AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS, 1st Session | SENATE | TREATY DOC. 109–8

PROTOCOL AMENDING THE CONVENTION WITH SWEDEN ON TAXES ON INCOME

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT WASHINGTON ON SEPTEMBER 30, 2005

NOVEMBER 10, 2005.—Protocol 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

U.S. GOVERNMENT PRINTING OFFICE
49–112 WASHINGTON : 2005

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 10, 2005.*

To the Senate of the United States:

I transmit herewith for the advice and consent of the Senate to ratification, a Protocol Amending the Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on September 30, 2005 (the "Protocol"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol eliminates the withholding tax on certain cross-border dividend payments. The proposed Protocol is one of a few recent U.S. tax agreements to provide for the elimination of the withholding tax on dividends arising from certain direct investments. In addition, the Protocol also modernizes the Convention to bring it into closer conformity with current U.S. tax-treaty policy, including strengthening the treaty's provisions preventing so-called treaty shopping.

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

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 26, 2005.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Protocol Amending the Convention between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on September 30, 2005 (the "Protocol") and a related exchange of notes.

The Protocol eliminates the withholding tax on certain cross-border dividend payments. The Protocol is one of a few recent U.S. tax agreements to provide for the elimination of the withholding tax on dividends arising from certain direct investments. In addition, the Protocol also modernizes the Convention to bring it into closer conformity with current U.S. tax-treaty policy, including strengthening the treaty's provisions preventing so-called treaty shopping. The Protocol also resolves a long-standing problem regarding the taxation of local employees of the United States Embassy in Stockholm and U.S. Consulate in Gothenburg, which had resulted in reduced pensions for such employees.

The Protocol is especially significant in light of the importance of economic relations between the United States and Sweden. The Department of the Treasury and the Department of State cooperated in the negotiation of the Protocol. It has the full approval of both Departments.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosure: Key Provisions of the U.S.-Sweden Income Tax Protocol.

KEY PROVISIONS OF THE U.S.-SWEDEN INCOME TAX PROTOCOL

The Protocol to the Income Tax Convention with Sweden was negotiated to bring the current convention, concluded in 1994, into closer conformity with current U.S. tax treaty policy. There are, as with all bilateral tax conventions, some variations from these norms. In the Protocol, these differences reflect particular aspects of Swedish law and treaty policy, the interaction of U.S. and Swedish law, and U.S.-Sweden economic relations.

The most important aspect of the Protocol relates to the taxation of cross-border dividend payments. Under the Protocol, most dividends paid by a subsidiary in one country to its parent in the other country will be exempt from withholding tax in the subsidiary's home country, rather than being subject to the current treaty's maximum withholding tax rate for direct dividends of five percent. Eliminating withholding taxes on cross-border direct dividends is consistent with an overall view that investment income should be taxed by the country of residence, not the country of source.

The Protocol also strengthens the treaty's provisions preventing so-called treaty shopping, which is the inappropriate use of a tax treaty by third-country residents.

The Protocol resolves a long-standing problem regarding the taxation of local employees of the United States Embassy in Stockholm and the U.S. Consulate in Gothenburg. The U.S. Government had reduced the salaries paid to such individuals to take account of the fact that they were exempt from Swedish income tax. As a result, their pensions, which were based on "high-three," were automatically reduced. Under the 1994 treaty, Sweden can and does tax those pensions, thereby significantly reducing the expected benefits to those former employees. The Protocol provides relief to the affected persons by providing that Sweden may not tax a pension under the U.S. Civil Service Retirement Pension Plan paid by the United States to employees of the United States Embassy or Consulate in Sweden if the individual was hired prior to 1978.

The Protocol also updates the current treaty to reflect legislative changes since 1994. For example, the Protocol provides that former citizens or long-term residents of the United States may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States.

