CONVENTION

BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND 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 Finland,

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 capital,

Have agreed as follows:

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of 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 capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

a) in Finland:

(i) the state income taxes (valtion tuloverot; de statliga inkomstskatterna);

(ii) the corporate income tax (yhteisöjen tulovero; inkomstskatten för samfund);

(iii) the communal tax (kunnallisvero; kommunalskatten);

(iv) the church tax (kirkollisvero; kyrkoskatten);

(v) the tax withheld at source from interest

(korkotulon lähdevero; källskatten på ränteinkomst);

(vi) the tax withheld at source from non-residents' income (rajoitetusti verovelvollisen lähdevero; källskatten för begränsat skattskyldig); and

(vii) the state capital tax (valtion varallisuusvero; den statliga förmögenhetsskatten);

(hereinafter referred to as "Finnish tax");

b) in Ukraine:

(i) the tax on income of enterprises (podatok na dokhody pidpriemstv);

(ii) the income tax on citizens (pributkovy podatok z gromadyan); and

(iii) the local taxes on income (mistcevi podatky na dokhod) imposed under the Decree on local taxes;

(hereinafter referred to as "Ukraine tax").

4. Where a new tax on income or on capital is introduced in a Contracting State after the date of signature of the Convention, the Convention shall apply also to such tax. The competent authorities of the Contracting States shall by mutual agreement determine whether a tax which is introduced in either Contracting State is one to which the Convention shall apply according to the preceding sentence.

5. The Convention shall apply also to any taxes, being identical with or substantially similar to those mentioned or referred to in paragraphs 1 and 2, which are imposed af-

ter the date of signature of the Convention in addition to, or in place of, the taxes to which the Convention applies by virtue of those paragraphs. The competent authorities of the Contracting States shall notify each other of any significant 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 "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

b) the term "Ukraine" means Ukraine and, when used in a geographical sense, means the territory of Ukraine, and any area adjacent to the territorial waters of Ukraine within which, under the laws of Ukraine and in accordance with international law, the rights of Ukraine with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

c) the terms "a Contracting State" and "the other Conracting State" mean Finland or Ukraine, as the context requires;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) 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;

g) the term "citizen" means:

(i) any individual possessing the citizenship 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;

h) the term "international traffic" means any transport by a 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;

i) the term "competent authority" means:

(i) in Finland, the Ministry of Finance, its authorised representative or the authority which, by the Ministry of Finance, is designated as competent authority;

(ii) in Ukraine, the Ministry of Finance or its authorised representative.

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

Article 4
RESIDENCE

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 (registration) or any other criterion of a similar nature. The term also includes a Contracting State itself, a political subdivision, a local authority and a statutory body thereof. The 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 capital situated therein.

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 citizen;

d) if he is a citizen 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 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 practical day to day management is situated.

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) premises used as a sales outlet; and

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

3. A building site or construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities last for a period of more than twelve months. The use of an installation or structure or drilling rig or ship to explore for natural resources constitutes a permanent establishment only if such use is for a period of more than six months.

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, display or occasional 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 occasional 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 fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), 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, a person - other than an agent of an independent status to whom paragraph 6 applies - acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to constitute a permanent establishment of the enterprise in the first-mentioned State if:

a) he has, and habitually exercises, in that first-mentioned State an authority to conclude contracts in the name of 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; or

b) he has no such authority, but habitually maintains in that first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordin-

ary 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 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. a) The term "immovable property" shall, subject to the provisions of sub-paragraphs b) and c), have the meaning which it has under the law of the Contracting State in which the property in question is situated.

b) The term "immovable property" shall in any case include buildings, 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.

c) Ships 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. 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.

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 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. 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 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 case of banking enterprise, by way of interest on money lent to the permanent establishment by the enterprise.

4. Where the information available to the tax authority concerned in a Contracting State is inadequate to determine the profits to be attributed to a permanent establishment of an enterprise of the other Contracting State situated in the first-mentioned State or where information to determine such profits is not available to that authority, such profits may be determined in the Contracting State in which the permanent establishment is situated by the exercise of discretion or the making of an estimate by that authority, in accordance with the tax laws and the administrative practice of the last-mentioned State, provided that such discretion shall be exercised or such estimate shall be made so 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
SHIPPING AND AIR TRANSPORT

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. 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.

