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2d Session

SENATE

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104-33

## TAXATION CONVENTION WITH LUXEMBOURG

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### MESSAGE

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT LUXEMBOURG ON APRIL 3, 1996



SEPTEMBER 4, 1996.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

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U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1996



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *September 4, 1996.*

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg April 3, 1996. Accompanying the Convention is a related exchange of notes providing clarification with respect to the application of the Convention in specified cases. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

This Convention, 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 and protection from double taxation of income. The Convention also provides for exchange of information to prevent fiscal evasion and sets forth standard rules to limit the benefits of the Convention to persons that are not engaged in treaty shopping.

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

WILLIAM J. CLINTON.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, August 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 Convention Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg April 3, 1996 ("the Convention"). Also enclosed for the information of the Senate is an exchange of notes which provides clarification with respect to the application of the Convention in specified cases.

This Convention will replace the existing Convention between the United States of America and the Grand Duchy of Luxembourg with Respect to Taxes on Income and Property signed December 18, 1962. The new Convention maintains many provisions of the existing convention, but it also provides certain additional benefits and updates the text to reflect current tax treaty policies.

This Convention 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 Convention to persons that are not engaged in treaty-shopping. Like other U.S. tax conventions, this Convention 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).

With respect to U.S. taxes, this Convention applies to federal income taxes (excluding social security taxes), and federal excise taxes imposed on premiums paid to foreign insurers other than premiums for reinsurance. For Luxembourg taxes, the Convention applies to the income tax on individuals, communal trade tax, corporation tax, capital tax, and tax on the fees of directors of companies; it also applies to Luxembourg's surcharges for its employment fund on individual income and corporate taxes. Like the 1962 convention, however, this convention does not apply to Luxembourg corporations that are now entitled, or subsequently become entitled, to special tax benefits available to companies that do not engage in an active trade or business, so-called 1929 holding companies. These companies are exempt from Luxembourg income tax on

the receipt of income, and their shareholders are exempt from Luxembourg tax on the receipt of dividends from these companies.

The Convention establishes maximum rate of tax that may be imposed by the source country on specified categories of income, including dividends, interest, and royalties. In most respects, these rates are the same as in many recent U.S. treaties with OECD countries. With one exception, the withholding rates on investment income are generally the same as in the present U.S.-Luxembourg treaty. Dividends on direct investments are generally subject to tax by the source country at a rate of five percent. However, dividends paid by companies that are residents of Luxembourg will be exempt from taxation by the source country if derived by a 25-percent shareholder from a company engaged in the active conduct of a trade or business in Luxembourg. Portfolio dividends remain taxable at 15 percent. In contrast, the current convention ties the tax rate on portfolio dividends to Luxembourg's statutory rate of tax.

Interest and royalties are generally exempt under the Convention from tax by the source country as under the present treaty. In general, interest and royalties derived and beneficially owned by a resident of a Contracting State are taxable only in that State. This is not true, however, if the beneficial owner of the interest is a resident of one Contracting State and the interest arises in the other Contracting State from a permanent establishment through which the interest owner carries on business or from a fixed base from which the owner carries on personal services. In that situation, the income is to be considered either business profits or independent personal services income.

Like other U.S. tax treaties, this Convention provides the standard anti-abuse rules for certain classes of investment income. In addition, the proposed Convention provides for the elimination of another potential abuse relating to the granting of U.S. treaty benefits in the so-called "triangular cases," to third-country permanent establishments of Luxembourg corporations that are exempt from tax in Luxembourg by operation of Luxembourg law. Under the proposed rule, full U.S. treaty benefits will be granted in these "triangular cases" only when the U.S.-source income is subject to a significant level of tax in Luxembourg and in the country in which the permanent establishment is located.

The taxation of capital gains under the Convention is similar to the rule in the present treaty and recent U.S. tax treaties. Gains from the sale of personal property are taxed only in the seller's State or residence unless they are attributable to a permanent establishment or fixed base in the other State.

The proposed Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. Each Contracting State may tax business profits of an enterprise of the other State only when the profits are attributable to a permanent establishment located in the first state.

As with all recent U.S. treaties, this Convention permits the United States to tax branch operations. This is not permitted under the present treaty. The proposed Convention also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent-establishment income that is earned during the life of the per-

manent establishment but is deferred and not received until after the permanent establishment no longer exists.

Consistent with U.S. treaty policy, the proposed Convention permits only the country of residence to tax profits from international carriage by ships or airplanes and income from the use or rental of ships, aircraft, or containers. Under the present treaty, only the State where the ship or aircraft is registered may tax the income derived from the operation of the ships or aircraft.

The taxation of income from the performance of personal services under the proposed Convention is essentially the same as that under other recent U.S. treaties with OECD countries. Such income is taxable only the State of the person's residence unless the person has a fixed base regularly available in the other Contracting State. Unlike many U.S. treaties, however, the proposed Convention allows the resident state to tax the income derived from employment abroad a ship or aircraft operated in international traffic if the enterprise's Contracting State fails to tax the income.

The proposed Convention contains standard rules making its benefits unavailable to persons engaged in treaty-shopping. The current treaty contains no such anti-treaty-shopping rules. Under the proposed Convention, a company will be entitled to benefits if it is a "qualified resident" of a Contracting State as defined in the Convention.