The United States and Sweden will notify each other through the diplomatic channel, accompanied by an instrument of ratification, when their respective requirements for entry into force have been completed. The Protocol will enter into force on the thirtieth day after the later of the notifications. The Protocol will have effect, with respect to taxes withheld at source, on or after the first day of the second month following the date upon which the Protocol enters into force and with respect to other taxes, for taxable years beginning on or after the first day of January next following the date

upon which the Protocol enters into force. The Protocol shall have effect with respect to taxes on local employees of the United States Embassy in Stockholm and the U.S. Consulate in Gothenburg, on or after January 1, 1996, the effective date of the Convention.

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF SWEDEN
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of Sweden, desiring to amend the Convention between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Stockholm on September 1, 1994 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Article 1 (Personal Scope) of the Convention is amended by:

a) omitting the last sentence of paragraph 4 and substituting the following sentence:

"Notwithstanding the other provisions of this Convention, a former citizen or long-term resident of the United States may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States."; and

b) adding a new paragraph as follows:

"6. In the case of an item of income, profit or gain derived by or through a person that is fiscally transparent under the laws of either Contracting State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit, or gain of a resident."

ARTICLE II

Article 2 (Taxes Covered) of the Convention is amended by omitting subparagraph b) of paragraph 1 and substituting the following:

"b) in Sweden:

i) the national income tax;

ii) the withholding tax on dividends;

iii) the income tax on non-residents;

iv) the income tax on non-resident artistes and athletes;

v) for the purpose of paragraph 3 of this Article, the national capital tax;

vi) the excise tax imposed on insurance premiums paid to foreign insurers; and

vii) the municipal income tax."

ARTICLE III

Article 4 (Residence) of the Convention is amended by omitting paragraph 1 and substituting the following:

"1. a) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by

reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State.

b) A United States citizen or an alien lawfully admitted for permanent residence in the United States is a resident of the United States, but only if such person has a substantial presence, permanent home, or habitual abode in the United States. If such person is also a resident of Sweden under this paragraph, such person will also be treated as a United States resident under this paragraph and such person's status shall be determined under paragraph 2.

c) The term "resident of a Contracting State" includes a legal person organized under the laws of that Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:

i) exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; or

ii) to provide pensions or other similar retirement benefits pursuant to a plan."

ARTICLE IV

1. Article 10 (Dividends) of the Convention shall be omitted and the following shall be substituted:

"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. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other

Contracting State, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns shares representing at least 10 percent of the voting power in the company paying the dividends;

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

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

3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is:

a) a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividends is determined, and:

i) satisfies the conditions of clause i) or ii) of subparagraph c) of paragraph 2 of Article 17 (Limitation on Benefits);

ii) satisfies the conditions of clauses i) and ii) of subparagraph e) of paragraph 2 of Article 17, provided that the company satisfies the conditions described in paragraph 4 of that Article with respect to the dividends;

iii) is entitled to benefits with respect to the dividends under paragraph 3 of Article 17; or

iv) has received a determination pursuant to paragraph 6 of Article 17 with respect to this paragraph; or

b) a pension fund that is a resident of the other Contracting State, provided that:

i) such dividends are not derived from the carrying on of a trade or business by the pension fund or through an associated enterprise; and

ii) such pension fund does not sell or make a contract to sell the

holding from which such dividend is derived within two months of the date such pension fund acquired such holding.

For the purposes of determining whether a company is entitled to benefits with respect to the dividends under paragraph 3 of Article 17, within the meaning of clause iii) of subparagraph a) of this paragraph, the determination of whether a person owning shares, directly or indirectly, in the company claiming the benefits of this Convention is an equivalent beneficiary shall be made by treating such person as holding the same voting power in the company paying the dividends as the company claiming the benefits holds in such company.

4. a) Subparagraph a) of paragraph 2 and subparagraph a) of paragraph 3 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply only if:

i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;

ii) the dividends are paid with respect to a class of shares that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's shares; or

iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

b) For purposes of this paragraph, a REIT shall be "diversified" if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this provision, foreclosure property shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.

5. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights that is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and income from arrangements, including debt obligations, carrying the right to participate in profits to the extent so characterized under the laws of the Contracting State in which the income arises as well as, in the case of the United States, contingent interest of a type that would not qualify as portfolio interest.

6. The provisions of paragraphs 2 and 3 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 14 (Independent Personal Services), as the case may be, shall apply.

7. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as:

a) the dividends are paid to a resident of that State; or

b) the dividends are attributable to a permanent establishment or a fixed base situated in that State.

8. A religious, scientific, literary, educational, or charitable organization that is resident in Sweden and that has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

9. A company that is a resident of a Contracting State and that has a permanent establishment in the other Contracting State, or that is subject to tax in that other Contracting State on items of income that may be taxed in that other State under Article 6 (Income from Real Property) or under paragraph 1 of Article 13 (Gains), may be subject in that other Contracting State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may:

a) in the case of the United States be imposed only on:

i) the portion of the business profits of the company attributable to the permanent establishment, and

ii) the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 or paragraph 1 of Article 13,

that represents the "dividend equivalent amount" of those profits and income; the term "dividend equivalent amount" shall, for the purposes of this subparagraph, have the meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle thereof; and

b) in the case of Sweden be imposed only on that portion of the income described in subparagraph a) that is comparable to the amount that would be distributed as a dividend by a locally incorporated subsidiary.

10. The tax referred to in subparagraphs a) and b) of paragraph 9 shall not be imposed at a rate exceeding the rate specified in paragraph 2 a). In any case, it shall not be imposed on a company that:

a) satisfies the conditions of clause i) or ii) of subparagraph c) of paragraph 2 of Article 17;

b) satisfies the conditions of clauses i) and ii) of subparagraph e) of paragraph 2 of Article 17, provided that the company satisfies the conditions described in paragraph 4 of that Article with respect to an item of income, profit, or gain described in paragraph 9;

c) is entitled under paragraph 3 of Article 17 to benefits with respect to an item of income, profit, or gain described in paragraph 9; or

d) has received a determination pursuant to paragraph 6 of Article 17 with respect to this paragraph.

11. The term "pension fund" as used in this Article means any person that:

a) is organized under the laws of a Contracting State;

b) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments; and

c) is exempt from tax in that Contracting State with respect to the activities described in subparagraph b)."

2. Paragraph 5 of Article 24 (Non-Discrimination) shall be omitted and the following paragraph shall be substituted:

"5. Nothing in this Article shall be construed as preventing imposition of a tax described in paragraph 9 of Article 10 (Dividends)."

ARTICLE V

Article 17 (Limitation on Benefits) of the Convention shall be omitted and the following Article substituted:

"ARTICLE 17

Limitation on Benefits

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:

a) an individual;

b) a Contracting State or any political subdivision or local authority thereof;

c) a company, if:

i) its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:

A) its principal class of shares is primarily traded on a recognized stock exchange located in the Contracting State of which the company is a resident (or, in the case of a company resident in Sweden, on a recognized stock exchange located within the European Union or in any other European Economic Area state or in Switzerland or, in the case of a company resident in the United States, on a recognized stock exchange

located in another state that is a party to the North American Free Trade Agreement); or

B) the company's primary place of management and control is in the Contracting State of which it is a resident; or

ii) at least 50 percent of the aggregate voting power and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in subparagraph c) of paragraph 1 of Article 4 (Residence), provided that, in the case of a person described in clause ii) of that subparagraph, either:

i) more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

ii) the organization sponsoring such person is entitled to the benefits of this Convention pursuant to this Article; or

e) a person other than an individual, if:

i) on at least half the days of the taxable year at least 50 percent of each class of shares or other beneficial interests in the person is owned, directly or indirectly, by residents of the Contracting State of which that person is a resident that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph; and

ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the

person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor).

