

出國報告（出國類別：國際會議）

參加經濟合作暨發展組織(OECD)及
馬來西亞內地稅務局聯合舉辦之
「租稅協定談判」研討會會議報告

服務機關：財政部

姓名職稱：科員 吳珍菊

派赴國家：馬來西亞

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摘 要

為使各國處理租稅協定業務官員掌握國際租稅協定最新發展趨勢，瞭解租稅協定談判實務政策與技術議題，並增進租稅協定談判技巧，馬來西亞內地稅務局與經濟合作暨發展組織(Organization for Economic Cooperation and Development, OECD) 於 107 年 3 月 12 日至 16 日聯合舉辦「租稅協定研討會」。

本報告第一部分介紹租稅協定談判技巧，包括各階段工作重點、談判策略與因應方式、可運用談理論點及談判過程應注意事項等；第二部分介紹分組模擬雙邊租稅協定談判情形及 OECD 官員建議事項。最後，分享本次出國參加會議心得並提出若干建議。

參加經濟合作暨發展組織(OECD)及馬來西亞內地稅務局聯合舉辦之「租稅協定談判」研討會
會議報告

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壹、緣起及目的

經濟合作暨發展組織 (Organization for Economic Co-operation and Development, OECD) 成立於 1961 年，總部設於法國巴黎，目前有 35 個會員國，包括澳大利亞、奧地利、比利時、加拿大、智利、捷克、丹麥、愛沙尼亞、芬蘭、法國、德國、希臘、匈牙利、冰島、愛爾蘭、以色列、義大利、日本、韓國、拉脫維亞、盧森堡、墨西哥、荷蘭、紐西蘭、挪威、波蘭、葡萄牙、斯洛伐克、斯洛維尼亞、西班牙、瑞典、瑞士、土耳其、英國及美國 (以國名英文字首排列) 。 OECD 成立目的為藉由跨國合作推動促進經濟繁榮穩定及各國間和諧發展政策。

馬來西亞內地稅務局 (Inland Revenue Board of Malaysia, IRBM) 於 1994 年 9 月成立馬來西亞租稅學院 (Malaysia Tax Academy) ，位於首都吉隆坡近郊，作為培育專業租稅人才之搖籃，該局自 2010 年起，定期邀請我國參加其與 OECD 聯合舉辦之租稅研討會。本次會議主要目的為增進各國從事租稅協定業務官員談判技巧，並透過模擬演練以瞭解實務談判可能面臨問題及因應方式，另外，模擬談判案例亦納入 2017 年 OECD 稅約範本最新條文，有助各國代表對該等條文有更進一步之瞭解。

貳、議程及與會人員

本研討會期間為 107 年 3 月 12 日至 16 日，出席代表多為負責租稅協定業務或政策制定官員。除地主國馬來西亞（5 名）外，其他與會國家代表有柬埔寨（2 名）、斐濟（1 名）、我國（1 名）、香港特別行政區（1 名）、迦納（2 名）、印尼（1 名）、肯亞（1 名）、馬爾地夫（2 名）、模里西斯（1 名）、尼泊爾（1 名）、菲律賓（3 名）、塞席爾（1 名）及斯里蘭卡（1 名），共計 23 名。

本次會議由 OECD 官員 Mr. David Partington 擔任租稅協定談判主講人，另邀請五位租稅協定談判專家擔任各組指導員(Resource Person)，分別為 OECD 官員 Mr. Andrew Dawson、挪威財政部官員 Ms. Johanne Rian、德國財政部官員 Mr. Michael Kiesewetter、愛爾蘭稅務局官員 Ms. Ann O’Driscoll 及 Ms. Marta Alvarez。研討會進行方式係由 Mr. David Partington 簡介租稅協定談判技巧，隨後進入分組準備時間，討論當天應進行談判條文，並分成上下午兩場分組模擬談判，最後由各組當天主談人分享談判進度，再由談判指導員總結各組談判過程優缺點。

