

Agreement
between
the Government of the Slovak Republic
and the Government of the Democratic Socialist Republic of Sri Lanka
for the Elimination of Double Taxation with respect to Taxes on Income
and the Prevention of Fiscal Evasion and Avoidance

The Government of the Slovak Republic and the Government of the Democratic Socialist Republic of Sri Lanka, hereinafter referred to as “Contracting State” or “Contracting States”, as the context requires,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude the Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through fiscal evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third states),

Have agreed as follows:

Article 1
Persons Covered

(1) This Agreement shall apply to persons who are residents of one or both of the Contracting States.

(2) For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State.

(3) This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under, paragraph 2 of Article 9 and Articles 19, 20, 22, 23, 24 and 26.

Article 2

Taxes Covered

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

(3) The existing taxes to which the Agreement shall apply are in particular:

a) in the Slovak Republic:

(i) the tax on income of individuals,

(ii) the tax on income of legal persons,

b) in Sri Lanka:

the income tax, including the income tax payable as a percentage of turnover of enterprises that entered into agreements with the Board of Investment.

(4) The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General Definitions

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

a) the term “the Slovak Republic”, means the Slovak Republic and, used in a geographical sense, means its territory, within which the Slovak Republic exercises its sovereign rights and jurisdiction, in accordance with the rules of international law;

b) the term “Sri Lanka” means the territory of the Democratic Socialist Republic of Sri Lanka as defined in the Constitution, including its land territory, internal waters and territorial sea, air space above them as well as the exclusive economic zone and continental shelf where the Democratic Socialist Republic of Sri Lanka exercise or may hereafter exercise sovereign rights and jurisdiction in conformity with international law and its national legislation;

c) the terms “a Contracting State” and “the other Contracting State” mean the Slovak Republic and the Democratic Socialist Republic of Sri Lanka as the context requires;

d) the term “person” includes an individual, a company and any other body of persons;

e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term “enterprise” applies to the carrying on of any business;

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

h) the term “competent authority” means:

(i) in the Slovak Republic, the Ministry of Finance of the Slovak Republic or its authorized representative,

(ii) in Sri Lanka, the Commissioner General of Inland Revenue or an authorised representative of the Commissioner General,

i) the term “international traffic” means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that Contracting State,

j) the term “national”, in relation to a Contracting State, means:

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

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

k) the term “business” includes the performance of professional services and of other activities of an independent character.

l) the term “recognised pension fund” of a Contracting State means an entity or arrangement established in that Contracting State that is treated as a separate person under the taxation laws of that Contracting State and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

(2) As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 24, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4

Resident

(1) For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof as well as a recognised pension fund of that Contracting State. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

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

- a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

Article 5

Permanent Establishment

(1) For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;

- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of exploration and extraction of natural resources.

(3) The term „permanent establishment” also encompasses:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned;

(4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

(5) Paragraph 4 of this Article shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

(6) Notwithstanding the provisions of paragraphs 1 and 2 of this Article but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person

a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

(i) in the name of the enterprise, or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

(iii) for the provision of services by that enterprise,

unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 of this Article would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that Contracting State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.

(7) Paragraph 6 of this Article shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

(8) 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 either company a permanent establishment of the other.

(9) For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the

beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

(10) For the sole purpose of determining whether the six-month period referred to in subparagraph a) of paragraph 3 of this Article has been exceeded,

(a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction, assembly or installation project or supervisory activities in connection therewith and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding six months, and

(b) connected activities are carried on at the same building site, or construction, assembly or installation project or supervisory activities in connection therewith, during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, assembly or installation project or supervisory activities in connection therewith.

Article 6

Income from Immovable Property

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

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

Article 7

Business Profits

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

(2) Subject to the provisions of paragraph 3 of this Article, 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

(5) For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

(1) Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.

(2) Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that Contracting State unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other Contracting State. The profits to be taxed in that other Contracting State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by 50 per cent.

