

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

Prom. SG. 60/4 Jul 1995

The Republic of Korea and the Republic of Bulgaria, Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and to further develop and facilitate their economic relationship, Have agreed as follows:

Personal Scope

Art. 1

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Taxes Covered

Art. 2

1. This Convention shall apply to taxes on income and 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 appreciations.

2. The taxes to which this Convention shall apply are:

(a) In the case of Korea:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the inhabitant tax (hereinafter referred to as "Korean tax");

(b) In the case of Bulgaria:

- (i) the tax on the total income; and
- (ii) the tax on profit (hereinafter referred to as "Bulgarian tax")

3. This Convention shall also apply to any identical or substantially similar taxes, whether national or local, which are imposed after the date of signature of this Convention in addition to, or in place of the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws. In case any doubt arises in determining whether such taxes are identical or substantially similar the competent authorities of the Contracting States may consult each other due regard being had to the provisions of Art. 25.

General Definitions

Art. 3

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

(a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of

Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised.

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

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

(d) the term "tax" means Korean tax or Bulgarian tax, as the context requires;

(e) the term "person" means an individual, a legal person, including 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 "nationals" means:

(i) all individuals possessing the nationality of a Contracting State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(i) the term "international traffic" means any transport by ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "competent authority" means:

(i) in the case of Korea the Minister of Finance or his authorized representative.

(ii) in the case of Bulgaria the Minister of Finance or his authorized representative.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Convention applies.

Resident

Art. 4

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 nationality, domicile, residence, place of head or main office, place of management, place of registration or any other criterion of a similar nature. 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.

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

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Art. a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Permanent Establishment

Art. 5

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.

4. Notwithstanding the provisions of this Art., the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise any other activity of a preparatory or auxiliary character;

(f) the maintenance of a stock of goods displayed by the enterprise in a fair or an exhibition which is to be sold after the conclusion; and

(g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom the provisions of paragraph 6 apply -- 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 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. 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, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. 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 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.

Income From Immovable Property

Art. 6

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture and 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 laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, 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 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 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Business Profits

Art. 7

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 or has carried 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 that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting state carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

6. Where profits include items of income which are dealt with separately in other Art.s of this Convention, the provisions of those Art.s shall not be affected by the provisions of this Art..

Shipping and Air Transport

Art. 8

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

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

3. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Bulgaria, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea which may hereafter be imposed in Bulgaria.

Associated Enterprises

Art. 9

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 enterprise 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 income of an enterprise of that Contracting State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the income so included is income which would have accrued to the first-mentioned enterprise if the conditions made between the two enterprises had been those which would have been made between independent persons, then that other State, subject to the domestic tax laws, shall make an appropriate adjustment to the amount of tax charged therein on that income. 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 consult each other.

Dividends

Art. 10

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 recipient is the beneficial owner of the dividends 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 15 per cent of the capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends in all other cases

The provisions of 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 Art. 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 is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries or has carried on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Art. 7 or Art. 14, as the case may be, 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 or a fixed base 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.

Interest

Art. 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) Interest arising in a Contracting State and received by the Government of the other Contracting State including a political subdivision or a local authority thereof or the central bank of that other Contracting State shall be taxable only in that other Contracting State.

(b) Interest arising in a Contracting State in respect of loans or credits made or guaranteed,

-- in the case of Korea, by the Export Import Bank of Korea and Korea Development Bank;

-- in the case of Bulgaria, by the Bulgarian Foreign Trade Bank, or any other institution, which may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States, and paid to a resident of the other Contracting State shall be taxable only in that other State.

(c) Interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, by an enterprise of one of the Contracting States to the enterprise of the other Contracting States shall be taxable only in the Contracting State of which beneficiary is a resident.

4. The term "interest" as used in this Art. 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. Penalties for late payments shall not be regarded as an interest for the purposes of this Art..

5. the provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Art. 7 or Art. 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Royalties

Art. 12

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

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

3. The term "royalties" as used in this Art. 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 and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, as well as from technical services if such income is connected with the mentioned in this paragraph use or the right to use.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such a permanent establishment or fixed base. In such case the provisions of Art. 7 or Art. 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority thereof, or a resident of that Contracting State.

Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Art. 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.

Capital Gains

Art. 13

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

2. 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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Independent Personal Services

Art. 14

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Dependent Personal Services

Art. 15

1. Subject to the provisions of Art. 16, 18, 19, 20 and 21 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, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base, which the employer has in that other State.

3. Notwithstanding the preceding provisions of this Art., remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

Directors' Fees

Art. 16

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 of the supervisory board of a company which is a resident of the other State may be taxed in that other Contracting State.

