

**PROTOCOL
BETWEEN
THE GOVERNMENT OF UKRAINE
AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY
TO AMEND THE AGREEMENT BETWEEN
THE GOVERNMENT OF UKRAINE
AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME
AND ON CAPITAL**

The Government of Ukraine and the Government of the Republic of Turkey, desiring to conclude a Protocol to amend the Agreement between the Government of Ukraine and the Government of the Republic of Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Ankara on 27 November 1996 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

Article 1

Paragraph 3 of Article 2 "Taxes covered" of the Agreement shall be worded as follows:

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

- a) in the case of Ukraine:
 - i) the tax on profits of enterprises; and
 - ii) the individual income tax;
(hereinafter referred to as "Ukrainian tax");
- b) in the case of Turkey:
 - i) the income tax; and
 - ii) the corporation tax;
(hereinafter referred to as "Turkish tax")."

Article 2

Paragraph 2 of Article 3 "General definitions" of the Agreement shall be worded as follows:

"2. As regards the application of the Agreement 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 Agreement 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 "Resident" of the Agreement shall be worded as follows:

"1. For the purposes of this Agreement, 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, registered office, place of registration, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein."

Article 4

Paragraph 2 of Article 8 "International transport" of the Agreement shall be worded as follows:

"2. For the purposes of this Article, profits from the operation of ships, boats, aircraft or road vehicles in international traffic include 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, such use or maintenance, as the case may be, is incidental to the operation of ships, boats, aircraft or road vehicles in international traffic."

Article 5

Paragraph 2 of Article 10 "Dividends" of the Agreement 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) 10 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."

Article 6

1. Paragraph 1 of Article 11 "Interest" of the Agreement shall be worded as follows:

"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. Paragraph 2 of Article 11 "Interest" of the Agreement shall be worded as follows:

"2. However, interest 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 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."

3. Paragraph 3 of Article 11 "Interest" of the Agreement shall be worded as follows:

"3. Notwithstanding the provisions of paragraph 2 of this Article, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which

the beneficial owner is a resident, if the interest is paid:

a) to that State, a political subdivision or local authority thereof or the central bank;

b) by the State in which the interest arises or by a political subdivision or a local authority thereof;

c) in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision or local authority thereof.”.

Article 7

1. Paragraph 1 of Article 12 “Royalties” of the Agreement shall be worded as follows:

“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. Paragraph 2 of Article 12 “Royalties” of the Agreement 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 10 per cent of the gross amount of the royalties.”.

Article 8

Paragraph 3 of Article 15 “Dependent personal services” of the Agreement shall be worded as follows:

“3. Notwithstanding the provisions of paragraphs 1 and 2, salaries and other remuneration derived by a resident of a Contracting State for a work carried out in the other Contracting State are not taxed in that other Contracting State if it is performed by persons:

a) in connection with a building site, construction, assembly or installation project in connection with paragraph 3 of Article 5 of the Agreement,

b) in respect of an employment exercised aboard a ship, boat, aircraft or road vehicle operated in international traffic by an enterprise of a Contracting State of which the enterprise is a resident.”.

Article 9

Article 26 “Exchange of information” of the Agreement shall be worded 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 Agreement 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 Agreement. 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 Contracting 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 10

A new Article 26A “Assistance in the collection of taxes” shall be inserted after Article 26 “Exchange of information” of the Agreement:

“Article 26A

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 Agreement 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. When 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. When 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 benefit to be derived by the other Contracting State.”

Article 11

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

2. This amending Protocol shall form an integral part of the Agreement 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 amending Protocol shall have effect:

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

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

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

DONE at Kyiv this 9th day of October 2017 in duplicate, in Ukrainian, Turkish and English languages, the texts being equally authentic. In case there is any divergence of interpretation of this Protocol, the English text shall prevail.

**For the Government
of Ukraine**



SERGII MARCHENKO
Deputy Minister of Finance

**For the Government
of the Republic of Turkey**



NIHAT ZEYBEKÇİ
Minister of Economy