3. The provisions of paragraphs 1 and 2 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 by the first-mentioned State claimed to be 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 make an appropriate adjustment to the amount of tax charged therein on those profits, where that other State considers the adjustment justified. 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. 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 20 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.

2. Notwithstanding the provisions of paragraph 1, as long as an individual resident in Finland is entitled to a tax credit in respect of dividends paid by a company resident in Finland, dividends paid by a company which is a resident of Finland to a resident of Ukraine shall be taxable only in Ukraine if the recipient is the beneficial owner of the dividends.

3. Notwithstanding the provisions of paragraph 1, dividends paid by a company being a resident of Ukraine to a company which is a resident of Finland and which is the beneficial owner of the dividends shall be exempt from Ukraine tax if:

a) an investment guarantee is granted by the Finnish Guarantee Board for the capital invested in respect of which the dividends are paid or for dividends paid; or

b) the capital invested (other than in the field of gambling, show business or intermediation business, or auctions) in respect of which the dividends are paid is not less than one million (1,000,000) United States dollars or its equivalent in Finnish markkas, and the recipient holds at least 50 per cent of the equity capital of the company paying the dividends.

The exemption under this paragraph shall be allowed with regard to dividends paid for any tax year within the period for which the above-mentioned guarantee is in force or, where there is no such guarantee, with regard to dividends paid for the first three years next following the year during which the investment was made, or in any case for any longer period under the tax laws of Ukraine relating to the exemption of outward dividends, or to the exemption of profits of Ukrainian enterprises with foreign investment where the dividends are paid out of exempted profits.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of paragraphs 1 and 2. The provisions of those paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. 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 is a resident.

6. 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 on business in the other Con-

tracting 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 Article 7 or Article 14, as the case may be, shall apply.

7. 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.

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 recipient is the beneficial owner of the interest the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the interest if:

(i) the recipient is a resident of that other State, and

(ii) such recipient is an enterprise of that other State and is the beneficial owner of the interest, and

(iii) the interest is paid with respect to indebtedness arising on the sale on credit, by that enterprise, of any merchandise or industrial, commercial or scientific equipment to an enterprise of the first-mentioned State, except where the sale or indebtedness is between related persons;

b) 10 per cent of the gross amount of the interest in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2,

a) interest arising in Ukraine shall be taxable only in Finland if the interest is paid to:

(i) the State of Finland, or a local authority or a statutory body thereof;

(ii) the Bank of Finland;

(iii) the Finnish Fund for Industrial Co-operation Ltd (FINNFUND) or the Finnish Export Credit Ltd; or

(iv) any other institution, similar to those mentioned in subdivision (iii), as may be agreed from time to time between the competent authorities of the Contracting States;

b) interest arising in Finland shall be taxable only in Ukraine if the interest is paid to:

(i) the State of Ukraine, or a political subdivision or a local authority thereof;

(ii) the National Bank of Ukraine;

(iii) any institution which is established in Ukraine after the date of signature of this Convention and which is similar to any of those mentioned in subdivision (iii) of sub-paragraph a), as may be agreed from time to time between the competent authorities of the Contracting States;

c) interest arising in

(i) a Contracting State on a loan guaranteed by any of the bodies mentioned or referred to in sub-paragraph a) or sub-paragraph b) and paid to a resident of the other Contracting State shall be taxable only in that other State;

(ii) interest arising in Ukraine on a loan guaranteed by the Finnish Guarantee Board and paid to a resident of Finland shall be taxable only in Finland.

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.

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 business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that

other 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 Article 7 or Article 14, as the case may be, 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 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 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 is 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, except in the case of payments referred to in sub-paragraph a) of paragraph 3, may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the royalties, in the case of payments of the kind referred to in sub-paragraph b) of paragraph 3;

b) 10 per cent of the gross amount of the royalties, in the case of payments of the kind referred to in sub-paragraph c) of paragraph 3.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

a) for the use of, or the right to use, any computer software, patent, design or model, or plan;

b) for the use of, or the right to use, any secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how);

c) for the use of, or the right to use, any copy-

right of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting, or any trade mark.