The proposed Convention contains a variation on certain derivative benefits provisions contained in recent treaties between the United States and the member states of the European Union. The proposed Convention allows subsidiaries of publicly-traded companies to obtain benefits if seven or fewer residents of a state that is a member of the European Union or a party to the North American Free Trade Agreement own at least 95 percent of the company and the other state has a comprehensive income tax convention with the Contracting State. The treaty does not establish a minimum threshold for Luxembourg ownership.

The proposed Convention also contains the standard rules necessary for administering the Convention, including rules for the resolution of disputes under the Convention and for exchange of information. Unlike the current convention, the proposed Convention contains a provision dealing with items of income that are not dealt with specifically in other articles. Such a provision is standard in our modern treaties.

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

This Convention is subject to ratification. It will enter into force on the day that the instruments of ratification are exchanged. It 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 the first day of January following the date on which the Convention enters into force. When the present convention affords a more favorable result for a taxpayer than the proposed Convention, the taxpayer may elect to continue to apply the

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provisions of the present convention, in its entirety, for one additional year.

This Convention will remain in force indefinitely unless terminated by one of the Contracting States. Either State may terminate the Convention by giving at least six months of prior notice through diplomatic channels.

An exchange of notes accompanies the Convention and is provided for the information of the Senate. This exchange of notes clarifies the application of the Convention in specified cases. For example, the notes specify that certain information pertaining to financial institutions may be obtained and provided to certain U.S. authorities only in accordance with the terms of the Treaty Between the United States and Luxembourg on Mutual Legal Assistance in Criminal Matters. That treaty, which sets forth the scope of that obligation, is expected to be signed shortly and submitted to the Senate for its advice and consent to ratification.

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

Respectfully submitted,

LYNN E. DAVIS.



CONVENTION BETWEEN  
THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG  
AND  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of the Grand Duchy of Luxembourg and the  
Government of the United States of America, desiring to  
conclude a convention for the avoidance of double taxation  
and the prevention of fiscal evasion with respect to taxes  
on income and capital have agreed as follows:

(1)

(1)

ARTICLE 1

GENERAL SCOPE

1. This Convention shall apply only 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 benefit 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 Convention except paragraph 4 of this Article, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention 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 the United States under paragraph 2 of Article 9 (Associated

Enterprises), under subparagraph 1(b) of Article 19 (Pensions, Social Security, and Annuities), and under Articles 25 (Relief From Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure); and

b) the benefits conferred by the United States under Articles 20 (Government Service), 21 (Students, Trainees, Teachers, and Researchers), and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, the United States.

5. 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 Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1(e) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the dispute.

b) Unless the competent authorities determine that a taxation measure is not within the scope of this

Convention, the nondiscrimination obligations of this Convention 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 purposes 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. The existing taxes to which this Convention shall apply are:

a) in the United States:

(i) the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and

(ii) the Federal excise taxes imposed on

insurance premiums paid to foreign insurers. The Convention shall, however, not apply to the excise taxes imposed on premiums paid to foreign insurers for reinsurance. The Convention shall apply to the excise taxes imposed on premiums paid to foreign insurers for insurance other than reinsurance only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under an income tax convention that applies to such taxes;

b) in Luxembourg:

(i) the income tax on individuals, including the surcharge thereon for the benefit of the employment fund (l'impôt sur le revenu des personnes physiques, y compris la contribution au fonds pour l'emploi);

(ii) the corporation tax, including the surcharge thereon for the benefit of the employment fund (l'impôt sur le revenu des collectivités, y compris la contribution au fonds pour l'emploi);

- (iii) the tax on fees of directors of companies (l'impôt spécial sur les tantièmes);
- (iv) the capital tax (l'impôt sur la fortune); and
- (v) the communal trade tax (l'impôt commercial communal).

2. The Convention shall also apply to any identical or substantially similar taxes that 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 that 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 "person" includes an individual, an estate, a trust, a partnership, a company, and any

other body of persons;

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

c) 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;

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

e) the term "competent authority" means:

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

(ii) in Luxembourg: the Minister of Finance or his authorized representative;

f) 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;

g) the term "Luxembourg" means the Grand Duchy of Luxembourg;

h) the term "national," in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

i) the term "beneficial owner" means in the case of a company that is treated as a partnership, or that is otherwise not subject to tax as a body corporate, under the laws of the other Contracting State, the persons that are subject to tax on the income of the company under the laws of the other Contracting State.

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 27 (Mutual Agreement Procedure), have the meaning that it has under the law of that State concerning the taxes to which the Convention applies.



## ARTICLE 4

RESIDENCE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein;

b) in the case of income derived 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, beneficiaries or grantor;

c) an individual who is a U.S. citizen or an alien admitted to the United States for permanent residence (a "green card" holder) and who is not a resident of Luxembourg under this paragraph is to be treated as a resident of the United States for purposes of this

paragraph, only if the individual has a substantial presence, permanent home or habitual abode in the United States;

d) the Government of a Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority is, for purposes of this paragraph, to be treated as a resident of that Contracting State; and

e) a person that under the laws of a Contracting State is a resident of that State and that is wholly or partially exempt from tax in that State by virtue of the fact that it is organized and operated exclusively either:

(i) for a religious, charitable, educational, scientific, or other public purpose; or

(ii) to provide pensions or other benefits to employees pursuant to a plan

is to be treated for purposes of this paragraph as a resident of that Contracting 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 (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; or

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 person other than an individual is a resident of both Contracting States, the competent authorities shall endeavor

to settle the question by mutual agreement, having regard to the person's place of effective management, the place where it is incorporated or constituted, and any other relevant factors. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Convention.

