

UNITED STATES - POLAND INCOME TAX CONVENTION

*Convention signed at Washington October 8, 1974;
Ratification advised by the Senate of the United States of America November 18, 1975;
Ratified by the President of the United States of America December 15, 1975;
Ratified by the Polish People's Republic June 10, 1976;
Proclaimed by the President of the United States of America July 23, 1976;
Entered into force July 22, 1976;*

GENERAL EFFECTIVE DATE UNDER ARTICLE 25: 1 JANUARY 1974

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MESSAGE

FROM
THE PRESIDENT OF THE UNITED STATES
TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO INCOME, AND A RELATED EXCHANGE OF NOTES, SIGNED AT WASHINGTON ON OCTOBER 8, 1974

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 11, 1974.

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 Polish People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Income, and a related exchange of notes, signed at Washington on October 8, 1974.

The Convention deals mainly with Federal income taxes in the case of the United States and with substantially similar income taxes specified in Article 2 (2) (a) in the case of Poland. The provision relating to nondiscrimination applies, however, to taxes of every kind imposed at the national, state, or local level.

This Convention is similar to other recent tax conventions concluded by this government. It incorporates the same basic principles with respect to the taxation of business income, personal service income and income from investments, and includes provisions for nondiscriminatory tax treatment and for reciprocal administrative cooperation.

Pursuant to this Convention profits derived by a business enterprise of one country would be subject to taxation by the other country only to the extent that the profits are attributable to a "permanent establishment" in that other country. Employees of a firm are not taxable by the host country on their personal service income unless the services are performed there during a stay lasting longer than six months during the taxable year concerned. Withholding taxes imposed on income going from one country to residents of the other country will be limited to 15 percent on portfolio dividends, 5 percent on dividends from a share holding of 10 percent or more, and 10 percent on royalties and film rentals, and interest will be exempt from tax. In the absence of a convention the United States tax rate has been 30 percent of the gross amount, and the Polish tax,

although computed at graduated rates, also reaches 30 percent of the gross amount.

A technical memorandum explaining in detail the provisions and effect of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Foreign Relations Committee for consideration in connection with the Convention.

Upon entry into force, this Convention will be effective from January 1, 1974, and will remain in force for a minimum period of five years. After the initial five year period it will remain in force indefinitely until terminated by either State.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted,

ROBERT S. INGERSOLL.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 23, 1975.*

To the Senate of the United States:

I transmit herewith, for Senate advise and consent to ratification, the Convention between the Government of the United States of America and the Government of the Polish People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Income as well as a related exchange of notes.

I also transmit for the information of the Senate, the report of the Department of State with respect to this Convention.

The Convention was signed on October 8, 1974, during the visit to Washington of Polish First Secretary Edward Gierek and is the first income tax convention between the two countries. The Convention is similar to other income tax conventions recently concluded by this Government and it is expected to encourage and support the growing interest in bilateral trade and investment between the two countries. It provides rules of tax jurisdiction, reduces or eliminates tax liability in certain cases, ensures nondiscriminatory tax treatment and provides for administrative cooperation.

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

GERALD R. FORD.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention between the United States of America and the Polish People's Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and a related exchange of notes were signed at Washington on October 8, 1974, the texts of which Convention and related notes, are hereto annexed;

The Senate of the United States of America by its resolution of November 18, 1975, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention and related notes;

The Convention and related notes were ratified by the President of the United States of America on December 15, 1975, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the Polish People's Republic on June 10, 1976;

It is provided in Article 25 of the Convention that the Convention shall enter into force thirty days after the date of exchange of instruments of ratification, with effectiveness from January 1, 1974, with respect to income;

The instruments of ratification of the Convention were exchanged at Warsaw on June 22, 1976; and accordingly the Convention and related notes, enter into force on July 22, 1976, with effectiveness from January 1, 1974, with respect to income;

NOW, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Convention and related notes, to the end that they shall be observed and fulfilled with good faith on and after July 22, 1976, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-third day of July in the year of our Lord one thousand nine hundred seventy-six and of the Independence of the United States of America the two hundred first.