在 5 天密集會議中，經由專家們深入闡述租稅協定條文及分享豐富實務談判經驗，並透過分組模擬談判，使各國與會者對租稅協定談判技巧及各條文論述要點有更進一步認識，有助未來應用於實際談判會議，以促進國際租稅交流。

叁、會議討論議題

主題一、租稅協定談判技巧

主講人: OECD 資深專家 Mr. David Partington

一、租稅協定談判

(一) 租稅協定談判步驟

1. 取得部長級首長批准以啟動談判。
2. 雙方初步接觸：交換各自租稅協定範本及排定第一回合談判期程。
3. 談判前準備：
 - (1) 分析與對方國家經濟關係及所得流量情形。
 - (2) 分析對方國家租稅制度及已締結租稅協定內容。
 - (3) 談判前徵詢其他政府部門及利益團體意見：外交部亦涉入特定技術議題之協定談判，例如協定架構、簽署主體、領域及國家定義等，另包括協定談判全部完成時製作簽署文本、洽定正式簽署日期、安排簽署儀式等。

充分準備為協定談判成敗與否關鍵，即便經驗豐富談判代表，仍須做足談判前準備，包括介紹我方條文內容、引用稅約範本註釋、可能爭點、對方可能提出的反駁論點及如何回應反駁論點等。而談判經驗較少者，在談判過程中做筆記非常重要，筆記的好處在於一方面幫助自己回憶和記憶，有助於對方發言完畢後，就某些問題向對方提出質詢，同時也幫助自己做充分分析，理解對方論點確切含義；另一方面筆記亦確保所準備論點能在談判時充分闡述。在談判過程中，要接受和處理大量訊息，加上談判現場氣氛很緊張，即使記憶力再好也僅能記住大概內容，須記下雙方爭點及回應內容；該談判筆記亦有助未來其他協定之談判。

4. 第一回合談判：通常進行兩回合租稅協定談判，第一回合處理容易達成共識議題，包括陳述各條文立場、協定政策及特殊議題；著重於確認雙方同意項目、取得資訊、闡述立場及建立友好合作關係。雙方於第二回合談判

前可對第一回合未達成共識議題做更深入研究並進一步準備論點，正式談判前雙方可能需進行一次或幾次非正式討論。

- 5.第二回合談判：著重解決未達共識議題。
- 6.草簽協定：雙方談判代表於草案簽名表示對協定草案已取得一致性意見，但不代表雙方政府已同意，爰該草簽協定文本仍須攜回經各自政府同意後始安排正式簽署儀式。
- 7.翻譯協定文本為各自官方語言、決定簽署日期及地點。
- 8.準備簽署文本、正式簽署協定。
- 9.雙方締約國國會核准所簽署協定。
- 10.雙方各自通知對方完成使協定生效之國內法律程序，使協定生效。

(二) 如何算是一個「好的租稅協定」

- 1.儘可能符合雙方的利益：當提出草案具防止協定濫用功能，可提醒對方該草案係可避免納稅義務人濫用及保護雙方政府稅收，使對方意識該提案亦有利己方。
- 2.雙方都可接受：協定須於雙方均可接受之前提下，方可長期執行，舉例而言，我方草案工程常設機構(PE)範圍包括裝配及監督活動，倘對方不欲納入前述活動，除可引述 OECD 稅約範本註釋¹維護我方立場外，亦可提醒未納入恐造成納稅義務人分割工程活動以規避所得來源地國稅負。
- 3.可通過時間考驗：當研擬各條款內容時，應將未來可能變化情況納入考量。
- 4.可改善雙方關係：應避免佔盡所有便宜，倘一方得到其想要的協定內容，而他方認為協定內容對其非常不利，可能導致他方不欲使該協定生效。雙方須接受談判結果雖未獲得最高利益，然仍為所能獲致之最佳結果。協定談判不是一場競賽，應考慮對方情況，共締雙贏局面。

(三) 成功談判涉及要素

¹ OECD 稅約範本第 5 條註釋第 50 節後段：On-site planning and supervision of the erection of a building are covered by paragraph 3. States wishing to modify the text of the paragraph to provide expressly for that result are free to do so in their bilateral conventions.