## 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. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts more than twelve months.

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

a) the use of facilities solely for the purpose of storage, display, or 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; and

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 which 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 as independent agents.

7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that 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 (immovable 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 (immovable property)" shall have the meaning that it has under the laws of the Contracting State in which the property in question is situated.

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 elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State.

#### 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 business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other



State but only so much of them as are 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 that it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the 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 executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), 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 of accounting year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income that 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.

7. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 3 of Article 12 (Interest), paragraph 3 of Article 13 (Royalties), paragraph 3 of Article 14 (Gains), Article 15 (Independent Personal Services) and paragraph 2 of Article 22 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such

permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

## 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 on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee, or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State, shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international

traffic by the enterprise.

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 that differ from those that would be made between independent enterprises, then, any profits that, 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 other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that 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.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. a) 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, except as otherwise provided in paragraph 6, the tax so charged shall not exceed:

(i) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;  
or

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

b) Notwithstanding the provisions of subparagraph a)(i), dividends paid by a company that is a resident of Luxembourg shall not be taxable in Luxembourg if the

beneficial owner of the dividends is a company that is a resident of the United States and that has had, during an uninterrupted period of two years preceding the date of payment of the dividends, a direct shareholding of at least 25 percent of the voting stock of the company paying the dividends. This provision only applies to dividends attributable to that part of the shareholding that has been owned without interruption by the beneficial owner during such two-year period. Furthermore, the provisions of this subparagraph shall only apply if the distributed dividend is derived from the active conduct of a trade or business in Luxembourg (other than the business of making or managing investments, unless such business is carried on by a banking or insurance company).

c) This paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. a) The term "dividends" means income from shares, "jouissance" shares, or "jouissance" rights, mining shares, founders' shares, or other rights, not being debt-claims, participating in profits, as well as

income treated as a distribution by the taxation laws of the State of which the company making the distribution is a resident; and income from arrangements, including debt obligations, that carry the right to participate in, or are determined with reference to, profits of the issuer or one of its associated enterprises, to the extent that such income is characterized as a dividend under the laws of the Contracting State in which the income arises.

b) The provisions of this Article shall apply where a beneficial owner of dividends holds depository receipts evidencing ownership of the shares in respect of which the dividends are paid, in lieu of the shares themselves.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such



permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. Where a company that is a resident of one of the States derives profits or income from the other 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 pertains to a fixed base situated in that other State, nor, except as provided in Article 11 (Branch Tax), subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Subparagraph a) (i) of paragraph 2 shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company or a Real Estate Investment Trust (REIT). In the case of a United States person that is a REIT, subparagraph a) (ii) of paragraph 2 also shall not apply, unless the dividend is beneficially

owned by an individual holding a less than 10 percent interest in the REIT.

#### ARTICLE 11

##### BRANCH TAX

Notwithstanding any other provision of this Convention, a company that is a resident of Luxembourg may be subject in the United States to a tax in addition to the tax on profits. Such additional tax, however, may not exceed 5 percent of the "dividend equivalent amount" of the business profits of the company that are either attributable to a permanent establishment in the United States or are subject to tax on a net basis in the United States under Article 6 (Income from Real Property (Immovable Property)) or paragraph 1 of Article 14 (Gains).

#### ARTICLE 12

##### INTEREST

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

2. The term "interest" as used in this Convention 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, unless described in paragraph 3 of Article 10 (Dividends), 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 all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall

apply.

4. Interest shall be deemed to arise in a Contracting State when:

a) the payer is a resident of that State; or

b) the payer, whether a resident of a Contracting State or not, has in that Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest paid was incurred and such interest is borne by such permanent establishment or fixed base.

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 interest, having regard to the debt claim for which it is paid, exceeds the amount that 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 taxation law of each State, due regard being had to the other provisions of this Convention.

6. Notwithstanding the provisions of paragraph 1:

a) interest arising in a Contracting State that is determined with reference to the profits of the issuer or of one of its associated enterprises, and paid to a resident of the other Contracting State, may be taxed in that other State;

b) 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 is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph 2(a)(ii) of Article 10 (Dividends).

c) Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

#### ARTICLE 13

##### ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be

taxable only in that other State if such resident is the beneficial owner of the royalties.

2. The term "royalties" as used in this Convention means:

a) payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work (including cinematographic films, and audio and video tapes and disks and other means of reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, for information concerning industrial, commercial, or scientific experience;

b) gain derived from the alienation of any property described in subparagraph a), provided that such gain is contingent on the productivity, use, or disposition of the property.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in

that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when they are in consideration of the use of, or the right to use, property, information or experience in that State.

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.

