

# TAXATION AGREEMENT WITH TURKEY

GENERAL EFFECTIVE DATE UNDER ARTICLE 28: 1 JANUARY 1998

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY, FOR THE AVOIDANCE OF  
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL,  
SIGNED AT WASHINGTON ON MARCH 28, 1996

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, July 30, 1996.*

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 Agreement Between the Government of the United States of America and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at Washington March 28, 1996 ("the Agreement").

This Agreement is the first bilateral income tax convention between the United States and Turkey, the only OECD partner country with which the United States does not have a tax treaty. It is, thus, an important extension of the U.S. network of tax treaties. Since the maximum rates of taxation it specifies are lower than those currently applied to some types of income earned by foreign investors in Turkey, the Agreement will remove a disincentive to U.S. investment in that nation.

This Agreement is similar to the tax treaties between the United States and other OECD nations. It provides maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information to prevent fiscal evasion, and standard rules to limit the benefits of the Agreement to persons that are not engaged in treaty shopping.

Like other U.S. tax conventions, this Agreement provides rules specifying when income that arises in one of the countries and is derived by residents of the other country may be taxed by the country in which the income arises (the "source" country). The Agreement establishes maximum rates of tax that

may be imposed by the source country on specified categories of income, including dividends, interest, and royalties, to residents of the other country. These rates are somewhat higher than those found in most U.S. treaties with OECD countries. Dividends may be subject to tax by the source country at a maximum rate of 20 percent, except when the dividends are paid to a corporation that owns at least 10 percent of the payor, in which case the maximum rate is 15 percent.

The general rate of tax on interest by the source country under the Agreement is 15 percent, but interest on a loan granted by a financial institution may be taxed at a maximum rate of 10 percent. Interest received, guaranteed, or insured by the government of either the United States or Turkey or paid to the central bank of either State is exempt from withholding by the source country.

Royalties are generally subject to tax by the source country at a maximum rate of 10 percent. Payments for the use of industrial, commercial or scientific equipment are treated as royalties but are subject to tax at a maximum rate of five percent at source.

Like other U.S. tax treaties and agreements, this Agreement provides the standard anti-abuse rules for certain classes of investment income. For example, Turkish residents cannot, by investing in a tax-favored real estate investment trust, obtain tax treatment more favorable than they would have obtained by investing in the underlying real property directly. Similar rules prevent a Turkish resident's using a U.S. regulated investment company to reduce artificially the U.S. tax on the income generated by investments held by that company.

The taxation of capital gains under the Agreement is essentially the same as under most recent U.S. tax treaties. In general, except for real property and business property, the country of the seller's residence is given the exclusive right to tax capital gains. A limited exception to this general rule relates to the alienation of corporate shares. Under the exemption, one Contracting State may, in accordance with its law, tax a resident of the other State on the gain from the alienation of shares issued by a corporation that is a resident of the first Contracting State if (i) the shares are not quoted on a stock exchange in the first Contracting State; (ii) the shares are alienated to a resident of that State; and (iii) the seller held the securities for one year or less. (Current U.S. law does not impose tax on a foreign person on the disposal of shares in a U.S. corporation.)

The Agreement generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is limited to cases in which the profits are attributable to a permanent establishment located in that country. The Agreement accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment income that is earned during the life of the permanent establishment but is deferred and not received until after the permanent establishment no longer exists.

As do all recent U.S. treaties, the Agreement preserves the right of each country to impose its branch profits tax in addition to the basic corporate tax on the branch's business profits. Additionally, the United States has also preserved its right to impose its branch-level interest tax.

Consistent with U.S. treaty policy, the Agreement permits only the country of residence to tax profits from international carriage by ships or airplanes and income from the use or rental of containers. In a departure from this policy, however, the reciprocal exemption does not extend to income from the non-incidental rental of ships or aircraft. Such income is treated as royalties and is, therefore, generally subject to a maximum tax by the source country of five percent.