1. 縮小立場歧異：確保雙方對條文草案有共同理解，引用 OECD 稅約範本註釋，使雙方對條文內容具共同認知。找出雙方立場差異處，參考他方其他協定內容，建立我方論述立場。
2. 符合雙方需要：分析雙方需求時，應先理解問題所在及對方主張原因，在雙方未充分討論議題以瞭解問題時，不應驟然達成任何決定。
3. 揭露資訊：揭露資訊對說服對方接受我方立場非常重要，對談判獲得正面回應亦有助益，舉例來說，賣車商向買方揭露有其他買主亦想買同一輛車並準備出價，這項資訊將迫使買方快速做出決定。揭露資訊包括說明對某項條文內容大致看法，例如：「這項條款我方可能可以接受，但現在無法同意，須俟協定整體諮商後，視情況而定」，相較於一直否決對方提案，因透露讓步訊息，已傳達達成共識期望，可使對方做成決定，維持談判進行，同時亦可要求對方作出同等讓步回應。
4. 以誠意精神進行談判：誠意是談判雙方合作的基礎，在談判中任何欺騙行為將失去對方信任。

二、談判各階段工作

(一) 研究階段

1. 瞭解對方國家租稅制度

- (1) 協定可否導正或補強對方國家租稅制度。
- (2) 是否有任何影響雙方締結協定之租稅制度。
- (3) 著重與協定適用範圍相關之租稅制度。
- (4) 與於該國有從事交易或投資之業者討論。

2. 瞭解對方國家協定政策

- (1) 檢視其近期、主要協定及經貿關係與我方相似之其他國家與該國協定。
- (2) 確認其協定政策立場是否堅定。

(二) 規劃階段

1. 考量時間性及優先性，將協定納入談判工作計畫。
2. 規劃採行之談判策略。

3.對談判可能結果進行實際預測

(1)有助確定談判優先次序。

(2)確認識題並規劃相關支援。

(3)讓談判團隊看清楚實際狀況。

4.與其他議題或協定作連結(issues linkages)：多議題連結談判模式把兩個以上單一議題適當結合起來，有助談判推進，同時避免談判卡在單一議題歧見，雙方僵持不下困境。

(三) 準備階段：

1.取得授權進行談判。

2.技術團隊簡報：由團隊領導人向談判團隊介紹協定進展、談判主要目標、實際及潛在問題及工作流程等，以便團隊成員履行各自職責時，能符合團隊計畫。

3.比較雙方協定範本。

4.確認識題：區分出最重要與次要的議題，及議題之間的關聯性。

5.角色分工：一個談判團隊中，一定要有個核心，即談判主談人，其他成員根據自己扮演角色提供主談人輔佐及支援，尤其談判陪談人不要越位，越位會自亂陣腳。

6.後勤支援：談判過程中，行政人員對談判團隊所有成員提供妥適之後勤支援，確保談判者無後顧之憂。

7.建立適當談判環境：人在自己領域裡，會有明顯安全感，可發揮主場效應，取得心理優勢，愛國際談判慣例為輪流在兩國舉行。

(四) 執行談判階段

1.建立適當關係：

(1)對文化差異具敏感度：瞭解對方文化對問題思維方式和處理事情風格，以合宜應對，使談判順利進行。

- (2)建立良好工作關係:談判初期應努力創造和諧交流、輕鬆愉快的談判氣氛，通常以輕鬆話題開場，以鬆弛對方緊張謹慎的情緒，再逐步將焦點轉向正題。
- (3)非正式性討論亦為重要：可取得資訊、達成共識及建立融洽關係等。
- 2.訓練有素的談判團隊:談判團隊角色分工可分為主談人、發言人、觀察者、記錄者、其他支援人員等。主談人為協調成員意見、決定談判目標、讓步程序、報告進度及接受指令；發言人為說明談判立場，和主談人可為同一人；觀察者為觀察對方真正領導者、是否有內部分歧、弱點及蒐集談判過程中訊息；記錄者記錄談判過程議事狀況及雙方發言論點等。
- 3.清晰簡明的陳述及回應：為互相瞭解及有效溝通，提出論點時，宜使用簡單易懂用語，且必須合乎邏輯。
- 4.準確記錄關鍵數字或問題。
- 5.所有接觸均為談判的一部分。
- 6.保持正向開放態度、瞭解對方立場、清楚闡明我方立場。
- 7.每回合談判結束作成會議紀錄(agreed minutes)。