Artistes and Athletes

Art. 17

1. Notwithstanding the provisions of Art.s 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, and a musician, or as an athlete, 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 in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Art.s 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to the remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes within the framework of a cultural agreement or if their visit to that State is substantially supported from the public funds in the other Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, members or shareholders.

Pensions

Art. 18

Subject to the provisions of paragraph 2 of Art. 19 of this Convention, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Government Service

Art. 19

1. (a) 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 thereof shall be taxable only in that State.

(b) However, such 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 Art.s 15, 16 and 18 shall apply to remuneration 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.

4. The provisions of paragraphs 1 and 2 of this Art. shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea, the Korea Development Bank, the Korea Trade Promotion Corporation, the Korea Tourism Corporation and the Korean Broadcasting System and, in the case of Bulgaria, Bulgarian National Bank, Bulgarian Foreign Trade Bank, Bulgarian Chamber of Commerce and Industry, Committee for Tourism, Committee for Radio, Committee for Television and Bulgarian Telegraph Agency and for remuneration of pensions paid by any agency or institution, wholly owned by the State, political subdivision or local authority thereof, as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

Students

Art. 20

1. 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 Contracting State solely for the purpose of his education or training receives for his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. The provisions of the preceding paragraph shall also apply to payments which a student or a business apprentice who is a resident of a Contracting State receives in the other Contracting State in respect of an employment performed in that other Contracting State provided that such employment is connected with his education or qualification or that payment is necessary to supplement his maintenance and for not more than five consecutive years from the date of his first arrival in the other Contracting State.

Professors and Teachers

Art. 21

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, at the invitation of any university, college, school or other similar non-profit educational institution, which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such

educational institution shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

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

Other Income

Art. 22

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Art. 6, if the recipient of such income, being a resident of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Art. 7 or Art. 14, as the case may be, shall apply.

3. For the purposes of allowance as a credit against the tax payable in Korea or Bulgaria, as the context requires, the tax payable on dividends, interest, or royalties in a Contracting State shall be deemed to include the tax which is otherwise payable in that State but has been reduced or exempted by that State in pursuance of its tax incentives programme for the promotion of economic development or by the provisions of this Convention. Provided that the amount of the tax referred to in this paragraph shall not exceed an amount of 10 per cent of the gross amount of such dividends, interest, or royalties.

Non-Discrimination

Art. 24

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 or connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall notwithstanding the provision of Art. 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation of a permanent establishment which an enterprise, or of a fixed base which a resident, 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 or residents of that other State, carrying on the same activities.

3. Nothing contained in this Art. shall 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.

4. Except where the provisions of Art. 9, paragraph 7 of Art. 11 or paragraph 6 of Art. 12, 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 profit of such enterprise, be deductible under the same conditions, as if they had been paid to a resident of the first-mentioned state.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirements

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.

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

Mutual Agreement Procedure

Art. 25

1. Where a person considers that the action 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 the case comes under paragraph 1 of Art. 24 of this Convention, to that of the Contracting State of which he is a national. The case must be presented within three 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 not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Exchange of Information

Art. 26

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Art. 1. Any information received 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 or administrative bodies) involved in assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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.

2. In no case shall the provisions of paragraph 1 of this Art. be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with 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 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 (order public).

Diplomatic Agents and Consular Officers

Art. 27

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents and consular officers under the general rules of international law or under the provisions of special agreements.

Entry Into Force

Art. 28

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible. The Convention shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.

2. This Convention shall have effect:

(a) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January of the year in which this Convention enters into force, and

(b) in respect of other taxes, for taxation years beginning on or after the first day of January of the year in which this Convention enters into force.

Termination

Art. 29

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year, following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

(b) in respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Sofia this eleventh day of March of the year one thousand nine hundred and ninety-four in the Korean, Bulgarian and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA:

FOR THE REPUBLIC OF BULGARIA:

PROTOCOL

At the moment of signing the Convention between the Republic of Korea and the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal

Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. It is understood that if capital taxes are introduced in one or both of the Contracting States, the Convention shall also apply with respect to such taxes and double taxation shall be avoided in conformity with the provisions of Art.s 2 and 23. The competent authorities of both Contracting States shall settle by mutual agreement the mode of application of this paragraph.

2. In respect of subparagraph (g) of paragraph 1 of Art. 3, it is understood that the term "enterprise" shall include also enterprises of individuals, whether legal persons or not.

3. In respect of paragraph 1 of Art. 8, profits from the operation of vessels engaged in fishing, dredging or hauling activities shall be treated as income falling under this paragraph.

In witness whereof the undersigned, have signed this Protocol which is an integral part of the Convention.

Done in duplicate at Sofia this eleventh day of March of the year one thousand nine hundred and ninety-four in the Korean, Bulgarian and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.