3. A company that is a resident of a Contracting State shall also be entitled to the benefits of the Convention if:

a) at least 95 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries; and

b) less than 50 percent of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor), that are deductible for the purposes of the taxes covered by this Convention in the company's State of residence.

4. a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is entitled to benefits under paragraph 2 or 3, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance, or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State or any of its associated enterprises carries on a trade or business activity in the other Contracting State which gives rise to an item of income, subparagraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State. Whether a trade or

business activity is substantial for purposes of this paragraph will be determined based on all the facts and circumstances.

c) In determining whether a person is "engaged in the active conduct of a trade or business" in a Contracting State under subparagraph a) of this paragraph, activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate voting power and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate voting power and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. Notwithstanding the preceding provisions of this Article, where an enterprise of Sweden derives insurance premiums, interest, or royalties from the United States, and, pursuant to a tax convention between Sweden and a third state, the income consisting of such premiums, interest, or royalties is exempt from taxation in Sweden because it is attributable to a permanent establishment which that enterprise has in that third state, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to such income if the tax that is actually paid with respect to such income in the third state is less than 60 percent of the tax that would have been payable in Sweden if the income were earned in Sweden by the enterprise and were not attributable to the permanent establishment in the third state. Any interest or royalties to which the provisions of this paragraph apply may be taxed in the United States at a rate that shall not exceed 15 percent of the gross amount thereof. Any insurance premiums to which the provisions of this paragraph apply will be subject to tax under the provisions of the domestic law of the United States, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of interest, as defined in Article 11 (Interest), the income from the United States is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making, managing, or simply holding investments for the enterprise's own account, unless these activities are banking, or securities activities carried on by a bank, or registered securities dealer); or

b) in the case of royalties, as defined in Article 12 (Royalties), the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself.

6. A resident of a Contracting State that is not entitled to benefits pursuant to the preceding paragraphs of this Article shall, nevertheless, be granted benefits of the Convention if the competent authority of the other Contracting State determines that the establishment, acquisition, or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits of the Convention under this paragraph.

7. For the purposes of this Article:

a) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

b) the term "disproportionate class of shares" means any class of shares of a company resident in a Contracting State that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments, or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company when compared to its participation in overall assets or activities of such company;

c) the term "shares" shall include depository receipts thereof;

d) the term "recognized stock exchange" means:

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

ii) the Stockholm Stock Exchange (Stockholmsbörsen), the Nordic Growth Market, and any other stock exchange subject to regulation by the Swedish Financial Supervisory Authority;

iii) the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Copenhagen, Frankfurt, Hamburg, Helsinki, London, Madrid, Milan, Oslo, Paris, Reykjavik, Riga, Tallinn, Toronto, Vienna, Vilnius and Zurich; and

iv) any other stock exchanges agreed upon by the competent authorities of the Contracting States;

e) a class of shares is considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or exchanges during the preceding taxable year is at least 6 percent of the average number of shares outstanding in that class during that preceding taxable year;

f) a company's primary place of management and control will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial, and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state, and the staffs conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state;

g) the term "equivalent beneficiary" means a resident of a member state of the European Union or of any other European Economic Area state or of a party to the North American Free Trade Agreement, or of Switzerland, but only if that resident:

i) A) would be entitled to all the benefits of a comprehensive tax convention between any member state of the European Union or any other European Economic Area state or any party to the North American Free Trade Agreement, or Switzerland, and the State from which the benefits of this Convention are claimed under provisions analogous to subparagraph a), subparagraph b), clause i) of subparagraph c) or subparagraph d) of paragraph 2, provided that if such convention does not contain a comprehensive limitation on benefits provision, the resident would be entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of paragraph 2 if such person were a resident of one of the Contracting States under Article 4 (Residence); and

B) with respect to insurance premiums and to income referred to in Article 10 (Dividends), 11 (Interest), or 12 (Royalties), would be entitled under such convention to a rate of tax with respect to the item of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

ii) is a resident of a Contracting State that is entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of paragraph 2;

h) with respect to dividends, interest, or royalties arising in Sweden and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of subparagraph g) i) B) for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest, or royalties arising in Sweden and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the tax convention between Sweden and that other member

state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10, 11, or 12."