ARTICLE 14

GAINS

1. Gains derived by a resident of a Contracting State that are attributable to 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" shall include:

a) real property referred to in Article 6 (Income from Real Property);

b) a United States real property interest, as defined in the Internal Revenue Code on the date of signature of this Convention, and as amended from time to time without changing the general principles in this paragraph; and

c) shares or comparable corporate rights in a company that is a resident of Luxembourg, the assets of which company consist for the greater part of real property situated in Luxembourg.

3. Gains from the alienation of personal property (movable property) that are attributable to a permanent



establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is 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 operated or used in international traffic or personal property (movable property) pertaining to the operation or use of such ships aircraft or containers shall be taxable only in that State.

5. Gains from the alienation of any property other than property referred to in paragraphs 1 through 4 shall be taxable only in the Contracting State of which the alienator is a resident.

#### ARTICLE 15

##### INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident

of a Contracting State from personal services in an independent capacity shall be taxable only in that State unless the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

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

3. In determining the income described in paragraph 1 that is taxable in the other Contracting State, the principles of paragraph 3 of Article 7 (Business Profits) shall apply.

#### ARTICLE 16

##### DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17 (Directors' Fees), 19 (Pensions, Social Security, and Annuities) and 20 (Government Service), 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 commencing or ending in the taxable year concerned;

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 that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised

continuously or predominantly aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State. If that State fails to tax the income derived from such employment, such income shall be taxable in the State of which the employee is a resident.

#### ARTICLE 17

##### 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 that is a resident of the other Contracting State may be taxed in that other Contracting State.

#### ARTICLE 18

##### ARTISTES AND SPORTSMEN

1. Notwithstanding Articles 15 (Independent Personal Services) and 16 (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 ten thousand United States dollars (\$10,000), or its equivalent in Luxembourg francs, for the taxable year concerned.

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 himself but to another person, that income of that other person, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Independent Personal Services), may 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 (whether or not residents of that State) participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends,

partnership distributions, or other distributions.

ARTICLE 19

PENSIONS, SOCIAL SECURITY, AND ANNUITIES

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 shall be taxable only in that State; and

b) notwithstanding the provisions of subparagraph a), payments made by a Contracting State, or a statutory body thereof, under provisions of the social security or similar legislation of a Contracting 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.

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).

# ARTICLE 20

## GOVERNMENT SERVICE

1. Notwithstanding the provisions of Articles 15  
(Independent Personal Services), 16 (Dependent Personal  
Services), and 18 (Artistes and Sportsmen):

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, subject to the provisions of  
subparagraph b), be taxable only in that State;

b) such remuneration, however, 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. Notwithstanding the provisions of Article 19  
(Pensions, Social Security, and Annuities):

a) any 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, subject to the provisions of subparagraph b), be taxable only in that State;

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

3. The provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees), and 19 (Pensions, Social Security, 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 21

##### STUDENTS, TRAINEES, TEACHERS, AND RESEARCHERS

1. Payments received 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 full-time education at a recognized educational institution, or for full-time training, shall not be taxed in that State, provided that such payments are for the purpose of his maintenance, education, or training. The exemption from tax provided by this Article shall apply to an apprentice or business trainee only for a period of time not exceeding two years from the date he first arrives in the first-mentioned Contracting State for the purpose of his training. If the visit exceeds two years, the first-mentioned State may tax the individual under its national law for the entire period of the visit, unless in a particular case the competent authorities of the States agree otherwise.

2. A resident of one of the Contracting States who, at the invitation of a university, college, school, or other recognized educational institutions situated in the other Contracting State, is temporarily present in the other State solely for the purpose of teaching, or engaging in research, or both, at that educational institution shall, for a period not exceeding two years from the date he first arrives in

the other State, be exempt from tax by the other State on his remuneration for such teaching or research. If the visit exceeds two years, the other State may tax the individual under its national law for the entire period of the visit, unless in a particular case the competent authorities of the States agree otherwise.

3. No exemption shall be granted under paragraph 2 with respect to any remuneration for research carried on for the benefit of any person other than the educational institution that extended the invitation referred to in paragraph 2.

## ARTICLE 22

### OTHER INCOME

1. Items of income beneficially owned by 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 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 15 (Independent Personal Services), as the case may be, shall apply.

#### ARTICLE 23

##### CAPITAL

1. Capital represented by real property (immovable property) referred to in Article 6 (Income from Real 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 movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in

the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital of an enterprise of a Contracting State operating in international traffic as referred to in Article 8 (Shipping and Air Transport) represented by ships, aircraft or containers and movable property pertaining to the operation of such ships, aircraft or 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

##### LIMITATION ON BENEFITS

1. A resident of a Contracting State shall be entitled to all the benefits of this Convention only if it is a "qualified resident" as defined in this Article. A person that is not a qualified resident may be entitled to benefits of this Convention with respect to certain items of income under paragraphs 3, 4 and 7.