The taxation of income from the performance of personal services under the Agreement differs in some respects from the standard U.S. treaty policy. For example, a 183-day test applies in addition to the standard fixed-base test to determine the host-country's right to tax income from independent personal services. Thus, even if there is no fixed base, the "host" Contracting State may tax the income from the services performed in that State by an individual who is present there for more than 183 days in a twelve-month period. The Agreement provides for host-country exemption of visiting teachers if the visit does not exceed two years and if the remuneration arises outside the host country.

This Agreement contains standard rules making its benefits unavailable to persons engaged in treaty shopping. It also contains the standard rules necessary for administering the Agreement, including rules for the resolution of disputes under the Agreement and for exchange of information.

The Agreement authorizes the General Accounting Office and the Tax-Writing Committees of Congress to obtain access to certain tax information exchanged under the Agreement for use in their oversight of the administration of U.S. tax laws and treaties.

This Agreement is subject to ratification. It will enter into force upon the exchange of instruments of ratification and will have effect with respect to taxes withheld by the source country for payments made or credited on or after the first day of January following entry into force and in other cases for taxable years beginning on or after that date.

This Agreement will remain in force indefinitely unless terminated by one of the Contracting States. Either State may terminate the Agreement after five years from its entry into force by giving at least six months prior notice through diplomatic channels.

A Protocol accompanies and forms an integral part of the Agreement and provides clarification with respect to the application of the Agreement in specified cases. For example, the Protocol defines certain technical tax terms used in the Agreement by reference to particular provisions of the Internal Revenue Code.

A technical memorandum explaining in detail the provisions of the Agreement will be 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 Agreement. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 3, 1996.*

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification the Agreement Between the Government of the United States of America and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at Washington March 28, 1996. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Agreement.

This Agreement, which is similar to tax treaties between the United States and other OECD nations, provides maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information to prevent fiscal evasion, and standard rules to limit the benefits of the Agreement to persons that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Agreement and related Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

AGREEMENT BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND  
THE GOVERNMENT OF THE REPUBLIC OF TURKEY  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES  
ON INCOME

The Government of the United States of America and the Government of the Republic of Turkey, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1  
Personal Scope

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

2. The Agreement 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. Notwithstanding any provision of the Agreement except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Resident)), and, in the case of the United States, by reason of citizenship may tax its citizens, as if the Agreement had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

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 paragraph 2 of Article 18 (Pensions and Annuities), and under Article 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
- b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Apprentices, and Teachers), and 27 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have immigrant status in, that State.

5. Notwithstanding the provisions of subparagraph 2(b):

a) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Agreement shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1(h) of Article 3 (General Definitions) of this Agreement, and the procedures under this Agreement exclusively shall apply to the dispute.

b) Unless the competent authorities determine that a taxation measure is not within the scope of this Agreement, the nondiscrimination obligations of this Agreement exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

## ARTICLE 2 Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes to which the Agreement shall apply are, in particular:

a) in the case of Turkey:

i) the income tax (Gelir Vergisi);

ii) the corporation tax (Kurumlar Vergisi);

iii) the levy imposed on the income tax and the corporation tax (hereinafter referred to as "Turkish Tax");

b) in the case of 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 private foundations (hereinafter referred to as "United States Tax").

3. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement 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.

### ARTICLE 3 General Definitions

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

a) (i) the term "Turkey" means the territory of the Republic of Turkey, as well as the continental shelf over which Turkey has, in accordance with international law, sovereign rights to explore and exploit its natural resources;

(ii) the term "United States" means the United States of America, but does not include Puerto Rico, Virgin Islands, Guam or any other United States possession or territory. When used in a geographic sense it means the states thereof, the District of Columbia, and the internal waters and territorial sea of the United States, established in accordance with international law; it also includes the seas, seabed and subsoil adjacent to the territorial sea in which the United States has or exercises sovereign rights or jurisdiction in accordance with international law;

b) the terms "a Contracting State" and "the other Contracting State" mean Turkey or the United States as the context requires;

c) the term "person" includes an individual, 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) a company has its "place of incorporation":

(i) in Turkey, if its legal head office is registered in Turkey under the Turkish Code of Commerce; or