三、談判過程、策略及風格

(一) 談判過程重要事項

- 1.良好準備：談判前做好準備工作，資料蒐集、分析越充分，越有助達成談判目標，包括蒐集支持我方論點資訊、預先準備好談判主要問題、決定談判問題先後順序、決定談判策略、對手可能反應，並模擬實際談判各種可能狀況，另為談判人員準備談論論點備忘摘要文字，對談判人員可起提示作用，掌握談判進度。
- 2.說服與折衝(selling and bargaining):包括如何提出論點說服對方同意我方立場，探索彼此期望結果與能讓步底線，尋求合乎雙方目標解決之道。
- 3.良好溝通：陳述立場及問題時應簡明扼要，解釋問題時可充分利用白板或圖表等輔助工具，另廣告業研究顯示，視覺呈現有助人們加強印象及瞭解內容。

- 4.運用談判策略：談判策略為取得預期談判目標而採取措施及手段，對談判成敗有直接影響，其涉及談判過程應採取合作、競爭、迴避或妥協策略。
- 5.槓桿作用(Leverage)：槓桿又稱論點的支撐點，如何使用槓桿使對方讓步，使對方將注意力集中於有利自己的條件上，進而「移動」對方至我方所期望方向。
- 6.開放態度：即使經驗老到的談判高手也會注意傾聽對方論述，以理解對方思考邏輯。另外，對方可能提出我方未曾想過解決問題創意方法，爰保持開放態度在談判中非常重要。
- 7.信任及尊重彼此：談判為雙方以建設性方式締結協定，倘失去對方信任，將難以說服對方認同自己論點，且對方將消極地不願做出任何決定，使談判將難以順利推進。另須特別注意，有些談判團隊，談判陪談人為主要發言人，主談人在談判過程中則相較安靜，雖在談判過程中主要說服對象為談判陪談人，但基於尊重主談人，仍須面向主談人發言。

(二) 建立論點：租稅協定談理論點大致可分為七類，分述如下：

- 1.政策或邏輯論述 (policy/logic argument)：政策及邏輯實證論點通常基於經濟因素考量，亦可提出雙方可互蒙其利及如何獲益論點。
- 2.已有前例 (precedent)：
 - (1)參考國際稅約範本：說明我方草案係參照 OECD 或 UN 稅約範本及稅基侵蝕及利潤移轉(BEPS)行動計畫建議擬定，以鞏固我方草案立場及提升可靠性。
 - (2)參考雙方其他租稅協定：倘草案已納入我方其他協定條文內容，可證明該草案已被廣泛接納及提升草案可靠性。另外，檢視對方國家其他租稅協定有無納入前例，尤其應關注其與我方競爭對手國協定，倘該協定納入較優惠條款，將對我方企業產生不利影響，可要求對方比照給予相同優惠。
- 3.防止協定濫用 (anti-abuse)：由於納入防止濫用條款為大多數國家協定慣例，亦為 BEPS 行動計畫意旨，爰陳述立場時可使用防止濫用論點。另外，可提醒對方租稅協定僅給予納稅義務人合理減免稅優惠，並無意為其創造逃