By the President:

GERALD R. FORD

Henry A. Kissinger
Secretary of State

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Polish People's Republic, desiring to further expand and facilitate mutual economic relations, have resolved to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and have agreed upon the following:

ARTICLE 1
Scope of Convention

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

ARTICLE 2
Taxes Covered by the Convention

- (1) This Convention shall apply to taxes on income imposed by each Contracting State.
- (2) The taxes existing at present, to which the Convention applies, are:
 - (a) In the case of the Polish People's Republic:
 - (i) The income tax,
 - (ii) The tax on salaries and wages, and
 - (iii) The equalization tax (Surtax), and
 - (b) In the case of the United States of America, the Federal income taxes imposed by the Internal Revenue Code (other than employment taxes imposed by chapters 2 and 21).
- (3) The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.
- (4) For the purpose of Article 21, this Convention shall also apply to taxes imposed at the national, state, or local level, subject to any limitation contained in paragraph (4) of Article 21.
- (5) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (2) and of the adoption of any taxes referred to in paragraph (3) by transmitting the texts of any amendments or new statutes at least once a year.

ARTICLE 3
General Definitions

(1) In this Convention, unless the context otherwise requires:

(a) The term "Poland" means the Polish People's Republic, and when used in a geographical sense the term "Poland" includes:

(i) The territorial sea thereof, and

(ii) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Poland exercises Sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(b) The term "United States" means the United States of America, and when used in a geographical sense the term "United States" means the States thereof and the District of Columbia and also includes:

(i) The territorial sea thereof, and

(ii) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(c) The terms "Contracting State" and "the other Contracting State" mean the Polish People's Republic or the United States of America as the context requires.

(d) The term "person" includes an individual, a trustee or administrator, a company or juridical person, and any other body of persons.

(e) The term "company" means any corporate body or any entity which is treated as a corporate body for tax purposes.

(f) (i) The term "Polish company" means a corporation, or any unincorporated entity treated as a Polish corporation for purposes of Polish tax, which is created or organized under the laws of Poland; and

(ii) The term "United States company" means a corporation, or any unincorporated entity treated as a United States corporation for purposes of United States tax, which is created or organized under the laws of the United States or any state thereof or the District of Columbia.

(g) The term "resident of Poland" means:

(i) A Polish company, and

(ii) Any person (except a company or any entity treated under Polish law as a company) resident in Poland for purposes of its tax, but in the case of a partnership, trustee or administrator only to the extent that the income derived by such person in that capacity is subject to Polish tax as the income of a resident.

(h) The term "resident of the United States" means:

(i) A United States company, and

(ii) Any person (except a company or any entity treated as a corporation for United States tax purposes) resident in the United States for purposes of its tax, but in the case of a partnership, trustee or administrator only to the extent that the income derived by such person in that capacity is subject to United States tax

as the income of a resident.

(i) 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.

(j) The term "competent authority" means:

(i) In the case of Poland, the Minister of Finance; and

(ii) In the case of the United States, the Secretary of the Treasury or his delegate.

(k) The term "State" means any national State, whether or not one of the Contracting States.

(l) The term "tax" means any tax imposed by the United States or Poland, whichever is applicable, to which this Convention applies by virtue of Article 2.

(m) The term "international traffic" means any voyage of a ship or aircraft operated by a resident of a Contracting State except where such voyage is confined solely to places within that Contracting State.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of this Convention.

ARTICLE 4 Fiscal Residence

Where by reason of the provisions of paragraphs (1) (g) and (h) of Article 3 an individual is a resident of both Contracting States:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests)

(b) If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode; and

(c) If he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen.

ARTICLE 5

General Rules of Taxation

- (1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention.
- (2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded -
 - (a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or
 - (b) By any other agreement between the Contracting States.
- (3) Notwithstanding any provisions of this Convention except paragraph (4), a Contracting State may tax a citizen of that Contracting State or a resident (as determined under Article 4) of that Contracting State as if this Convention had not come into effect.
- (4) The provisions of paragraph (3) shall not affect:
 - (a) The benefits conferred by a Contracting State under Articles 20, 21, and 22;
and
 - (b) The benefits conferred by a Contracting State under Articles 17, 18, 19, and 24 upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.
- (5) The competent authorities of the two Contracting States may prescribe regulations necessary to carry out the provisions of this Convention.

ARTICLE 6

Permanent Establishment

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include especially:
 - (a) A branch;
 - (b) An office;
 - (c) A factory;
 - (d) A workshop;
 - (e) A mine, quarry, or other place of extraction of natural resources;
 - (f) A building site or construction or assembly project which exists for more than 18 months.
- (3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:
 - (a) The use of facilities 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 for the purpose of storage, display, or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of processing or reprocessing by another enterprise;
- (d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
- (e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such person is acting in the ordinary course of his business, whether or not such broker or agent acts exclusively for one or more principals.