(ii) in the United States, if it is organized, created, or incorporated under the laws of the United States or any political subdivision thereof;

f) the term "national" means:

(i) in relation to Turkey, any individual possessing Turkish nationality in accordance with the Turkish Nationality Code; and any legal person, partnership, or association deriving its status as such from the law in force in Turkey;

(ii) in relation to the United States, any individual who is a citizen of the United States; and any company, association, or other entity deriving its status as such from the laws of the United States or any political subdivision thereof;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "competent authority" means:

(i) in the case of Turkey, the Minister of Finance or his authorized representatives;

(ii) in the case of the United States, the Secretary of the Treasury or his delegate;

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

2. As regards the application of this Agreement 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 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

## ARTICLE 4

### Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that in the case of income derived or paid by a partnership or similar pass-through entity, estate, or trust, this term applies only to the extent that the income derived by such partnership, similar entity, 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, beneficiaries, members, or grantors. The term does not include any person who is liable to tax in that State only on income from sources in that State.

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

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed



to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he 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.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, it shall be deemed to be a resident of the State in which it has its place of incorporation.

4. 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 Agreement to such person.

## ARTICLE 5 Permanent Establishment

1. For the purposes of this Agreement, 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) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

g) a building site, a construction, assembly or installation project if such site, project, or activities continue for a period of more than six months.

3. 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 activities mentioned in subparagraphs a) through e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person (other than an agent of an independent status to whom paragraph 5 applies) is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such a person:

- a) has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph; or
- b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise. The foregoing provisions of this subparagraph shall apply only if it is proved that in order to avoid taxation in the first-mentioned State, such person undertakes not only the regular delivery of the goods or merchandise, but also undertakes virtually all the activities connected with the sale of the goods or merchandise except for the actual conclusion of the sales-contract itself.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

6. 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 (Real Property)

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, fishing places of every kind, 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; ships, boats and aircraft shall not be regarded as immovable property.

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

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

## 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 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 profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

5. For the purposes of this Agreement, the profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, 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 purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such rental profits are incidental to other profits 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 paragraphs 1 and 3 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 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 claimed by the first-mentioned State 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 the tax charged therein on those profits, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be paid to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

## ARTICLE 10

### Dividends

1. Dividends paid by 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 payor is 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) 15 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 percent of the voting stock of the company paying the dividends;

b) 20 percent of the gross amount of the dividends in all other cases. Subparagraph b) and not subparagraph a) shall apply in the case of dividends paid by a United States person that is a Regulated Investment Company or by a Turkish person that is a Securities Investment Corporation or a Securities Investment Fund. Subparagraph a) shall not apply to dividends paid by a United States person that is a Real Estate Investment Trust or a Turkish person that is a Real Estate Investment Corporation or a Real Estate Investment Fund, and subparagraph b) shall apply only if the dividend is beneficially owned by an individual holding a less than 10 percent interest in the Real Estate Investment Trust, Real Estate Investment Corporation, or Real Estate Investment Fund; otherwise, the rate of tax applicable under domestic law shall apply.

3. The term "dividend" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders shares or other rights (not being debt-claims) participating in profits, income from other corporate rights that are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is resident; and income from arrangements, including instruments denominated as debt-claims, that carry the right to participate in, or are determined by reference to, profits, to the extent so characterized under the laws of the Contracting State in which the income arises.

4. a) Profits attributable to a permanent establishment located in Turkey, through which a company that is a resident of the United States carries on business, after having been taxed under other provisions of this Agreement, may be taxed on the remaining amount in Turkey in accordance with its law.

b) A corporation which is a resident of Turkey and which has a permanent establishment in the United States or which is subject to tax in the United States on a net basis on its income that may be taxed in the United States under Article 6 (Income from Immovable

Property (Real Property)) or under paragraph 1 of Article 13 (Gains) may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Agreement. Such tax, however, may be imposed only on the portion of the business profits of the corporation attributable to the permanent establishment, and the portion of the income of the corporation referred to in the preceding sentence that is subject to tax under Article 6 or under paragraph 1 of Article 13 that represents the dividend equivalent amount of such profits and income. The taxes referred to in this paragraph shall not be imposed at a rate exceeding the rate specified in subparagraph a) of paragraph 2 of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or, in the case of a resident of Turkey, performs in the United States independent personal services from a fixed base situated in the United States, 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. 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.