2. A resident of a Contracting State is a qualified resident for a taxable year only if:

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a) that person is an individual;

b) that person is a Contracting State, a political subdivision or a local authority thereof or any agency or instrumentality of any such government, subdivision or authority;

c) that person is a company, if:

(i) at least 50 percent of the principal class of shares in the company is ultimately owned by persons that are qualified residents or U.S. citizens pursuant to this paragraph; and

(ii) amounts paid or accrued by the company during its taxable year

A) to persons that are neither qualified residents nor U.S. citizens, and

B) that are deductible for income tax purposes in the company's state of residence (but not including arm's length payments in the ordinary course of business for services or purchases or rentals of tangible property including immovable property),

do not exceed 50 percent of the gross income of the company for that year;

d) that person is a company whose principal class of shares is substantially and regularly traded on one or more recognized stock exchanges; the shares in a class of shares are considered to be substantially and regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded in such stock exchange or exchanges during the previous taxable year is at least 6 percent of the average number of shares outstanding in that class during that taxable year;

e) that person is a company that is controlled, directly or indirectly, by publicly-traded corporations described in subparagraph d), which are residents of one of the Contracting States, provided its payments to persons who are neither qualified residents nor U.S. citizens satisfy the requirements of subparagraph c)(ii); or

f) that person is 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 more than half of the beneficiaries, members or participants, if any, in such

organization are qualified residents.

3. a) A resident of a Contracting State that is not a qualified resident shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if such resident is directly (or indirectly through an associated enterprise) 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 such business is conducted by a banking or insurance company), and:

(i) the item of income is derived in connection with the trade or business in the first-mentioned State, and such trade or business is substantial in relation to the resident's proportionate interest in the activity in the other State that generated the income; or

(ii) the item of income derived from the other State is incidental to that trade or business in the first-mentioned State.

b) The item of income is derived in connection with a trade or business if:

(i) such item of income accrues in the

ordinary course of such trade or business and the beneficial owner owns, directly or indirectly, less than 5 percent of the shares (or other comparable rights) in the payer of the item of income; or

(ii) the activity in the other State that generated the item of income is a line of business that forms a part of or is complementary to the trade or business conducted in the first-mentioned State by the income recipient.

c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be considered to be substantial if, for the preceding taxable year, each of the following three ratios for factors that are related to the trade or business within the first-mentioned State equals at least 7.5 percent and the average equals at least 10 percent:

- (i) the asset value;
- (ii) gross income; and
- (iii) payroll expense



in relation to the proportionate share of the asset value, the gross income and the payroll expense, respectively, that are related to the activity that generated the income in the other State. If any separate factor does not meet the 7.5 percent test in the first preceding taxable year, the average of the ratios for that factor for the three preceding taxable years may be substituted. If the resident owns, directly or indirectly, less than 100 percent of an activity conducted in either State, only the resident's proportionate interest in such activity will be taken into account for purposes of the test described in this subparagraph c).

d) The item of income derived from the other State is incidental to a trade or business conducted in the first-mentioned State if the income is not described in subparagraph b) and the production of such item of income facilitates the conduct of the trade or business in the first-mentioned State (for example, the investment of working capital of such trade or business).

4. Except as provided in subparagraph c), a company

that is a resident of a Contracting State shall also be entitled to all the benefits of this Convention if:

a) 95 percent of the company's shares is ultimately owned by seven or fewer residents of a state that is a party to NAFTA or that is a member State of the European Union and with which the other State has a comprehensive income tax convention; and

b) amounts paid or accrued by the company during its taxable year

(i) to persons that are not residents of a state that is a party to NAFTA, residents of a member State of the European Union, or U.S. citizens, and

(ii) that are deductible for income tax purposes in the company's state of residence (but not including arm's length payments in the ordinary course of business for services or purchases or rentals of tangible property), do not exceed 50 percent of the gross income of the company for that year.

c) Notwithstanding the other provisions of this paragraph 4, a resident described in this paragraph

will be entitled to the benefits of Articles 10 (Dividends), 11 (Branch Tax), 12 (Interest), and 13 (Royalties) with respect to an item of income described in one of such articles only if the comprehensive income tax convention referred to in subparagraph a) between one of the States and a third state provides a rate of tax equal to or less than the rate provided under this Convention with respect to the item of income derived from the other State.

d) (i) The term "resident of a member State of the European Union" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any member State of the European Union and the Contracting State from which the benefits of this Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs 2(c) and 2(d) and paragraph 3), the person would be entitled to the benefits of this Convention under the principles of paragraphs 2 or 3 if such person were a resident of one of the

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Contracting States under Article 4 (Resident) of this Convention.

(ii) The term "resident of a state that is a party to NAFTA" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any member State of the North American Free Trade Agreement and the Contracting State from which the benefits of this Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs 2(c) and 2(d) and paragraph 3), the person would be entitled to the benefits of this Convention under the principles of paragraphs 2 or 3 if such person were a resident of one of the Contracting States under Article 4 (Resident) of this Convention.

(iii) When applying the principles of paragraph 3, an item of income derived from one of the Contracting States with respect to which treaty benefits are claimed must be derived in connection with an active trade or business

conducted by the resident of the third state in that state.

5. Notwithstanding the other provisions of this Convention, where:

- a) an enterprise of a Contracting State derives income from the other Contracting State,
- b) that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, and
- c) the enterprise is exempt from tax in the first-mentioned State on the profits attributable to the permanent establishment,

the tax benefits that otherwise would apply under the Convention will not apply to any item of income on which the combined tax in the first-mentioned State and in the third jurisdiction is less than 50 percent of the tax that would be imposed in the first-mentioned State if the income were earned in that State by the enterprise and were not attributable to the permanent establishment. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other State at a rate not exceeding 15 percent of the gross amount

thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State. The provisions of this paragraph shall not apply if the income derived from the other Contracting State is in connection with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (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).