稅或避稅機會，而減損任一方國家利益。闡述濫用問題時，可適當使用白板，而非僅口頭概述，並邀請對方提問，以確保對方理解問題，同時保持開放態度，共同尋求替代解決方案。

4. 為處理特定問題 (to address a particular problem): 該問題可能為技術面或法律面問題，亦可能為法條實際執行面問題。舉例而言，部分國家對於租稅刑事案件係由司法系統蒐集或要求納稅人提供事證，倘經由行政程序所獲得之稅務資訊作刑事起訴用途，形同強迫納稅義務人承認犯罪，為其憲法所不許，爰對於依據資訊交換(EOI)條文取得之資訊，不能逕做為刑事起訴使用。
5. 無法解決問題 (not effective): 倘對方草案無法有效處理問題，應建議改為實際可行方案，並使用例子說明，但須注意措詞，避免使用”你的”草案無法解決問題，因輕視對方可能招致對方的敵意，不利談判關係，應對事不對人。
6. 稅收考量 (revenue): 租稅協定規範所得來源國給予減、免稅優惠，居住地國對所得人於來源地國繳納稅額應給予稅額扣抵或免稅，以消除雙重課稅，涉及兩國稅收重分配。稅收考量為比較對方草案及我方國內法稅率 (例如倘我方國內法對非居住者股利扣繳稅率為 25%，對方草案要求降至 10%，則我方將放棄 15%課稅權)，衡量做出讓步可能產生稅收損失，及調降稅率實際上是否能吸引更多投資。
7. 政策立場堅定 (firm policy): 租稅政策或租稅協定慣例導致談判方對某些條文立場相當堅定，無彈性空間，舉例來說，部分國家為 OECD 「全球稅務透明與資訊交換論壇 (Global Forum on Transparency and Exchange of Information for Tax Purposes)」 成員，為符合 OECD 打擊逃漏稅目標，須於租稅協定資訊交換條文納入 OECD 稅約範本第 4 項(不得以無國內課稅利益拒絕提供資訊)及第 5 項(不得因資訊為金融機構持有而拒絕提供)。此外，檢視對方與其他國家租稅協定，亦可瞭解其租稅協定政策或立場，倘對方

其他租稅協定已納入我方草案，在談判過程中，對方可能考量為利談判後期交換其他較重要利益，而採未馬上讓步策略。

(三)重要提醒

- 1.判斷談判議題對我方重要程度：在談判準備過程中應於準備資料中，將重要談判項目標示出來。至於對方認為重要而我方可予讓步之談判議題，無須立即暴露同意讓步想法，仍應謹慎處理，以換取對我方有利條款。
- 2.揭露訊息：
 - (1)資訊為談判籌碼，應妥善運用，不當揭露訊息將不利談判，例如，談判團隊成員不應在中場休息時間向對方透露重要事情，因所有接觸均為談判一部分。
 - (2)有經驗的談判人員在談判中會仔細聆聽對方發言，並不斷向對方提問，以確保正確理解對方及蒐集資訊。另外，無法有效揭露訊息或具體描述議題，對方在無法瞭解情況下，可能持反對立場，亦可能認為我方不準備讓步，使雙方陷於僵局。
 - (3)於其他條款尚未討論且雙方未達成任何共識前，談判可繼續推進之道：試圖表達我方立場，並透露其他條款談判將有利對方，對方可能因此願意讓步至其底線。
- 3.消除負面，強調正面：採用正面或共同利益論述以支持論點，較易使對方採納。
- 4.試圖理解對方立場：好的談判人員會站在對方立場分析及解決問題，設想所達訊息如何被對方理解等。
- 5.倘對方不接受我方提出精闢論點時，無須不悅或驚訝，很可能為對方談判策略一部分，或對方不知如何回應而拒絕，此時，可詢問對方是否須提供更多資訊，以確保對方理解我方論點，繼續談判其他條款，之後再回頭討論該議題。

(四)主談人風格：大致可分為下列二種，比較如下表：

溫和型	侵略型
將對方視為朋友	將對方視為對手
目的：盡快達成共識	目的：勝過對方
以讓步來改善彼此關係	要求對方讓步
對他人身段柔軟	對他人態度強硬
信任對方	不信任對方
容易改變想法	挑戰對方立場
提供選擇方案	威脅對方
揭露底線	誤導底線
接受單方損失	要求單方利益
尋求他方接受方案	僅接受己方提案
堅持達成共識	堅持立場
避免衝突	試圖在衝突中獲勝
屈服壓力	施加壓力