## 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the interest, except that, if the interest is derived from a loan of whatever kind granted by a financial institution, such as a bank, savings institution, or insurance company, the interest shall not be taxed at an amount in excess of 10 percent of the gross amount of such interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in:

- a) the United States and paid to the Government of Turkey or to the Central Bank of Turkey (Turkiye Cumhuriyet Merkez Bankasi) shall be exempt from United States tax;
- b) Turkey and paid to the Government of the United States or any Federal Reserve Bank shall be exempt from Turkish tax;

c) a Contracting State in connection with a loan or credit guaranteed or insured by the Government of the other Contracting State shall be exempt from taxation in the first-mentioned State.

The competent authorities shall by mutual agreement determine the scope of subparagraph c) of this paragraph.

4. The term "interest" as used in this Article:

a) 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 all other income that is characterized as income from money lent by the laws of the Contracting State in which the income arises, and in particular, income from government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures; and

b) includes, in the case of the United States the excess, if any, of the amount of interest borne by a permanent establishment, fixed base, or trade or business subject to tax on a net basis in the United States under Article 6 (Income from Immovable Property (Real Property)) or paragraph 1 of Article 13 (Gains) over the interest paid by that permanent establishment, fixed base, or trade or business in the United States.

However, the term interest does not include income dealt within Article 10 (Dividends).

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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, in the case of a resident of Turkey, performs in the United States independent personal services from a fixed base situated in the United States, and the interest is attributable to that 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. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, local authority or 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 or a trade or business subject to tax in that State on a net basis under Article 6 (Income from Immovable Property (Real Property)) or Article 13 (Gains), and such interest is borne by such permanent establishment, fixed base, or trade or business, then such interest shall be deemed to arise in the State in which the permanent establishment, fixed base, or trade or business is situated. Interest described in subparagraph b) of paragraph 4 shall be deemed to arise in the United States.

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 that 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 Agreement.

8. The provisions of paragraphs 2 and 3 shall not apply to:
- a) an excess inclusion with respect to a residual interest in a United States real estate mortgage investment conduit; or
  - b) interest that is contingent interest of a type that does not qualify as portfolio interest under United States law, and to equivalent amounts under Turkish law.

Income described in subparagraph a) may be taxed in accordance with the domestic law of the Contracting State in which the interest arises, and income described in subparagraph b) will be taxed in accordance with the provisions of Article 10 (Dividends), as if it were a dividend.

## 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 may also be taxed by the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of royalties described in subparagraph a) of paragraph 3 and shall not exceed 5 percent of the gross amount of royalties described in subparagraph b) of paragraph 3.

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

- a) for the use of, the right to use, or the sale (which is contingent on the productivity, use, or disposition) of any copyright of literary, artistic, or scientific work including royalties in respect of motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning, industrial, commercial or scientific experience;
- b) for the use of, or the right to use industrial, commercial, or scientific equipment.

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, in the case of a resident of Turkey, performs in the United States independent personal services from a fixed base situated in the United States, 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. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by the permanent establishment or fixed base, then such royalties shall be deemed to be derived from sources within the Contracting State in which the permanent establishment or fixed base is situated. Where neither of the previous two sentences operates to deem royalties as arising in one of the Contracting States, and where the royalties are paid for the use of or the right to use a right or property within a Contracting State, the royalties shall be deemed to arise in that State.

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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Agreement.

## ARTICLE 13

### Gains

1. Gains derived by a resident of a Contracting State from the alienation of:
  - a) real property situated in the other Contracting State or
  - b) an interest in a partnership, trust or estate to the extent attributable to real property situated in the other Contracting State may be taxed in that other State.

