the Convention shall be modified as follows:

“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 or other income 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.”

Article 7

1. Paragraph 3 of Article 11 of the Convention shall be modified as follows:

“3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit granted, guaranteed or insured by the Government, a political-administrative subdivision or a local authority of the other Contracting State, or the Central Bank of that other State or by any financial institution owned or controlled by the Government of that other State.

For the purposes of this paragraph, the terms “the Central Bank” and “any financial institution owned or controlled by the Government of that other State” mean, unless the context otherwise requires:

a) in the case of Ukraine:

- (i) the National Bank of Ukraine – the Central Bank;
- (ii) the State Savings Bank of Ukraine (Oschad Bank);
- (iii) the State Export Import Bank of Ukraine (Ukreximbank); and
- (iv) any financial institution owned or controlled by Ukraine as may be agreed upon between the competent authorities of the Contracting States;

b) in the case of the Czech Republic:

- (i) the Czech National Bank;
- (ii) the Czech Export Bank (CEB);
- (iii) the Export Guarantee and Insurance Company (EGAP); and
- (iv) any financial institution owned or controlled by the Czech Republic as may be agreed upon between the competent authorities of the Contracting States.”

2. Two sentences shall be added to paragraph 4 of Article 11 of the Convention that shall read as follows:

“Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. 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.”

3. Paragraph 5 of Article 11 of the Convention shall be modified by replacing the phrase “The provisions of paragraphs 1 and 2” by the phrase “The provisions of paragraphs 1, 2 and 3”.

4. The first sentence of paragraph 6 of Article 11 of the Convention shall be modified as follows:

“6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State.”

Article 8

1. Paragraph 3 of Article 12 of the Convention shall be modified as follows:

“3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, films or tapes or other means of image or sound reproduction for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience (know-how).”

2. The first sentence of paragraph 6 of Article 12 of the Convention shall be modified as follows:

“6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State.”

Article 9

Paragraph 2 of Article 13 of the Convention shall be modified as follows:

“2. Gains derived by a resident of a Contracting State from the alienation of shares or other interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.”

Article 10

Paragraph 5 of Article 15 of the Convention shall be modified as follows:

“5. Notwithstanding the preceding provisions of this Article, remuneration

derived in respect of an employment exercised aboard a ship, boat, aircraft, road or railway vehicle operated by an enterprise of a Contracting State in international traffic may be taxed in that State.”

Article 11

Paragraph 3 of Article 18 of the Convention shall be modified as follows:

“3. Notwithstanding the provisions of paragraph 1 of this Article and the provisions of sub-paragraph b) of paragraph 2 of Article 19 of this Convention, 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-administrative subdivision or local authority, shall be taxed only in that State.”

Article 12

Article 23 of the Convention shall be modified as follows:

“Article 23

ELIMINATION OF DOUBLE TAXATION

1. 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 the Czech Republic, Ukraine shall allow:

- a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Czech Republic;
- b) as a deduction from the tax on the property of that resident, an amount equal to the property tax paid in the Czech Republic.

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 the Czech Republic.

2. Subject to the provisions of the laws of the Czech Republic regarding the elimination of double taxation, in the case of a resident of the Czech Republic, double taxation shall be eliminated as follows:

The Czech Republic, when imposing taxes on its residents, may include in the tax

base upon which such taxes are imposed the items of income or of property which according to the provisions of this Convention may also be taxed in Ukraine, but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in Ukraine. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income or property which, in accordance with the provisions of this Convention, may be taxed in Ukraine.

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 or property.”

Article 13

1. Paragraph 3 of Article 24 of the Convention shall be modified as follows:

“3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or a resident of a Contracting State performing in that other State independent personal services from a fixed base situated therein shall not be less favourably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities.”

2. Paragraph 7 of Article 24 of the Convention shall be modified as follows:

“7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.”

Article 14

Article 26 of the Convention shall be modified as follows:

“Article 26

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-administrative 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.

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

It is understood for the purposes of the Convention that:

a) benefits provided under this Convention shall not be granted to companies of either Contracting State if the purpose of the creation or existence of such companies is to obtain benefits under this Convention that would not otherwise be available.

b) the provisions of this Convention shall in no case prevent a Contracting State from the application of the provisions of its domestic laws aiming at the prevention of fiscal evasion and avoidance.

c) the competent authority of a Contracting State may, after consultation with the competent authority of the other Contracting State, deny the benefits of this Convention to any person, or with respect to any transaction, if in its opinion the granting of those benefits would constitute an abuse of the Convention.

Article 16

The Contracting States shall notify each other in writing, through the diplomatic channels, of the completion of all the domestic procedures required for the bringing into force of this Protocol. This Protocol, which shall form the integral part of the Convention, shall enter into force on the date of the latter of these notifications and shall have effect in both States for taxable periods beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

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

DONE in Kyiv on 21th of October 2013 in two originals, each in the Ukrainian, Czech and English languages, all texts being equally authentic. In the case of any divergences, the English text shall prevail.

**For the Government
of Ukraine**



**For the Government
of the Czech Republic**