6. Notwithstanding the other provisions of this Article, the benefits of this Convention shall not apply to the disproportionate part of the income (i.e., that part of the income exceeding the income that would have been received absent the terms or arrangements mentioned in subparagraph a) of this paragraph) derived from a Contracting State by a company that is resident of the other Contracting State if that company, or a company that controls that company, has outstanding a class of shares:

- a) the terms of which, or which is subject to other arrangements that, entitle its holders to a

portion of the income of the company derived from the first-mentioned State that is larger than the portion such holders would receive absent such terms or arrangements; and

b) 50 percent or more of the vote and value of which is owned by persons who are not qualified residents of either a Contracting State or of a State that is a party to NAFTA or that is a member State of the European Union. .

7. A resident of a Contracting State that is not entitled to the benefits of the Convention under the preceding paragraphs of this Article shall, nevertheless, be granted the benefits of the Convention if the competent authority of the other Contracting State so determines.

8. The following provisions apply for purposes of this Article:

a) The term "a recognized stock exchange" means:

(i) Any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

(ii) the Luxembourg stock exchange;

(iii) the NASDAQ System owned by the National Association of Securities Dealers; and

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

With respect to closely-held companies, the term "recognized stock exchange" shall not include the stock exchanges mentioned under subparagraphs (ii) and (iii), and if so indicated in mutual agreement between the competent authorities, under subparagraph (iv).

b) The term "closely-held company" means a company of which 50 percent or more of the principal class of shares is owned by persons, other than qualified residents, residents of a member State of the European Union, or residents of a State that is a party to NAFTA, each of whom beneficially owns, directly or indirectly, alone or together with related persons, more than 5 percent of such shares for more than 30 days during a taxable year.

9. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article, including the publication of regulations or other public



guidance. The competent authorities shall, in accordance with the provisions of Article 28 (Exchange of Information), exchange such information as is necessary for carrying out the provisions of this Article.

10. Notwithstanding the other provisions of this Article, Luxembourg holding companies, within the meaning of the Act (loi) of July 31, 1929 and the Decree (arrêté grand-ducal) of December 17, 1938, or any subsequent revision thereof, or such other companies that enjoy a similar special fiscal treatment by virtue of the laws of Luxembourg, are not residents.

#### ARTICLE 25

##### 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 income tax:

a) the income tax paid to Luxembourg 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 power of a company which is a resident of Luxembourg and from which the United States company receives dividends, the income tax paid to Luxembourg 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 1(b) and paragraph 2 of Article 2 (Taxes Covered), other than the capital tax and that portion of the communal trade tax computed on a basis other than profits, shall be considered income taxes.

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

a) where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the United States, Luxembourg shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as

if the income or capital had not been exempted;

b) where a resident of Luxembourg derives income which, in accordance with the provisions of Article 10 (Dividends) and subparagraph 6(b) of Article 12 (Interest) may be taxed in the United States, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the United States. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the United States; and

c) where a company that is a resident of Luxembourg derives dividends from United States sources, Luxembourg shall exempt such dividends from tax, provided that the company that is a resident of Luxembourg has held directly since the beginning of its accounting year at least 10 percent of the capital of the company paying the dividends, and if this company is subject in the United States to an income tax corresponding to the Luxembourg corporation tax. The above-mentioned shares in the United States company

are, under the same conditions, exempt from the Luxembourg capital tax.

3. Where a United States citizen is a resident of Luxembourg:

a) with respect to items of income not exempt from Luxembourg tax under paragraph 2 and that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Luxembourg who is not a United States citizen, Luxembourg shall allow as a credit against Luxembourg tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 3 of Article 1 (General Scope);

b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to Luxembourg determined after reduction by the credit referred to in subparagraph a); the credit so allowed shall not reduce

the portion of the United States tax that is creditable against Luxembourg tax in accordance with subparagraph a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in Luxembourg to the extent necessary to avoid double taxation of such income under subparagraph b).

4. Except as provided in subparagraph c) of paragraph 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 States as apply for purposes of limiting the foreign tax credit, income derived by a resident of a Contracting State that may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope)) shall be deemed to arise in that other State.

## ARTICLE 26

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 also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, a United States national who is not a resident of the United States and a Luxembourg national who is not a resident of the United States are not in the same circumstances.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of remuneration of an individual resident of a Contracting State attributable to a fixed base in the other Contracting State regularly available to that resident, shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. The

provisions of this paragraph 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.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 12 (Interest), or paragraph 5 of Article 13 (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 an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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. Nothing in this Article shall be construed as preventing the United States from imposing a tax as described in Article 11 (Branch Tax).

6. 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 27

##### 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.

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 authorities 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 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. 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 a common determination of the State in which an item of income arises; and

e) to a common meaning of a term.

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.

5. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Convention, including the provisions of Article 24 (Limitation on Benefits). The competent authorities of the Contracting States may each prescribe regulations to carry out the purposes of this Convention.

## ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by the competent authority of a Contracting State from the competent authority of the other Contracting State shall be treated as secret in the same manner as information obtained under the domestic law 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 State 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 State 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. Where information is requested by a Contracting State through competent authorities, the competent authority of 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 writing) to the same extent that the competent authority of the other Contracting State can obtain such depositions and documents for an investigation or proceeding under its laws and administrative practice.

4. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto. With respect to a specific request for collection assistance:

- a) the requesting State must produce a copy of a document certified by its competent authority specifying that the sums referred to it for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

b) a document produced in accordance with the provisions of this paragraph shall be rendered enforceable in accordance with the laws of the requested State;

c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State; and

d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures that would be contrary to its sovereignty, security, public policy or its essential interests.

#### ARTICLE 29

##### 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 30

##### ENTRY INTO FORCE

1. This Convention shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible.
2. The Convention shall enter into force on the day of the exchange of instruments of ratification. Its provisions allocating taxation rights shall have effect, in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following, and in respect of taxes on other income and on capital, for fiscal periods beginning on or after the first day of January next following, the date on which the Convention enters into force.
3. Where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the United States of America and the Grand Duchy of Luxembourg with respect to taxes on income and property, signed in Washington on December 18, 1962

(hereinafter referred to as "the 1962 Convention"), under that Convention than under this Convention, the 1962 Convention shall, at the election of such person, continue to have effect in its entirety for the first assessment period or taxable year following the date on which this Convention would otherwise have effect under the provisions of paragraph 2.

4. The 1962 Convention shall cease to have effect in respect of income and capital to which this Convention applies in accordance with paragraphs 2 or 3 of this Article. The 1962 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

#### ARTICLE 31

##### TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year of entry into force. In such event, the Convention shall cease to have effect in

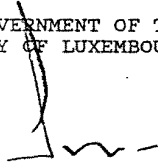


respect of tax withheld at the source, for amounts paid or credited on or after, and in respect of other taxes, to fiscal periods beginning on or after, the first day of January next following the expiration of the six month period.

IN WITNESS THEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at Luxembourg in duplicate, in the French and English languages, the two texts having equal authenticity, this April 3 day of 1996.

FOR THE GOVERNMENT OF THE  
GRAND DUCHY OF LUXEMBOURG:



FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



EMBASSY OF THE  
UNITED STATES OF AMERICA

Luxembourg, April 3, 1996

Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital (the "Convention") and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention, the negotiators developed and agreed upon a common understanding and interpretation of the following provisions. These understandings and interpretations are intended to give guidance both to the taxpayers and the authorities of our two countries in interpreting various provisions contained in the Convention.

I. With reference to Article 11 (Branch Tax):

The term "dividend equivalent amount" shall have the meaning it has under the law of the United States, as it may be amended from time to time without changing the general principle thereof.

II. With reference to Article 19 (Pensions, Social Security, and Annuities)

It is understood that the term "other similar legislation" as used in Article 19 (Pensions, Social Security, and Annuities) is intended to refer to United States tier 1 Railroad Retirement benefits.

His Excellency  
Jacques Poos,  
Minister of Foreign Affairs,  
Grand Duchy of Luxembourg

III. With reference to Article 24 (Limitation on Benefits)

A. It is understood that the term "a recognized stock exchange" includes the principal stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Sydney, Tokyo and Toronto.

B. It is understood that the term "such other companies which enjoy a similar special fiscal treatment by virtue of the laws of Luxembourg" includes investment companies within the meaning of the Act dated March 30, 1988.

C. For purposes of determining under subparagraph 4(c) if a comprehensive income tax Convention between one of the Contracting States and a third State provides with respect to dividends a rate of tax that is equal to or less than the rate of tax provided under the Convention, it is understood that the following two tax rates must be compared:

a) the rate of tax to which each of the persons described in subparagraph 4 a) would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends; and

b) the rate of tax to which the same persons, if they would be residents of the Contracting State of which the recipient is a resident, would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends.

D. With respect to subparagraphs 2(c) and 2(d) and paragraph 4, it is understood that a Contracting State may consider a person not to be a qualified resident, unless such person demonstrates that a percentage of its shares (including shares not issued in registered form) necessary to satisfy the ownership threshold specified in subparagraphs 2(c) and 2(d) or paragraph 4 is beneficially owned by qualified residents, or, where relevant, residents of a member State of the European Union or a State that is a party to NAFTA.

IV. With reference to Article 28 (Exchange of Information)

Paragraph 1 of Article 28 requires that each Contracting State provide to the other the broadest possible measure of assistance with respect to matters covered by the Convention. The Contracting States expect that the authorities in each State, including judicial authorities to the extent that they become involved in executing a request, will use their best efforts to provide the assistance requested.

Also, under paragraph 3, upon request the competent authority of a Contracting State will obtain and provide information, other than information of financial institutions, for any matter relating to 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, but only in the same manner and to the same extent as if the competent authority of the requested State were obtaining the information for an investigation or a public court proceeding under its laws and practices. Thus, upon request the competent authority of the requested State shall obtain and provide authenticated copies of third-party books and records located in the requested State for any tax investigation or proceeding in the requesting State, so long as the laws and practices of the requested State would allow its tax authorities to obtain such information for an investigation or a public court proceeding under its laws.