2. For purposes of this Article, the term "real property situated in the other Contracting State" includes a United States real property interest or an equivalent interest in Turkish real property, real property referred to in Article 6 (Income from Immovable Property (Real Property)) which is situated in the other Contracting State and an interest in a partnership, trust or estate referred to in paragraph 1 b).

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 such a fixed base, may be taxed in that other State.

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

5. Gains from the alienation of any property other than that referred to in the foregoing paragraphs shall be taxable only in the State of which the alienator is resident. However, the provisions of the foregoing sentence shall not affect the right of one of the States to levy according to its own law a tax on gains derived by a resident of the other State from the alienation of shares or bonds issued by a company which is a resident of the first-mentioned State (other than shares and bonds quoted on a stock exchange of that State) if the alienation takes place to a resident of the first-mentioned State and if the period between acquisition and alienation does not exceed one year.

#### ARTICLE 14 Independent Personal Services

1. Income derived by a resident of one of the Contracting States in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

- a) the resident has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or
- b) the resident is present in that other State for the purpose of performing those services or activities for a period or periods exceeding in the aggregate 183 days in any continuous period of 12 months. In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

2. Income derived by an enterprise of one of the Contracting States in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

- a) the enterprise has a permanent establishment in that other State through which the services or activities are performed; or
- b) the period or periods during which the services or activities are performed exceed in the aggregate 183 days in any continuous period of 12 months. In such circumstances only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case the Republic of Turkey may levy a withholding tax on such income. However, the recipient of such income, having been subjected to such a tax, may elect to be taxed on a net basis in respect of such income in accordance with the provisions of Article 7 (Business Profits) of this Agreement as if the income were attributable to a permanent establishment of the enterprise situated in that other State.

#### ARTICLE 15 Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities), 19 (Government Service), and 20 (Students, Apprentices, and Teachers), 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 continuous period of 12 months;
- 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 by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic by an enterprise of the other Contracting State may be taxed in that other Contracting State.

#### ARTICLE 16 Directors' Fees

Directors' fees and other 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 of a company which is a resident of the other State may be taxed in that other State.

#### ARTICLE 17 Artistes and Athletes

1. Notwithstanding the limitations 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 theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete from such activities does not exceed 3,000 United States dollars or its equivalent in Turkish lira for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete himself but to another person, that income 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 athlete are exercised, unless the entertainer or athlete establishes that neither he nor any person related to him participated 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. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or athletes if such activities are substantially supported by a non-profit organization of the other Contracting State or by public funds of the other Contracting State or a political subdivision or a local authority thereof.

## ARTICLE 18 Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment, whether paid periodically or in a lump-sum, shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under the provisions of the social security or similar legislation of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.

3. Annuities derived and beneficially owned by an individual 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) in money or money's worth.

## ARTICLE 19 Government Service

1.
  - a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), and 18 (Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## ARTICLE 20

### Students, Apprentices, and Teachers

1. Payments received for the purpose of maintenance, education, or training by a student, apprentice, or business 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 for the purpose of his full-time education or training shall not be taxed in that State, provided that such payments arise outside that State.

2. Likewise, remuneration received by a teacher or by an instructor 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 for a period or periods not exceeding two years for the purpose of teaching or engaging in scientific research shall be exempt from tax in that State on his remuneration from personal services for teaching or research, provided that such payments arise outside that State.

## ARTICLE 21

### Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement 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 (Income from Immovable Property (Real Property)), if the beneficial owner 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 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 22  
Limitation on Benefits

1. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall not be entitled under this Agreement to relief from taxation in that other Contracting State unless:

a) 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 one or more individual residents of one of the Contracting States or citizens of the United States, or by persons entitled to the benefits of this Agreement under the provisions of paragraphs 3, 4 or 5; and

b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are neither residents of one of the Contracting States or citizens of the United States, nor persons entitled to the benefits of this Agreement under the provisions of paragraphs 3, 4 or 5.

2. The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned Contracting State (other than the business of making or managing financial investments, unless these activities are banking or insurance activities carried on by a bank or an insurance company), and, in the case of income derived in connection with the active trade or business, the trade or business is substantial in relation to the activity carried on in the other Contracting State giving rise to the income in respect of which treaty benefits are being claimed in that other Contracting State.