(五)談判策略及因應方式

1.不實陳述：

- (1)即對重要事實作出虛假陳述，使對方陷於錯誤認知。此舉將置己方信譽於高度風險，倘對方查證事實發現有欺騙情事，將失去對方信任，使談判無法進行，是以，當對方談及本身沒有把握或陌生難解問題，不可為維護面子而強作答復，應回答現在不確定答案，待後續研究後再行討論。
- (2)深入瞭解協定條文與良好談判準備工作，不易誤導事實，例如，告知對方我國其他協定已有前例，證明陳述真實性。
- (3)挑戰問題而非挑戰人，將人際關係與欲解決問題區別，不進行人身攻擊，只專注尋求解決問題之道。
- (4)可陳述事實，但無義務向對方作出全面性揭露。

- 2.須取得上級授權：談判常用此策略，一方要求暫時停止談判，以向上級長官報告，取得授權後方可接受對方草案，從而獲取時間以考慮所處情況。
- 3.連結至租稅協定其他條文項目：可表達基於互惠原則，同意對方某條文草案前提為對方亦同意我方與該條文相關之其他條文立場。舉例來說，租稅協定第 4 條(居住者)第 3 項，倘對方草案採用 BEPS 行動計畫 6 (防止租稅協定濫用)建議，即綜合考量實際管理處所、設立登記地及其他因素，透過「相互協議」方式決定個人以外之人同時符合雙方國內稅法居住者定義之雙重居住者適用協定時唯一居住者身分，假設我方草案於第 25 條(相互協議程序)不欲納入仲裁機制，可連結第 25 條一起討論，向對方表示，接受對方第 4 條第 3 項草案前提為第 25 條不納入仲裁機制。
- 4.無談判空間：確認對方對某重要議題確無談判空間抑或僅為其談判策略，舉例而言，倘對方草案要求我方應提供「視同已納稅額扣抵²(Tax Sparing Credit)」措施，為雙方談判僅餘議題，可向對方表達雙方已花許多人力、時間準備及協商，並已解決許多問題，僅剩一項議題功虧一簣實屬可惜等打破僵局話語技巧。倘對方仍堅持為其租稅協定政策，可靜觀其變，也許等待幾個月，以瞭解該議題對對方重要性。另雙方可尋求其他替代方案解套，例如有條件給予視同已納稅額扣抵，即雖於雙方租稅協定第 23 條(雙重課稅之消除)納入該扣抵規定，仍須居住地國通過相關法規始得扣抵。
- 5.作出不合理要求：不合理要求將損及信譽，不利雙方未來稅務合作，要求對方給予正當理由，或比較該國其他租稅協定相關規定。
- 6.重啓已達共識項目：為避免達成共識條文內容有誤，在談判時，應使用數位投影機陳列雙方草案及標示差異處，供雙方檢視。倘發現錯誤，應告知對方已達共識草案原則不變，但草案文字內容無法達成其目的，並提出解決方案。

² 所得來源國為吸引外資，對於他方締約國企業依所得來源國特別獎勵規定所減免之所得稅額，要求他方締約國(企業居住地國)應給予稅額扣抵。

7.施加壓力：談判中以恐嚇、威脅或警告等方式施加對方壓力，恐招致對方反彈，不利談判進行。倘對方為強硬型談判者，不要試圖以牙還牙，給對方時間冷靜，倘對方態度未轉圜，則應告知對方持續強硬態度對談判並無幫助。

8.運用沈默：大多數人對沈默感到尷尬，而試圖以話語填補。高明的談判者會運用沈默使對方透露更多訊息，例如，於對方提出論點後沈默不語，而經驗不足談判者則因對方故意製造沈默，使其忍不住以額外細節來填補難堪的沈默，而洩露超過應該揭露的資訊，甚至讓步至其底線。正確回應為只說該說的，或以詢問對方問題或要求暫停談判以化解沈默的尷尬。

(六)解決問題之道：談判者為問題解決者，目標為有效締結協定，懂得對事不對人，聚焦雙方利益而非堅持立場，為互利尋求替代方案，基於獨立意志達成協議，屈於論述原則而非壓力。有助解決問題策略如下：