Finally, it is understood that certain information of financial institutions may be obtained and provided to certain U.S. authorities only in accordance with the terms of the Treaty between the United States of America and the Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters. The scope of this obligation is set forth in that agreement. Further, if the laws and practices in Luxembourg change in a way that permits the Luxembourg competent authority to obtain such information for purposes of enforcing and administering its tax laws or the tax laws of member States of the European Union, it is understood that such information will be obtained and provided to the U.S. competent authority to the same extent that it is obtained and provided for the enforcement and administration of such tax laws.

- 4 -

If the foregoing understandings and interpretations of the various provisions meet with the approval of the Government of the Grand Duchy of Luxembourg, this letter and your letter in reply thereto will constitute a common and binding understanding by our Governments of the Convention.

Accept, Your Excellency, the expression of my highest considerations.

Sincerely,



Clay Constantinou  
Ambassador

GRAND-DUCHÉ DE LUXEMBOURG


 MINISTÈRE  
DES AFFAIRES ÉTRANGÈRES

LE MINISTRE

Luxembourg, the 3<sup>rd</sup> of April, 1996

Excellency,

I have the honor to acknowledge the receipt of Your Excellency's Note of the 3<sup>rd</sup> of April, 1996 which reads as follows:

"I have the honor to refer to the Convention between the Government of the Grand Duchy of Luxembourg and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital (the "Convention") and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention, the negotiators developed and agreed upon a common understanding and interpretation of the following provisions. These understandings and interpretations are intended to give guidance both to the taxpayers and the authorities of our two countries in interpreting various provisions contained in the Convention.

## MEMORANDUM OF UNDERSTANDING

I. With reference to Article 11 (Branch Tax):

The term "dividend equivalent amount" shall have the meaning it has under the law of the United States, as it may be amended from time to time without changing the general principle thereof.

II. With reference to Article 19 (Pensions, Social Security, and Annuities)

It is understood that the term "other similar legislation" as used in Article 19 (Pensions, Social Security, and Annuities) is intended to refer to United States tier 1 Railroad Retirement benefits.

III. With reference to Article 24 (Limitation on Benefits)

A. It is understood that the term "a recognized stock exchange" includes the principal stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Sydney, Tokyo and Toronto.

B. It is understood that the term "such other companies which enjoy a similar special fiscal treatment by virtue of the laws of Luxembourg" includes investment companies within the meaning of the Act dated March 30, 1988.

C. For purposes of determining under subparagraph 4(c) if a comprehensive income tax Convention between one of the Contracting States and a third State provides with respect to dividends a rate of tax that is equal to or less than the rate of tax provided under the Convention, it is understood that the following two tax rates must be compared:

- a) the rate of tax to which each of the persons described in subparagraph 4 a) would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends; and
- b) the rate of tax to which the same persons, if they would be residents of the Contracting State of which the recipient is a resident, would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends.

D. With respect to subparagraphs 2(c) and 2(d) and paragraph 4, it is understood that a Contracting State may consider a person not to be a qualified resident, unless such person demonstrates that a percentage of its shares (including shares not issued in registered form) necessary to satisfy the ownership threshold specified in subparagraphs 2 (c) and 2 (d) or paragraph 4 is beneficially owned by qualified residents, or, where relevant, residents of a member State of the European Union or a State that is a party to NAFTA.

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Paragraph 1 of Article 28 requires that each Contracting State provide to the other the broadest possible measure of assistance with respect to matters covered by the Convention. The Contracting States expect that the authorities in each State, including judicial authorities to the extent that they become involved in executing a request, will use their best efforts to provide the assistance requested.

Also, under paragraph 3, upon request the competent authority of a Contracting State will obtain and provide information, other than information of financial institutions, for any matter relating to 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, but only in the same manner and to the same extent as if the competent authority of the requested State were obtaining the

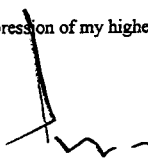
information for an investigation or a public court proceeding under its laws and practices. Thus, upon request the competent authority of the requested State shall obtain and provide authenticated copies of third-party books and records located in the requested State for any tax investigation or proceeding in the requesting State, so long as the laws and practices of the requested State would allow its tax authorities to obtain such information for an investigation or a public court proceeding under its laws.

Finally, it is understood that certain information of financial institutions may be obtained and provided to certain U.S. authorities only in accordance with the terms of the Treaty between the United States of America and the Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters. The scope of this obligation is set forth in that agreement. Further, if the laws and practices in Luxembourg change in a way that permits the Luxembourg competent authority to obtain such information for purposes of enforcing and administering its tax laws or the tax laws of member States of the European Union, it is understood that such information will be obtained and provided to the U.S. competent authority to the same extent that it is obtained and provided for the enforcement and administration of such tax laws.

If the foregoing understandings and interpretations of the various provisions meet with the approval of the Government of the Grand Duchy of Luxembourg, this Note and your Note in reply thereto will constitute a common and binding understanding by our Governments of the Convention."

I have further the honor to confirm the understandings and interpretations contained in Your Excellency's Note, on behalf of the Government of the Grand Duchy of Luxembourg.

Accept, Your Excellency, the expression of my highest considerations.



Jacques F. POOS  
Minister of Foreign Affairs  
Foreign Trade  
and Cooperation  
of the Grand Duchy of Luxembourg