3. The provisions of paragraph 1 shall not apply if the person deriving the income is:

a) a company which is a resident of a Contracting State in whose principal class of shares there is a substantial and regular trading on a recognized stock exchange; or

b) a company that is wholly owned, directly or indirectly, by a company referred to in subparagraph a) provided that each company in the chain of ownership used to satisfy the control requirement of this subparagraph is a resident of a Contracting State.

For purposes of this paragraph, the term "recognized stock 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 Istanbul Stock Exchange; and

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

4. The provisions of paragraph 1 shall not apply to a Contracting State or a political subdivision or local authority thereof.

5. The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived by a not-for-profit organization that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that

a) more than half of its annual support is expended for the benefit of qualified persons;

or

b) more than half of its annual support is derived from qualified persons.

The term "qualified person" means:

a) a person (including an individual) that is entitled, under paragraph 1, 3, 4 or 5 of this Article, to the benefits of this Agreement, or

b) a citizen of the United States.

6. A person that is not otherwise entitled to the benefits of this Agreement by reasons of the other provisions of this Article may, nevertheless, be granted the benefits of this Agreement if the competent authority of the State in which the income in question arises so determines.

## ARTICLE 23

### 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:

a) the tax paid on income to Turkey by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Turkey and from which the United States company receives dividends, the tax paid on income to Turkey by or on behalf of the distributing company with respect to the profits out of which the dividends are paid. For the purposes of this paragraph, the taxes referred to in subparagraph a) of paragraph 2 and paragraph 3 of Article 2 (Taxes Covered) shall be considered income taxes.

2. Where a resident of Turkey derives income which, in accordance with the provisions of this Agreement, may be taxed in the United States and in Turkey, Turkey shall, subject to the provisions of Turkish taxation laws regarding credit for foreign taxes (as they may be amended from time to time without changing the general principles hereof), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in the United States. Such deduction shall not, however, exceed that part of the income tax computed in Turkey before the deduction is given, which is appropriate to the income which may be taxed in the United States.

3. For the purposes of allowing relief from double taxation pursuant to this Article, and subject to such source rules in the domestic laws of the Contracting State as apply for the purpose of limiting the foreign tax credit, income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement (other than solely by reason of citizenship in

accordance with paragraph 3 of Article 1 (Personal Scope)) shall be deemed to arise in that other State.

The rules of this paragraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in subparagraph a) of paragraph 2 and paragraph 3 of Article 2 (Taxes Covered).

## ARTICLE 24 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, in particular with respect to residence, are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States.

2. 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.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 6 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.

4. 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.

5. The provisions of this Article 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.

6. Nothing in this Article shall be construed as preventing a Contracting State from imposing the taxes described in paragraph 4 of Article 10 (Dividends) or subparagraph b) of paragraph 4 of Article 11 (Interest).

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 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 Agreement, 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 a national.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within five years from the end of the taxable year to which the case relates.

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 Agreement. In particular the competent authorities of the Contracting States may agree:

- a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;
- b) to the same allocation of income, deductions, credits, or allowances between persons;
- c) to the same characterization of particular items of income;
- d) to the same application of source rules with respect to particular items of income;
- e) to a common meaning of a term;
- f) to increases in any specific dollar amounts referred to in the Agreement to reflect economic or monetary developments; and
- g) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Agreement.

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1 (Personal 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 this Agreement. 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 the 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 the 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, to the maximum extent possible under the laws and administrative practices and procedures of that other State, shall provide information under this Article in a form consistent with the purposes of the request.

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

#### ARTICLE 27

##### Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement 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. This Agreement shall be ratified and the instruments of ratification shall be exchanged at \_\_\_\_\_ as soon as possible.

2. The Agreement 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 January next following the date on which the Agreement enters into force; and
- b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Agreement enters into force.