(6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such enterprise sells at the termination of a trade fair in such other Contracting State goods or merchandise which such enterprise displayed at such trade fair.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

ARTICLE 7

Income from Real Property

(1) Income from real property, including royalties and other payments in respect of the exploitation of natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties or other payments, may be taxed by the Contracting State in which such real property or natural resources are situated. For purposes of this Convention, interest on indebtedness secured by real property or secured by a right giving rise to royalties or other payments in this respect of the exploitation of natural resources shall not be regarded as income from real property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use

in any other form of real property.

ARTICLE 8 Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only by that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed by the other Contracting State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment, or by the enterprise of which it is a permanent establishment, of goods or merchandise for the enterprise.

(5) Where profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supercede the provisions of this Article.

ARTICLE 9 Shipping and Air Transport

(1) Notwithstanding Articles 8 and 14, income which a resident of Poland derives from the operation in international traffic of ships or aircraft shall be exempt from tax by the United States.

(2) Notwithstanding Articles 8 and 14, income which a resident of the United States derives from the operation in international traffic of ships or aircraft registered in the United States shall be exempt from tax by Poland.

(3) For purposes of this Article, income derived from the operation in international traffic of ships or aircraft also includes-

(a) Income derived from the charter of ships or aircraft operated in international traffic if such income is supplementary to other income described in paragraph (1) or (2); and

(b) Income derived from the use, maintenance, and lease of -

(i) Containers,

(ii) Trailers for the inland transport of containers,

(iii) Lighters operated in the lighters-aboard-ship system, and

(iv) Other related equipment in connection with the operation in international traffic of ships or aircraft by the resident described in paragraph (1) or (2).

ARTICLE 10 Related Persons

(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 in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where an adjustment has been made by one Contracting State to the income of one of its residents in accordance with paragraph (1), then the other Contracting State shall, if it agrees with such redetermination, make a corresponding adjustment to the income of a person in such other Contracting State related to such resident. In the event the other Contracting State disagrees with such redetermination, the two Contracting States shall endeavor to reach agreement in accordance with the mutual agreement procedure in Article 22.

ARTICLE 11 Dividends

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

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the recipient is a company which holds directly at least 10 percent of the outstanding shares of the voting stock of

the company paying the dividends,

(b) In all other cases, 15 percent of the gross amount of the dividends.

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

(3) The provisions of paragraph (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 8 shall apply.

ARTICLE 12

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax by the first-mentioned Contracting State.

(2) Paragraph (1) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, the provisions of Article 8 shall apply.

(3) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(4) The term "interest" as used in this Convention means income from bonds, debentures, Government securities, notes, or other evidence of indebtedness, whether or not secured and whether or not carrying a right to participate in profits, and debt claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income arises, is assimilated to income from money lent.

(5) Interest shall be treated as arising in a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence-

(a) If the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, or

(b) If the person paying the interest is a resident of one of the Contracting States and has a permanent establishment in a State other than a Contracting State in connection

with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment, such interest shall be deemed to arise in the State in which the permanent establishment is situated.

ARTICLE 13 Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable by that other Contracting State.

(2) Royalties may be taxed in the Contracting State where they arise, and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the royalty.

(3) The term “royalties” as used in this Article means-

(a) Payments of any kind received as consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including copyrights of motion picture films or radio or television broadcasting tapes, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience or skill (know-how), and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(4) The provisions of paragraph (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 8 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State only to the extent that such royalties are payments made as consideration for the use of, or the right to use, property or rights described in paragraph (3) within that Contracting State.

(6) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14
Capital Gains

(1) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets unless-

(a) The gain is derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of property described in Article 7 situated within the other Contracting State,

(b) The recipient of the gain, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the property giving rise to the gain is effectively connected with such permanent establishment, or

(c) The recipient of the gain, being an individual who is a resident of one of the Contracting States is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) In the case of gains described in paragraph (1) (a), see Article 7. In the case of gains described in paragraph (1) (b), the provisions of Article 8 shall apply.

ARTICLE 15
Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities may be taxed by that Contracting State. Except as provided in paragraph (2), such income shall be exempt from tax by the other Contracting State.

(2) Income described in paragraph (1) which is derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State if the individual is present in that other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(3) The term "professional services" includes especially independent scientific, literary, and artistic activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists, journalists, and others.