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 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 permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that 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 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 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 is the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right or property 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 paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights in a company the assets of which consist mainly of immovable property situated in the other Contracting State may be taxed in that other State.

3. 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 fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State 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

that State.

5. 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
INDEPENDENT PERSONAL SERVICES

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 the 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.

Article 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 res-

pect 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 the other State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period, 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 or a fixed base 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 in international traffic by an enterprise of a Contracting State, may be taxed in that State.

Article 16
DIRECTORS' 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 similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State by an entertainer or a sportsman if the visit to that State is wholly or mainly supported by funds of the other Contracting State or a political subdivision or a local authority thereof. In such case, the income shall be taxable in accordance with the provisions of Article 7, Article 14 or Article 15, as the case may be.

Article 18
PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, 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.

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 19, pensions paid and other benefits, whether periodic or lump-sum compensation, granted under the social security legislation of a Contracting State or under any public scheme organised by a Contracting State for social welfare purposes, or any annuity arising in that State, may be taxed in that State.

3. The term "annuity" as used in this Article means a

stated sum payable to an individual periodically at stated times during 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 (other than services rendered).

Article 19
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 statutory body or a local authority thereof to an individual in respect of services rendered to that State or subdivision or body or authority shall be taxable only in that State.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:

      (i) is a citizen 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 statutory body or a local authority thereof to an individual in respect of services rendered to that State or subdivision or body or authority shall be taxable only in that State.

   b) However, such pension shall be taxable only in the Contracting State of which the individual is

a resident if he is a citizen of that State.

3. The provisions of Articles 15, 16 and 18 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 statutory body or a local authority thereof.

Article 20
STUDENTS AND TRAINEES

1. Payments which a student, or a trainee, 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.

2. A student at a university or other institution for higher education in a Contracting State, or a trainee, who is or was immediately before visiting the other Contracting State a resident of the first-mentioned State and who is present in the other Contracting State for a continuous period not exceeding 183 days, shall not be taxed in that other State in respect of remuneration for services rendered in that State, provided that the services are in connection with his studies or training and the remuneration constitutes earnings necessary for his maintenance.

Article 21
OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles 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 Article 6, if the recipient of such income, being a resident of a Contracting State, carries 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 Article 7 or Article 14, as the case may be, shall apply.

Article 22
CAPITAL

1. Capital represented by immovable property referred to in paragraph 2 of Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by shares or other corporate rights in a company the assets of which consist mainly of immovable property situated in a Contracting State may be taxed in that Contracting State.

3. Capital 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 or by 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, may be taxed in that other State.

4. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting

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

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. In Finland double taxation shall be eliminated as follows:

a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Ukraine, Finland shall, subject to the provisions of sub-paragraph b), allow:

(i) as a deduction from the tax on the income of that person, an amount equal to the tax on income paid in Ukraine;

(ii) as a deduction from the tax on the capital of that person, an amount equal to the tax on capital paid in Ukraine.

b) Dividends paid by a company being a resident of Ukraine to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

c) Notwithstanding any other provision of this Convention, an individual who is a resident of Ukraine and under Finnish taxation law with respect to the Finnish taxes referred to in Article 2 also is regarded as resident in Finland may be ta-

xed in Finland. However, Finland shall allow any Ukraine tax paid on income or on capital as a deduction from Finnish tax in accordance with the provisions of sub-paragraph a) of this paragraph and of paragraph 3. The provisions of this sub-paragraph shall apply only to citizens of Finland.

2. In Ukraine double taxation shall be eliminated as follows:

a) Finnish tax payable under the laws of Finland and in accordance with the Convention, whether directly or by deduction, on profits, income or capital from sources within Finland (excluding in the case of a dividend, tax payable in Finland in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Ukraine tax computed by reference to the same profits, income or capital by reference to which the Finnish tax is computed.

b) For the purposes of sub-paragraph a), profits and income derived and capital owned by a resident of Ukraine which may be taxed in Finland in accordance with the Convention shall be deemed to arise from sources in Finland.