ARTICLE 29  
Termination

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

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

DONE at *Washington*, in duplicate, this *twenty-eighth* day of *March* 1996, in the English and Turkish languages, the texts having equal authenticity.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:  
(s) Robert E. Rubin

FOR THE GOVERNMENT OF  
THE REPUBLIC OF TURKEY:  
(s) Kamel Kavatas

PROTOCOL

At the moment of signing the Agreement Between the Government of the United States of America and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. Ad Article 4 (Resident)

It is understood that, for purposes of determining whether a citizen or national of a Contracting State is a resident of that Contracting State for purposes of this Agreement, the principles of subparagraphs a) through d) of paragraph 2 of Article 4 shall be applied to determine whether such citizen or national is a resident of the United States, Turkey, or any third country.

## II. Ad Article 7 (Business Profits)

In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment may be considered attributable to that permanent establishment if it is proved that the sale or activities were structured in a manner intended to avoid taxation in the State where the permanent establishment is situated.

## III. Ad Article 7 (Business Profits)

In respect of paragraph 3 of Article 7, in determining the profits of a permanent establishment there shall not be allowed as deductions payments for interest, royalties, commissions or other similar payments made to the head office of the enterprise itself or to other permanent establishments, unless the payments are reimbursements of actual expense incurred for the purposes of the permanent establishment.

## IV. Ad Articles 5 (Permanent Establishment), 7 (Business Profits) and 14 (Independent Personal Services)

It is understood that income derived by a resident of a Contracting State from an installation or drilling rig or ship used for the exploration or exploitation of natural resources in the other Contracting State shall be treated as business profits or independent personal services income. If such income is derived by an enterprise of a Contracting State from services or activities performed in the other Contracting State, then that other State may tax such income only if:

- a) the enterprise has a permanent establishment other than the installation, drilling rig, or ship itself in that other State through which the services or activities are performed; or
- b) the period or periods during which the services or activities are performed exceed in the aggregate 183 days in any continuous period of 12 months.

The mere presence of an installation, drilling rig, or ship shall never constitute a permanent establishment.

## V. Ad Articles 7 (Business Profits), 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Gains), 14 (Independent Personal Services) and 21 (Other Income)

In applying paragraphs 1 and 2 of Article 7, paragraphs 4 and 5 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraph 3 of Article 13, Article 14, and paragraph 2 of Article 21, income or gain may be attributable to a permanent establishment or fixed base even if the income or gain is deferred until such permanent establishment or fixed base has ceased to exist.

VI. Ad Article 10 (Dividends)

In respect of paragraph 3 of Article 10, it is understood that the term dividends in the case of Turkey shall include distributions from securities investment funds and real estate investment funds.

VIII. Ad Articles 10 (Dividends) and 11 (Interest)

It is understood that the term "contingent interest," used in paragraph 8 b) of Article 11, will be defined in accordance with the provisions of sections 871(h) (4) and 881(c) (4) of the Internal Revenue Code when such interest arises in the United States.

VIII. Ad Article 23 (Relief from Double Taxation)

The United States shall allow a credit against the Alternative Minimum Tax (AMT) for taxes paid to Turkey. This credit may not offset more than 90 percent of the AMT. However, foreign tax credits that are unused because of this 90 percent limitation, may be carried forward and backward to be used against other years AMT liability. If the percentage limitation mentioned above for foreign tax credits is increased under U.S. law, the higher percentage will be used under this Agreement.

IX. Ad Article 23 (Relief from Double Taxation)

For purposes of paragraph 1 of Article 23, the withholding tax under Article 94 of Turkey's Income Tax Law will not be considered an income tax. Thus, whether that tax is a creditable income tax will depend upon whether it meets U.S. standards under the Internal Revenue Code.

X. Ad Article 25 (Mutual Agreement Procedure)

It is understood that with respect to paragraph 2 of Article 25 the taxpayer must in the case of Turkey claim the refund resulting from such mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement.

DONE at Washington, in duplicate, this twenty-eight day of March 1996, in the English and Turkish languages, the texts having equal authenticity.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

(s) Robert E. Rubin

FOR THE GOVERNMENT OF THE  
REPUBLIC OF TURKEY:

(s) Kamel Kavatas