ARTICLE VI

Article 20 (Government Service) shall be amended by adding the following new paragraph:

"4. Notwithstanding paragraph 2, Sweden shall not tax a pension, paid by the U.S. Government to Swedish citizens and residents (and those beneficiaries entitled to survivors benefits), if the relevant individual was hired prior to 1978 by the U.S. Government to work for the United States embassy in Stockholm or the United States consulate general in Gothenburg and was covered under the United States Civil Service Retirement pension plan."

ARTICLE VII

Article 23 (Relief from Double Taxation) of the Convention shall be amended by:

a) adding the words "or former citizen or former long-term resident" after the words "United States citizen" both in the chapeau to paragraph 3 and at the very end of subparagraph a) of paragraph 3; and

b) adding the words "or former citizenship or former long-term residency" after the word "citizenship" in clause (i) of subparagraph a) of paragraph 4.

ARTICLE VIII

1. This Protocol shall be subject to ratification in accordance with the applicable procedures of each Contracting State. Each Contracting State shall notify the other through the diplomatic channel, accompanied by an instrument of ratification, when it has completed the required procedures.

2. This Protocol shall enter into force on the 30th day after the later of the notifications, accompanied by an instrument of ratification, referred to in paragraph 1, and its provisions shall have effect:

a) in the case of the United States:

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

ii) in respect of other taxes, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force;

b) in the case of Sweden:

i) in respect of the taxes on income covered by Article VI, for income derived on or after January 1, 1996;

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

iii) in respect of other taxes, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force.

3. This Protocol shall remain in effect as long as the Convention remains in force.

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

DONE in duplicate at Washington on the 30th day of September, 2005, in the English language.

FOR THE GOVERMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF SWEDEN

DEPARTMENT OF STATE

WASHINGTON

September 30, 2005

Excellency:

I have the honor to refer to the Protocol Amending the Convention between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which was signed today, and to confirm, on behalf of the Government of the United States of America, the following understandings reached between our two Governments.

1. With reference to clause ii) of subparagraph e) of paragraph 2 of Article 17 (Limitation on Benefits) of the Convention

It is understood that in applying clause ii) of subparagraph e) of paragraph 2 of Article 17 (Limitation on Benefits) in the case of Sweden the amount of a person's deductible payments and gross income for the taxable year shall be

His Excellency

Gunnar Lund,

Ambassador of Sweden.

DIPLOMATIC NOTE

reduced by the amount of group contributions paid to a Swedish resident or Swedish permanent establishment.

2. With reference to paragraph 6 of Article 17 (Limitation on Benefits) of the Convention

It is understood that in applying paragraph 6 of Article 17 (Limitation on Benefits), the legal requirements for the facilitation of the free flow of capital and persons within the European Union, together with the differing internal income tax systems, tax incentive regimes, and existing tax treaty policies among member states of the European Union, will be considered. Under that paragraph, the competent authority is instructed to consider as its guideline whether the establishment, acquisition or maintenance of a company or the conduct of its operations has or had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority may, therefore, determine, under a given set of facts, that a change in circumstances that would cause a company to cease to qualify for treaty benefits under paragraphs 2 and 3 of Article 17 need not necessarily result in a denial of benefits. Such changed circumstances may include a change in the state of residence of a major shareholder of a company, the sale of part of the stock of a Swedish company to a person resident in another member state of the European Union, or an expansion of a company's activities in other member states of the European Union, all under ordinary business conditions. The competent authority will consider these changed circumstances (in addition to other relevant factors

normally considered under paragraph 6 of Article 17) in determining whether such a company will remain qualified for treaty benefits with respect to income received from United States sources. If these changed circumstances are not attributable to tax avoidance motives, this also will be considered by the competent authority to be a factor weighing in favor of continued qualification under paragraph 6 of Article 17.