(3) The provisions of paragraphs 1 and 2 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

(1) Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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

(2) Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, if it considers such adjustment justified both in principle and as regards the amount. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

(3) The provisions of paragraph 2 of this Article shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1 of this Article, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10

Dividends

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

(2) However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting 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) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

b) 10 per cent 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) The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs 1 and 2 of this Article 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 Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

Article 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, interest arising in a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by:

a) in the case of the Slovak Republic:

- (i) the Government of the Slovak Republic,
- (ii) the local authorities,
- (iii) Národná banka Slovenska (the National Bank of Slovakia),
- (iv) Eximbanka SR (Export-Import Bank of the Slovak Republic),
- (v) Slovenská záručná a rozvojová banka, a. s., (Slovak Guarantee and Development Bank),
- (vi) Agentúra pre riadenie dlhu a likvidity (Debt and Liquidity Management Agency),

b) in the case of Sri Lanka:

- (i) the Government of Sri Lanka,
- (ii) the local authorities,
- (iii) the Central Bank of Sri Lanka,
- (iv) any financial institution fully controlled or wholly owned by the Government of Sri Lanka.

(4) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other state independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article 12

Royalties and Fees for Technical Services

(1) Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, royalties and fees for technical services arising in a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

(3) a) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting and other means of image or sound reproduction, any patent, trademark, design or model, plan, secret formula or process, software, or for the use of, or the right to use, industrial (including ships, aircraft and containers), commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

b) The term “fees for technical services” as used in this Article means any payments in consideration for any service of technical, consultancy or managerial nature, but does not include payments for services mentioned in sub-paragraph a) of paragraph 3 of Article 5 and in Articles 8, 15, 16, 17 and 19. The term does not include also payments made by an individual for services furnished for the purpose of the personal use of the individual and payments for teaching made to or by educational institutions.

(4) The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein or performs in that other state independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services are paid is effectively connected

with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, having regard to the use, right, information or service for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

(3) Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

(4) Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other Contracting State.

(5) Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4 of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

(1) Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

(2) The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16,18 and 19 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 in that other Contracting State.

(2) Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal 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 or a fixed base which the employer has in the other Contracting State.

(3) In the computation of the periods mentioned in sub-paragraph (a) of paragraph 2 of this Article, the following days shall be included:

- a) all days of physical presence including days of arrivals and departures, and
- b) days spent outside the Contracting State of activity such as Saturdays and Sundays, national holidays, holidays, and business trips directly connected with the employment of the recipient in that Contracting State, after which the activity was resumed in the territory of that Contracting State.

(4) Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned Contracting State.

Article 16

Directors' Fees

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

Article 17

Entertainers and Sportspersons

(1) Notwithstanding the provisions of Articles 14 and 15 of this Agreement income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19

Government Service

- (1) a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State who:

- (i) is a national of that Contracting State, or
- (ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.

(2) a) Notwithstanding the provisions of paragraph 1 of this Article, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

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

(3) The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Professors and Students

(1) Payments which a student, apprentice, or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State for the purpose of his education or training receives for the purpose of his maintenance, education, or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.

(2) A professor, teacher or researcher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his/her arrival in that other Contracting State.

(3) The paragraph 2 of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 21

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

(2) The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

(4) Income shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the income, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the income was incurred, and such income is borne by such permanent establishment or fixed base, then such income shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

Article 22

Elimination of Double Taxation

(1) Where a resident of a Contracting State derives income which may be taxed in the other Contracting State in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by that other Contracting State solely because the income is also income derived by a resident of that Contracting State), the first mentioned Contracting State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Contracting State.

Such deduction in either case shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in that other Contracting State.

(2) Where in accordance with any provision of the Agreement income derived by a resident of a Contracting State is exempt from tax in that Contracting State, such Contracting State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

(3) Notwithstanding the provisions of paragraph 1 of this Article, the exemption method may also be applicable in a Contracting State provided that its domestic laws allow so and in accordance with these laws.

Article 23

Non-Discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than

the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected.

(2) Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the Contracting State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

(3) The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

(5) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

(6) This Article shall apply to taxes which are covered by this Agreement.