ARTICLE 16
Dependent Personal Services

(1) Salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only by that Contracting 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 by the other Contracting 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 by the first-mentioned Contracting State if:

(a) The recipient is present in the other Contracting State for a period or periods in the aggregate less than 183 days during the taxable year concerned, and

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and

(c) The remuneration is not borne by a permanent establishment which the employer has in the other Contracting State.

(3) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

ARTICLE 17

Teachers

(1) Where a resident of one of the Contracting States is invited by the Government of the other Contracting State, a political subdivision or a local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed 2 years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution shall be exempt from tax by that other Contracting State for a period not exceeding 2 years from the date of his arrival in that other Contracting State.

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

ARTICLE 18

Students and Trainees

(1) (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of-

(i) Studying at a university or other recognized educational institution in that other Contracting State, or

(ii) Securing training required to qualify him to practice a profession or professional specialty, or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) are-

(i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(ii) The grant, allowance, or award;

(iii) Any other payment from the Contracting State of which the individual is a resident, except income from the performance of personal services; and

(iv) Income from personal services performed in that other Contracting State in an amount not in excess of 2,000 United States dollars or its equivalent in Polish zlotys for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of-

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or

(b) Studying at a university or other recognized educational institution in that other Contracting State, shall be exempt from tax by that other Contracting State for a period not exceeding 1 year with respect to his income from personal services in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Polish zlotys.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study; shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Polish zlotys.

(4) The benefits provided under Article 17 and paragraph (1) of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit. The benefits provided under Article 17 shall not be available to an individual if, during the immediately preceding period, such individual enjoyed the benefits of paragraph (1) of this Article.

ARTICLE 19

Governmental Functions

(1) Wages, salaries, and similar remuneration, including pensions, annuities, or similar

benefits, paid from public funds of one of the Contracting States to a citizen of that Contracting State for labor or personal services performed as an employee of the national Government of that Contracting State, or any agency thereof, in the discharge of functions of a governmental nature shall be exempt from tax by the other Contracting State.

(2) Labor or personal services performed by a citizen of one of the Contracting States shall be treated by the other Contracting State as performed in the discharge of governmental functions if such labor or personal services would be treated under the internal laws of both Contracting States as so performed.

ARTICLE 20 Relief from Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of Poland (as it may be amended from time to time without changing the general principles hereof), Poland shall allow to a resident of Poland as a credit against the Polish tax the appropriate amount of taxes paid to the United States.

(2) 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 principles hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid to Poland and, in the case of a United States company owning at least 10 percent of the voting power of a Polish company from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid to Poland by the Polish company paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Poland, but the credit shall not exceed that portion of the United States tax which such citizen's or resident's net income from sources within Poland or on income from sources outside of the United States bears to his entire net income for the same taxable year. For purposes of applying the United States credit in relation to taxes paid to Poland, the taxes referred to in paragraph (2) (a) of Article 2 shall be considered to be income taxes.

ARTICLE 21 Nondiscrimination

(1) A citizen of a Contracting State who is a resident of the other Contracting State shall not be subject in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other Contracting State in the same circumstances are or may be subjected.

(2) A permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome

taxation than a permanent establishment of a resident of a third State carrying on the same activities. However, this paragraph shall not require a Contracting State to grant to permanent establishments of residents of the other Contracting State tax benefits granted by special agreements to permanent establishments of a third State.

(3) A company of one of the Contracting States, 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 Contracting State to any taxation or any requirement connected with taxation which is other or more burdensome than the taxation and requirements to which a company of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly or partly owned or controlled by one or more residents of a third State, is or may be subjected. However, this paragraph shall not require a Contracting State to grant to companies which are wholly or partly owned by residents of the other Contracting State tax benefits granted by special agreements to companies which are wholly or partly owned by residents of a third State.

(4) In this Article the term "taxation" means taxes of every kind and description, with the exception of the Treasury residence registration fee (opłata skarbową za zameldowanie). The contribution for the retirement fund (składka na cele emerytalne) made by Polish citizens shall be regarded as a tax.

ARTICLE 22

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen.

(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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

(3) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income in accordance with the agreement. Notwithstanding any procedural rule

(including statutes of limitations) applicable under the law of either Contracting State, refund or credit of taxes shall be allowed, as appropriate, by the Contracting States in accordance with such agreement.

ARTICLE 23 Exchange of Information

(1) The competent authorities shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions concerning taxes to which this Convention applies, provided the information is of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(2) Any information so exchanged shall be treated as secret, except that such information may be-

(a) Disclosed to any person concerned with, or

(b) Made part of a public record with respect to, the assessment, collection, or enforcement of, or litigation with respect to, the taxes to which this Convention applies.

(3) No information shall be exchanged which would be contrary to public policy.

(4) 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 copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(5) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

ARTICLE 24 Diplomatic and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials of the other Contracting State under the general rules of international law or under the provisions of special agreements.

ARTICLE 25 Entry into Force

This Convention is subject to ratification and shall enter into force 30 days after the date of

exchange of the instruments of ratification, which shall be done at Warsaw. The provisions of the Convention shall have effect with respect to income of calendar years or taxable years beginning (or in the case of taxes payable at the source, payments made) on or after January 1, 1974.

ARTICLE 26
Termination

(1) This Convention shall remain in force for an indefinite period of time. It may be terminated after 5 years from the date of entry into force provided that 6-months prior notice of termination has been given.

(2) In the case of termination the Convention shall cease to have force with regard to income of calendar years or taxable years beginning (or in the case of taxes payable at the source, payments made) on or after January 1, next following the expiration of the 6-month period.

DONE at Washington this 8th day of October, 1974, in duplicate, in the English and Polish languages, the two texts having equal authenticity.

*For the Government of the
United States of America:*
(s) Henry A. Kissinger,
Secretary of State

*For the Government of the
Polish People's Republic:*
(s) Stephan Olszowski
Minister of Foreign Affairs.

NOTES OF EXCHANGE

DEPARTMENT OF STATE,
Washington, October 8, 1974.

His Excellency, STEFAN OLSZOWSKI,
Minister of Foreign Affairs of the Polish People's Republic

EXCELLENCY: I have the honor to refer to the Income Tax Convention between the Government of the United States and the Government of the Polish People's Republic signed today in Washington. During the course of negotiations, the question arose as to the effect of the Convention upon the income taxes imposed by the states of the United States.

In that connection, I should like to note that the individual states of the United States each have Constitutional authority to impose taxes within certain limitations. In light of this authority, the Government of the United States has not considered it appropriate to enter into income tax conventions which restrict or limit state taxes except to prohibit any state from imposing discriminatory taxes.

A review of the tax laws of the states of the United States indicates that these laws generally operate in such a manner that a resident of Poland entitled to a reduced rate of tax or to tax

exemption under the Convention would not be subject to tax by the individual states. This is also the case as concerns Polish enterprises engaged in international traffic of ships or aircraft. Nevertheless, I should like to assure you that if necessary, the tax authorities of the United States will use their best efforts to secure exemption from any income taxes that may be imposed by any of the states of the United States on such shipping or airline enterprises.

Accept, Excellency, the assurances of my highest consideration.

(s) Henry A. Kissinger,
*Secretary of State of the
United States of America.*

[TRANSLATION]

EMBASSY OF THE POLISH PEOPLE'S REPUBLIC,
Washington, October 8, 1974.

His Excellency, HENRY A. KISSINGER,
Secretary of State of the United States of America

EXCELLENCY: I have the honor to acknowledge the receipt of your letter dated October 8, 1974, which reads as follows:

“EXCELLENCY: I have the honor to refer to the Income Tax Convention between the Government of the United States and the Government of the Polish People's Republic signed today in Washington. During the course of negotiations, the question arose as to the effect of the Convention upon the income taxes imposed by the states of the United States.

In that connection, I should like to note that the individual states of the United States each have Constitutional authority to impose taxes within certain limitations. In light of this authority, the Government of the United States has not considered it appropriate to enter into income tax conventions which restrict or limit state taxes except to prohibit any state from imposing discriminatory taxes.

A review of the tax laws of the states of the United States indicates that these laws generally operate in such a manner that a resident of Poland entitled to a reduced rate of tax or to tax exemption under the Convention would not be subject to tax by the individual states. This is also the case as concerns Polish enterprises engaged in international traffic of ships or aircraft. Nevertheless, I should like to assure you that if necessary, the tax authorities of the United States will use their best efforts to secure exemption from any income taxes that may be imposed by any of the states of the United States on such shipping or airline enterprises.

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

I have the honor to acknowledge the receipt of the assurances contained in the above text.

Accept, Excellency, the expression of my highest consideration.

(s) Stefan Olszowski,
Minister of Foreign Affairs, Polish People's Republic.