3. With reference to Article 26 (Exchange of Information) of the Convention

It is understood that the powers of each Contracting State's competent authorities to obtain information include powers to obtain information held by financial institutions, nominees, or persons acting in an agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative, where the client seeks legal advice), and information relating to the ownership of legal persons, and that each Contracting State's competent authority is able to exchange such information in accordance with the Article.

If this is in accordance with your understanding, I would appreciate an acknowledgment from you to that effect.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

Earl Anthony Wayne

September 30, 2005

Excellency:

I have the honor to acknowledge the receipt of your letter of September 30, 2005 which reads as follows:

"I have the honor to refer to the Protocol amending the Convention between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which was signed today, and to confirm, on behalf of the Government of the United States of America, the following understandings reached between our two Governments.

1. With reference to clause ii) of subparagraph e) of paragraph 2 of Article 17 (Limitation on Benefits) of the Convention

It is understood that in applying clause ii) of subparagraph e) of paragraph 2 of Article 17 (Limitation on Benefits) in the case of Sweden the amount of a person's deductible payments and gross income for the taxable year shall be reduced by the amount of group contributions paid to a Swedish resident or Swedish permanent establishment.

2. With reference to paragraph 6 of Article 17 (Limitation on Benefits) of the Convention

It is understood that in applying paragraph 6 of Article 17 (Limitation on Benefits), the legal requirements for the facilitation of the free flow of capital and persons within the European Union, together with the differing internal income tax systems, tax incentive regimes, and existing tax treaty policies among member states of the European Union, will be considered. Under that paragraph, the competent authority is instructed to consider as its guideline whether the establishment, acquisition or maintenance of a company or the conduct of its operations has or had as one of its principal purposes the obtaining of benefits under this Convention.

Her Excellency
Ms. Condoleezza Rice,
Secretary of State
of the United States of America
Washington, D.C.

The competent authority may, therefore, determine, under a given set of facts, that a change in circumstances that would cause a company to cease to qualify for treaty benefits under paragraphs 2 and 3 of Article 17 need not necessarily result in a denial of benefits. Such changed circumstances may include a change in the state of residence of a major shareholder of a company, the sale of part of the stock of a Swedish company to a person resident in another member state of the European Union, or an expansion of a company's activities in other member states of the European Union, all under ordinary business conditions. The competent authority will consider these changed circumstances (in addition to other relevant factors normally considered under paragraph 6 of Article 17) in determining whether such a company will remain qualified for treaty benefits with respect to income received from United States sources. If these changed circumstances are not attributable to tax avoidance motives, this also will be considered by the competent authority to be a factor weighing in favor of continued qualification under paragraph 6 of Article 17.

3. With reference to Article 26 (Exchange of Information) of the Convention

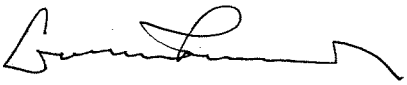
It is understood that the powers of each Contracting State's competent authorities to obtain information include powers to obtain information held by financial institutions, nominees, or persons acting in an agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative, where the client seeks legal advice), and information relating to the ownership of legal persons, and that each Contracting State's competent authority is able to exchange such information in accordance with the Article.

If this is in accordance with your understanding, I would appreciate an acknowledgment from you to that effect.

Accept, Excellency, the renewed assurances of my highest consideration."

I have the honor to confirm, on behalf of the Government of Sweden, that the references to clause ii) of subparagraph e) of paragraph 2 of Article 17, paragraph 6 of Article 17 and Article 26, as specified by you, are in accordance with our understanding.

Accept, Excellency, the renewed assurances of my highest consideration.



Gunnar Lund