Article 24

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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

Article 25

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1 of this Article, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the supplying Contracting State authorises such use.

(3) In no case shall the provisions of paragraphs 1 and 2 of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 27

Entitlement to Benefits

(1) Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Agreement (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 24) unless such resident is a “qualified person”, as defined in paragraph 2, at the time that the benefit would be accorded.

(2) A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Agreement if, at that time, the resident is:

a) an individual;

b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that Contracting State, political subdivision or local authority;

c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;

d) a person, other than an individual, that

(i) is an entity or organisation that is established and is operated exclusively for charitable, religious, humanitarian, scientific, educational, cultural, social, environmental, public health or similar purposes (or for more than one of those purposes), provided that all or part of its income may be exempt from tax under the domestic law of that Contracting State;

(ii) is a recognised pension fund;

e) a person other than an individual, if at that time and on at least half the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to the benefits of this Agreement under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

(3) a) Regardless of whether the resident is a qualified person a resident of a Contracting State shall be entitled to benefits under this Agreement with respect to an item of

income derived from the other Contracting State , if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State and the income derived from the other Contracting State emanates from, or is incidental to, that business. For the specific purpose of this Article, the interpretation of the term „active conduct of a business” shall not include the following activities or any combination thereof:

(i) operating as a holding company;

(ii) providing overall supervision or administration of a group of companies;

(iii) providing group financing (including cash pooling); or

(iv) making or managing investments, unless these activities are carried on by a bank or financial institutions similar to banks, insurance enterprise or registered securities dealer in the ordinary course of its business as such.

b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned Contracting State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State.

c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

(4) A resident of a Contracting State that is not a qualified person shall nevertheless be entitled to a benefit that would otherwise be accorded by this Agreement with respect to an item of income if, at the time when the benefit otherwise would be accorded and on at least half of the days of any twelvemonth period that includes that time, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the shares of the resident.

(5) If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of this Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Agreement. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other Contracting State, shall consult with the competent authority of that other Contracting State before either granting or denying the request.

(6) For the purposes of this and the previous paragraphs of this Article:

a) the term “recognised stock exchange” means:

(i) any stock exchange established and regulated as such under the laws of either Contracting State; and

(ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

b) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;

c) the term “principal class of shares” means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;

d) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) in each person. In any case, a person shall 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.

e) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, this Agreement or any other international agreement which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Agreement. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds.

(7) Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

Article 28

Entry into Force and Amendment

(1) This Agreement shall be ratified in accordance with the internal legal procedures of both Contracting States and shall enter into force on first day of the third month following date of receipt of later diplomatic note confirming that the internal legal procedures have been

completed. The provisions of this Agreement shall thereupon have effect in both Contracting States

a) in respect of taxes withheld at source, to amounts of income paid or credited on or after the first day of January of the calendar year following the year in which this Agreement enters into force,

b) in respect of other taxes, to such taxes as will be imposed for any tax periods beginning on or after the first day of January of the calendar year following the year in which this Agreement enters into force.

(2) This Agreement may be amended by mutual written consent of the Contracting States at any time. The amendments shall enter into force in accordance with the same legal procedure prescribed under paragraph 1 of this Article.

(3) The Convention between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of Sri Lanka for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and property signed at Colombo on July 26, 1978, shall cease to be in force and in effect in relation between the Slovak Republic and Sri Lanka on the date of the entry into effect of this Agreement.

Article 29

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either of the Contracting States may terminate the Agreement, through diplomatic channels by giving written notice of termination, at least six months before the end of any calendar year following after the period of at least five years from the date on which this Agreement enters into force. In such event, the Agreement shall cease to have effect in both Contracting States

a) in respect of taxes withheld at source, to income paid or credited on or after the first day of January in the calendar year next following the year in which the notice of termination is given,

b) in respect of other taxes, in any tax year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done in duplicate at this day of..... 20...., each in the Slovak, Sinhala and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the Government of the Slovak Republic

For the Government of the Democratic
Socialist Republic of Sri Lanka

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