3. Any deduction or credit referred to in sub-paragraphs a) and c) of paragraph 1 and sub-paragraph a) of paragraph 2 shall not, however, in a Contracting State exceed that part of the tax on the income or on the capital, as computed before the deduction is given or the credit is allowed, which is attributable, as the case may be, to the income or the capital which may be taxed in the other Contracting State.

4. Where in accordance with any provision of the Conven-

tion income derived or capital 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 capital of such resident, take into account the exempted income or capital.

Article 24
NON-DISCRIMINATION

1. Citizens 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 citizens of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which citizens of the State concerned in the same circumstances are or may be subjected.

3. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 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 determi-

ning 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 capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 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.

6. Nothing in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are granted to individuals so resident.

Article 25
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 24, to that of the Contracting State of which he is a citizen. 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 which is not in accordance with the Convention. In the event the competent authorities reach an agreement, refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement. 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.

Article 26
EXCHANGE OF INFORMATION

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 Article 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 and administrative bodies) involved in the 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 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).

Article 27
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 28
ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force fifteen days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a) in Finland:

(i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Convention enters into force;

(ii) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Convention enters into force;

b) in Ukraine:

(i) in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the Convention enters into force;

(ii) in respect of tax on income of enterprises for any taxation period beginning on or after 1 January in the calendar year next following that in which the Convention enters into force;

(iii) in respect of income tax on citizens for any payments made on or after the sixtieth day following that day on which the Convention enters into force.

3. Upon the date on which this Convention becomes effective, the following Agreements between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 2:

a) the Agreement for the reciprocal exemption of air traffic enterprises and their personnel from taxes and social security contributions, signed at Helsinki on 5 May 1972, (hereinafter referred to as "the 1972 Agreement"); and

b) the Agreement for the avoidance of double taxation with respect to taxes on income and the Protocol attached thereto, signed at Moscow on 6 October 1987, (hereinafter referred to as "the 1987 Agreement").

4. Where any provision of the 1972 or the 1987 Agreement would have afforded any greater relief from tax than is due under this Convention, any such provision as aforesaid shall continue to have affect:

a) in respect of taxes withheld at source, for a period of twelve months from the date on which the provisions of this Convention would otherwise have effect in accordance with the provisions of paragraph 2; and

b) in respect of other taxes, for taxes chargeable for the first tax year with regard to which the provisions of this Convention would otherwise have effect in accordance with the provisions of paragraph 2.

Article 29
TERMINATION

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

a) in Finland:

(i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

b) in Ukraine:

(i) in respect of taxes on dividends, interest or royalties for any payments made on or after the sixtieth day following that day on which the notice is given;

(ii) in respect of tax on income of enterprises for any taxation period beginning on or after 1 January in the calendar year next following that in which the notice is given;

(iii) in respect of income tax on citizens for any

payments made on or after the sixtieth day following that day on which the notice is given.

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

Done in duplicate at Kiev this 14th day of October 1994, in the Ukrainian, Finnish and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Government of Ukraine:

For the Government of the Republic of Finland:

PROTOCOL

At the signing today of the Convention between the Government of Ukraine and the Government of the Republic of Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which shall form an integral part of the Convention:

1. With reference to Article 5, paragraph 3

Notwithstanding the provisions of paragraph 3 of Article 5 of the Convention, the competent authority of the Contracting State in which an enterprise of the other Contracting State is engaged in the erection of a building or carries on any other activities or use referred to in that paragraph may upon application of the enterprise in each case extend the period of time upon the expiry of which a permanent establishment would come into existence under the provisions of that paragraph, where there are good and sufficient reasons supporting such extension. The extended period of time referred to in the preceding sentence, however, shall in no case exceed 24 months.

2. With reference to Article 13, paragraph 2, and Article 22, paragraph 2

For the purposes of paragraph 2 of Article 13 and paragraph 2 of Article 22 of the Convention, participations in a partnership shall be regarded as corporate rights in a

company, provided that the partnership is treated as a legal person under the laws of the Contracting State in which it was established.

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

Done in duplicate at Kiev this 14 th day of October 1994, in the Ukrainian, Finnish and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Government of Ukraine:

For the Government of the Republic of Finland: