

TAX CONVENTION WITH THE CZECH REPUBLIC

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1993

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE CZECH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED IN PRAGUE ON SEPTEMBER 16, 1993

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 19, 1993.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the United States of America and the Czech Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed in Prague on September 16, 1993. The new Convention will be the first income tax convention between the two countries, and is part of the continuing effort of the United States to expand economic relations with the Czech Republic.

This Convention is based on the standard model income tax conventions published by the U.S. Treasury Department and the Organization for Economic Cooperation and Development, and takes into account the current tax laws and recent income tax treaty policies of the two countries.

Like other U.S. income tax conventions, this bilateral Convention provides rules specifying when various categories of income derived by a resident of one country may be taxed by the other country, and in certain cases specifies limits on the rate of tax that may be imposed by the country where the income arises (the "source" country). The Convention also confirms that the residence country will avoid international double taxation by granting a foreign tax credit; and it provides for administrative cooperation to avoid double taxation and prevent fiscal evasion of taxes on income.

The Convention provides limits on the tax that may be imposed by the country of source on dividends, branch profits, interest and royalties derived by residents of the other country. The maximum tax at source on dividends is 5 percent on dividends paid by a 10 percent-owned subsidiary to its parent corporation, and 15 percent on other dividends. The 5 percent rate also applies to the "dividend equivalent amount" of branch profits. Interest payments are exempt from tax at source. These limits on the taxation of dividends, branch profits, and interest are consistent with the positions of the U.S. model income tax treaty. The maximum rate of tax at source on royalties is 10 percent. This rate is consistent with that in several other U.S. income tax

conventions.

The rules governing the taxation of capital gains are consistent with the positions of the U.S. model income tax convention and with U.S. law with respect to the taxation of gains from real property.

Business profits derived by a resident of one country generally are taxable by the other country only to the extent that the profits are attributable to a permanent establishment there, and then only on a net basis with deductions for business expenses. The Convention provides for reciprocal tax exemption at source of income from the international operation of ships and aircraft, and from the rental of containers for use in international transport.

The Convention provides conditions under which each country may tax income derived by individual residents of the other country from independent personal services or as employees, as well as pension income and social security benefits. Special relief is provided to visiting students, trainees, teachers and researchers.

Any item of income not specifically dealt with in the Convention may be taxed only in the country of residence.

The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately deriving benefits from the Convention. In addition, the Convention includes standard administrative provisions to permit the tax authorities of the two countries to cooperate in resolving issues of potential double taxation and to exchange information relevant to implementing the Convention and domestic income tax laws.

The Convention includes non-discrimination provisions standard to treaties to avoid double taxation; these provisions apply to all taxes at all levels of government. The Convention also confirms that each country will avoid double taxation of its residents by granting a foreign tax credit for income tax paid to the other country on income that arises there and has been taxed in accordance with the provisions of the Convention.

The Convention will enter into force on the date of the exchange of instruments of ratification. Its provisions will take effect, for taxes withheld at source, for payments made on or after the first day of the second month following the entry into force. In respect of other taxes, payable by return, the provisions will have effect for taxable periods beginning on or after the first day of January of the year of entry into force.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER

Enclosure: As stated.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 21, 1993.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the United States of America and the Czech Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Prague on September 16, 1993. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The Convention will be the first income tax convention between the two countries. It is intended to reduce the distortions (double taxation or excessive taxation) that can arise when two countries tax the same income. It will modernize tax relations between the two countries and will facilitate greater private sector U.S. investment in the Czech Republic.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification.

WILLIAM J. CLINTON.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE CZECH
REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The United States of America and the Czech Republic, desiring to further expand and facilitate mutual economic relations have resolved to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, and have agreed as follows:

ARTICLE 1
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- a) by the laws of either Contracting State; or
- b) by any other agreement between the Contracting States.

3. A Contracting State may tax its residents (as determined under Article 4 (Resident)) and its citizens, including former citizens, according to the laws of that State as if the Convention had not come into effect.

4. The provisions of paragraph 3 shall not affect:

- a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1(b) and 4 of Article 19 (Pensions, Annuities, Alimony, and Child Support), and under Articles 24 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

- b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students, Trainees, Teachers and Researchers), and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor lawful permanent residents in, that State.

ARTICLE 2 Taxes Covered

1. The existing taxes to which this Convention shall apply are:

- a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed with respect to the investment income of private foundations (hereafter referred to as "U.S. tax");

- b) in the Czech Republic: the income taxes imposed by the income tax law and the tax on immovable property (real property tax) (hereafter referred to as "Czech tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3 General Definitions

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

- a) the term "Contracting State" means the United States or the Czech Republic as the context requires;

- b) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory. When used in a geographical sense, the term "United States" includes the

territorial sea and the seabed and subsoil of the adjacent area over which the United States may exercise rights in accordance with international law and in which the laws relating to U.S. tax are in force;

c) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;

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

e) 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;

f) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;

g) the term "competent authority" means:

(i) in the United States, the Secretary of the Treasury or his delegate; and

(ii) in the case of the Czech Republic, the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Resident

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, or any other criterion of a similar nature.

2. a) However, the term "resident of a Contracting State" 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;

b) In the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and

c) The Czech Republic shall consider a United States citizen or an alien lawfully admitted for permanent residence (a green card holder) to be a resident of the United States only if such person has a substantial presence, permanent home, or habitual abode in the United States.

3. The term "resident of a Contracting State" includes:

a) that State, a political subdivision, or a local authority thereof, and any agency or instrumentality of any such State, subdivision or authority; and

b) a pension trust or any other organization that is constituted and operated exclusively to provide pension benefits or for religious, charitable, scientific, artistic, cultural or educational purposes and that is a resident of that State according to the laws of that State, notwithstanding that all or part of its income may be exempt from income tax under the domestic law of that State.

4. 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 (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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.

5. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created under the laws of a Contracting State or a political subdivision thereof, it shall be deemed to be a resident of that State.

6. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

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; and

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

3. The term, "permanent establishment" also includes:

a) a building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, but only if it lasts more than 12 months; and

b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel, but only if activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 9 months within any 12 month period.

A permanent establishment shall not exist in any taxable year in which the activity described in subparagraph a) or b) of this paragraph, respectively, continues for a period or periods aggregating less than 30 days in that taxable year.

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 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 fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person (other than an agent of an independent status to whom paragraph 6 applies) 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, 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 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 Real Property (Immovable Property)

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real 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 real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State. In the case of the United States tax, an election to apply the preceding sentence shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the United States agrees to terminate the election.

ARTICLE 7
Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on or has carried 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 business 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 or has carried 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 business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including a reasonable allocation of research and development expenses, interest, and other similar expenses and executive and general and administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business 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 this Convention, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.

7. For the purposes of the Convention, the term "business profits" means income derived from any trade or business. It includes, for example, profits from manufacturing, mercantile, fishing, transportation, communication, or extractive activities, and from the furnishing of the personal services of another person, including the furnishing by a corporation of the personal services of its employees. It does not include income received by an individual for his performance of personal services either as an employee or in an independent capacity.

8. Where business profits include items of income which are dealt with separately in other Articles of the 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, the term "profits from the operation of ships or aircraft in international traffic" includes profits derived from the rental of ships or aircraft on a full (time or voyage) basis. It also includes profits derived from the rental of ships or aircraft on a bareboat basis by an enterprise engaged in the operation of ships or aircraft in international traffic, if such rental activities are incidental to the activities described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraph 1 shall also apply to profits from 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, but for those conditions, would 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 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 the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in the case of fraud, gross negligence, or willful default.

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.

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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 percent of the gross amount of the dividends if the beneficial owner is a

company which owns at least 10 percent of the voting shares of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a United States Regulated Investment Company or a Real Estate Investment Trust. Subparagraph b) of paragraph 2 shall apply in the case of dividends paid by a Regulated Investment Company. In the case of dividends paid by a Real Estate Investment Trust, subparagraph b) of paragraph 2 shall apply if the beneficial owner of the dividends is an individual holding a less than 10 percent interest in the Real Estate Investment Trust; otherwise the rate of withholding applicable under domestic law shall apply.

4. 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. The term "dividends" also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises.

5. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on 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 or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. A corporation which is a resident of a Contracting State may be subject in the other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may not exceed 5 percent of the income of the corporation that is attributable to a permanent establishment in that other State or subject to tax on a net basis in that other State under Article 6 (Income from Real Property (Immovable Property)) or Article 13 (Gains), after deducting the taxes on profits imposed thereon in that other State and after adjustment for increases or decreases in the assets, net of liabilities, of the corporation connected with the permanent establishment or the trade or business. Such tax may only be applied if under the laws of that other State such tax applies with respect to any permanent establishment in that other State that is maintained by any corporation not resident in that other State.

7. Where a company that 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 forms part of the business property of a permanent establishment or a fixed base situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, the United States may tax an excess inclusion with respect to a residual interest in a Real Estate Mortgage Investment Conduit in accordance with its domestic law.

3. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage and, subject to paragraph 4 of Article 10 (Dividends), 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 or prizes attaching to such securities, bonds, or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises.

4. The provisions of paragraph 1 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 or has performed in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. 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 fixed base, 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.

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 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 the Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other

Contracting State may be taxed in that other State.

2. Royalties described in subparagraph a) of paragraph 3 and beneficially owned by a resident of a Contracting State may be taxed only in that State. Royalties described in subparagraph b) 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 beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use:

a) any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes and other means of image or sound reproduction;

b) any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.

The term "royalties" also includes payments derived from the disposition of any such right or property which are contingent on the productivity, use or further disposition thereof.

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 or has performed in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. 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 the Convention.

6. For purposes of this Article:

a) Royalties shall be treated as arising in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a Contracting State permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

b) Where subparagraph a) does not operate to treat royalties as arising in a

Contracting State, royalties paid for the use of, or the right to use, in a Contracting State any property or right described in paragraph 3 shall be treated as arising in that State.

ARTICLE 13

Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Article the term "real property situated in the other Contracting State" includes real property referred to in Article 6 which is situated in that other State. It also includes shares of stock of a company the property of which consists at least 50 percent of real property situated in the other Contracting State, and an interest in a partnership, trust or estate to the extent that its assets consist of real property situated in the other State.
3. Gains from the alienation of personal (movable) property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, or which are attributable to a fixed base which is or was available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.
4. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers used in international traffic shall be taxable only in that State.
5. Payments described in paragraph 3 of Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.
6. Gains from the alienation of any property other than property referred to in paragraphs 1 through 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless such services are performed or were performed in the other Contracting State and:
 - a) the income is attributable to a fixed base regularly available to the individual in that other State for the purpose of performing his activities; in such a case, the income attributable to that fixed base may be taxed in that other State; or
 - b) the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period.
2. The term "personal 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 (Directors' Fees), 19 (Pensions, Annuities, Alimony, and Child Support), 20 (Government Service), and 21 (Students, Trainees, Teachers, and Researchers), 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 the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period;
- 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 in respect of an employment as a member of the regular Complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

ARTICLE 16
Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors or another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17
Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if such person is:

- a) an individual;
- b) a Contracting State, or a political subdivision or local authority thereof;

c) engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company) and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;

d) a company in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or which is wholly owned, directly or indirectly, by a resident of that Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange;

e) an entity that is a not-for-profit organization (including a pension fund or private foundation) and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or

f) a person that satisfies both of the following conditions:

i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs a), b), d) or e); and

ii) not more than 50 percent of the gross income of such person is used directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraph a), b), d) or e).

2. A person which is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines.

3. For purposes of subparagraph d) of paragraph 1, the term "recognized securities exchange" means:

a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

b) the Czech stock exchange (Burza Cennych Papiru Praha, A.S.) and any other stock exchange approved by the State authorities; and

c) any other stock exchange agreed upon by the competent authorities.

4. For purposes of subparagraph f (ii) of paragraph 1, the term "gross income" means gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

ARTICLE 18 Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15

(Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theater, 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, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty thousand United States dollars (\$20,000) or its equivalent in Czech crowns for the taxable year concerned. Such tax may be imposed by withholding upon the entire amount of all gross receipts derived by such entertainer or sportsman at any time during the taxable year concerned, provided that such entertainer or sportsman is entitled to receive a refund of such taxes when there is no tax liability for such taxable year in accordance with the provisions of this Convention.

2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsman shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof or is made pursuant to a specific arrangement agreed to by the Governments of the Contracting States.

ARTICLE 19

Pensions, Annuities, Alimony, and Child Support

1. Subject to the provisions of Article 20 (Government Service):

a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment by that individual or another individual resident of the same Contracting State shall be taxable only in that State; and

b) social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The

term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Nondeductible alimony and periodic payments for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall not be taxable in that other State.

ARTICLE 20 Government Service

Remuneration, including a pension, paid from the public funds of a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article 14 (Independent Personal Services), Article 15 (Dependent Personal Services) or Article 18 (Artistes and Sportsmen), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid from the public funds of a Contracting State or a political subdivision or local authority thereof in respect of services rendered in connection with a business carried on by that State, political subdivision, or local authority.

ARTICLE 21 Students, Trainees, Teachers, and Researchers

1. a) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:
 - i) studying at a university or other accredited educational institution in that other Contracting State, or
 - ii) securing training required to qualify him to practice a profession or professional specialty, or
 - iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph (b) of this paragraph for a period not exceeding five years from the date of his arrival in that other Contracting State.

- b) The amounts referred to in subparagraph (a) of this paragraph are:
 - i) payments from abroad, other than compensation for personal services, for the purpose of his maintenance, education, study, research, or training;
 - ii) the grant, allowance, or award; and
 - iii) income from personal services performed in that other Contracting State in an aggregate amount not in excess of 5,000 United States dollars (\$5,000)

or its equivalent in Czech crowns for any taxable year.

2. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State, or

b) studying at a university or other accredited educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 8,000 United States dollars (\$8,000) or its equivalent in Czech crowns.

3. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study,

shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars (\$10,000) or its equivalent in Czech crowns.

4. The competent authorities of the Contracting States may agree to change the amounts specified in paragraphs 1 (b) (iii), 2 (b), and 3 of this Article to reflect significant changes in price levels.

5. An individual who visits a Contracting State for the primary purpose of teaching or conducting research at a university, college, school or other accredited educational or research institution in the other Contracting State, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State for a period not exceeding two years in respect of remuneration for such teaching or research. The benefits provided in this paragraph shall not be granted to an individual who, during the immediately preceding period enjoyed the benefits of one of the preceding paragraphs of this Article. An individual shall be entitled to the benefits of this paragraph only once.

6. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22

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 real property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the beneficial owner of the 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 or has performed in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 23

Capital

1. Capital represented by real property referred to in Article 6 (Income from Real Property (Immovable Property)), 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 personal (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 personal 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.

3. Capital represented by ships, aircraft and containers owned by a resident of a Contracting State and operated in international traffic, and by personal property pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.

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

ARTICLE 24

Relief from Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the income tax paid to the Czech Republic by or on behalf of such resident or citizen.

2. In the Czech Republic, double taxation will be avoided in the following manner: The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of this Convention may also be taxed in the United States, but shall allow as a deduction from the

amount of tax computed on such a base an amount equal to the tax paid in the United States (other than solely on the basis of citizenship). Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of this Convention, may be taxed in the United States (other than solely on the basis of citizenship).

3. In the case of an individual who is a citizen of the United States and a resident of the Czech Republic, income which may be taxed by the United States solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope) shall be deemed to arise in the Czech Republic to the extent necessary to avoid double taxation, provided that in no event will the tax paid to the United States be less than the tax that would be paid if the individual were not a citizen of the United States.

ARTICLE 25 Non-discrimination

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 and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as Czech nationals who are not residents of the United States.

2. The term “nationals” means:

- a) all individuals possessing the nationality of a Contracting State;
- b) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not 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. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 6 of Article 10 (Dividends).

5. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a

resident of the other Contracting States shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

6. 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.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 26

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 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 endeavor, 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. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor 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 27

Exchange of Information and Administrative Assistance

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 (General Scope). 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, collection, or administration 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*).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

ARTICLE 28 Diplomatic Agents and Consular Officers

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

ARTICLE 29 Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable

procedures of each Contracting State and instruments of ratification shall be exchanged at Washington, D.C. as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

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

ARTICLE 30 Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6-months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6-month period;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6-month period.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Prague, in duplicate, in the English and Czech languages, both texts being equally authentic, this *Sixteenth* day of *September*, 1993.

FOR THE UNITED STATES OF AMERICA
(s) Adrian A. Basora

FOR THE CZECH REPUBLIC:
(s) Ivan Kocarnik