

Protocol

At the signing of the Convention concluded today between the Government of the United States of America and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (hereinafter referred to as the "the Convention"), the undersigned have agreed upon the following additional provisions which shall form an integral part of the Convention.

1. With respect to paragraph 4 of Article 1 (General Scope)

The term "long-term resident" as used in subparagraph b) shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Bulgaria under this Convention, or as a resident of any country other than the United States under the provisions of any other tax treaty of the United States, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

2. With respect to paragraph 3 of Article 2 (Taxes Covered)

The personal income tax and corporate income tax referred to in subparagraph a) i) and ii) include the patent tax.

3. With respect to paragraph 1 of Article 3 (General Definitions)

The term "any other body of persons" as used in subparagraph d) includes an estate, trust, and partnership.

4. With respect to Article 4 (Resident)

A company that is or would be a resident of a Contracting State pursuant to that State's domestic law will not be treated as a resident of that State for purposes of the Convention if it is treated as a resident of a third state pursuant to an income tax convention between that State

and the third state.

A person who is liable to tax in respect only of profits attributable to a permanent establishment in a Contracting State is not liable to tax therein by reason of domicile, residence, citizenship, place of management, place of incorporation or a criterion of a similar nature.

5. *With respect to Article 7 (Business Profits)*

For this purpose, the business profits to be attributed to the permanent establishment shall include only the business profits derived from the assets used, risks assumed and activities performed by the permanent establishment.

The principles of the OECD Transfer Pricing Guidelines will apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods described therein as acceptable methods for determining an arm's length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In determining the amount of business profits attributable to a permanent establishment, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institution's risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment.

In applying Article 7, paragraph 4 of Article 6 (Income from Immovable Property (Real Property)), paragraph 6 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), paragraph 3 of Article 13 (Capital Gains) and paragraph 2 of Article 20 (Other Income), any income or gain attributable to a permanent establishment

during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

6. *With respect to Article 8 (International Traffic)*

Profits derived by an enterprise from the transport of tangible property or passengers within either Contracting State shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.

7. *With respect to Articles 11 (Interest) and 12 (Royalties)*

The Convention permits positive rates of taxation on interest and royalties. With respect to interest and royalties deemed to arise in Bulgaria where the beneficial owner of the income is a resident of the United States under the Convention, the Contracting States agree to reconsider the provisions of Articles 11 and 12 at an appropriate time, consistent with the conclusion of the transition period applicable to interest and royalties deemed to arise in Bulgaria that are beneficially owned by a resident of the European Union pursuant to Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

8. *With respect to paragraph 3 of Article 11 (Interest)*

The term "back to back loan" as used in subparagraph c) means a loan structured to obtain the benefits of subparagraph c) in which the loan is made to a financial institution that in turn lends the funds directly to the intended borrower.

9. *With respect to paragraph 2 c) and paragraph 6 of Article 13 (Capital Gains)*

The term "established securities market" means a national securities exchange which is officially recognized, sanctioned, or supervised by a governmental authority as well as an over the counter market. An over the counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general

circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

10. *With respect to paragraph 2 of Article 24 (Mutual Agreement Procedure)*

An agreement reached would not affect any court proceedings or any final court decisions or final tax assessment acts, unless, in the case of final court decisions or final tax assessment acts, the requirements under Bulgarian law for revision or repeal of final acts are fulfilled.

If an examination is completed and closed (and is not a matter pending before a court or for which a settlement or court decision has been reached) in a Contracting State, that Contracting State's competent authority may nonetheless accept a request for assistance if an adjustment causing double taxation is made in the other Contracting State.

11. *With respect to Article 27 (Entry into Force)*

The provisions of Article 25 (Exchange of Information and Administrative Assistance) shall have effect from the date of entry into force of the Convention without regard to the taxable period to which the matter relates.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at Washington in duplicate, in the English and Bulgarian languages, both texts being equally authentic, this twenty-third day of February, 2007.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF BULGARIA