- 1.清楚陳述提案及回應問題：力求相互瞭解所溝通議題，溝通時使用簡單易懂常用字並使用白板解釋，避免使用令人困惑草案文字。
- 2.逐項進行溝通：要使對方確實瞭解，最好方法是有結構及有秩序地逐項討論，避免同時討論太多議題，舉例來說，第 5 條第 3 項工程 PE，可分成課稅範圍及課稅門檻兩項，逐一討論。
- 3.使用例子：盡可能多使用例子解釋問題及解決方案。
- 4.發問：不要害怕發問，避免接受任何不瞭解的事情。發問可獲取資訊，確保正確理解對方。提出對方未曾想過的問題，甚至可吸引對方注意，強迫對方思考，有助雙方達成共識。另外，對於對方可能提問之回應內容，可參考過去談判會議之會議紀錄，以預做準備。
- 5.使用草案：使用現行協定草案做為談判基礎，檢視雙方協定前例，事前準備替代條文，鼓勵對方共同檢視草案內容。

6.運用短暫休會：獲取討論草案、檢視談判策略及談判進度的緩衝時間。

7.避免侵犯：良好關係有助談判進行及雙方後續溝通合作，談判中應保持溫和態度，避免輕視或以高壓手段強迫對方。

主題二、雙邊模擬談判

主辦單位將與會者分為 6 組，分別擔任 F1、F2、F3、U1、U2、U3 談判成員，按 F1U1、F2U2 及 F3U3 配對方式進行 3 場雙邊模擬談判，另指派 6 位租稅協定談判專家於談判準備時間指導各組談判策略，並於模擬談判時就各組談判過程、論點及應對方式進行評論。主辦單位會前提供模擬談判資料包括 Utopia 國(以下簡稱 U 國)與 Fredonia 國(以下簡稱 F 國)基本資料、稅制簡介、租稅協定草案及 Utopia 國與 Atlantis 國租稅協定(以下簡稱[U-A] DTC)、Fredonia 國與 Lilliput 國租稅協定(以下簡稱[F-L] DTC)。我國代表為 F2 成員，謹簡介談判資料及本組模擬談判情形如下：

一、F國及U國基本資料

(一) F 國：F 國與 U 國為具共同邊境之鄰國，兩國經貿關係密切，F 國主要出口石油(領土及領海均有油田)、礦產及農產品，主要自 U 國進口消費品、服務及技術。在 2013 年，F 國擺脫社會主義走向市場經濟，提供許多租稅獎勵吸引外國公司直接投資，以發展工業及基礎建設。由於 U 國許多工廠設在與 F 國邊界附近，因此許多 F 國工人每天通勤至 U 國工作。F 國僅締結少數租稅協定，最近生效為與已開發歐洲國家-Lilliput 國之租稅協定。F 國退休金係透過社會安全制度給付，該退休金在 F 國免稅，然由於媒體報導部分運動員自國外取得高額退休金返國，爰 F 國明年將立法通過對國外退休金所得課稅。F 國政府高度關切非居住者企業濫用租稅協定問題，爰於其租稅協定範本納入第 27 條一般反協定濫用條款-主要目的測試條款(Principal purpose test, PPT)。

(二) U 國：U 國為聯邦制國家，依據該國憲法，其地方政府有權開徵所得稅或資本稅，然至今尚無地方政府開徵。U 國為 OECD 會員國，具綿密租稅協定網絡，最近生效為與開發中國家-Atlantis 國之租稅協定。U 國近期依據 OECD BEPS 行動計畫建議修正其租稅協定範本。

二、兩國稅制簡介

(一) F 國：

1. 公司所得稅

(1) 合夥組織在課徵公司所得稅時被視為公司。雇主依給付薪資總額繳納薪資稅(payroll tax)。F 國採古典公司所得稅制，即公司與個人分別為獨立課稅主體，公司所得在公司階段被課稅，股利在股東階段再依適當稅率課稅，公司所繳所得稅不得在股東個人所得稅中扣抵。

(2) 居住者：依 F 國法律設立之公司、合夥、信託及其他非個人企業或其主要辦公室所在地在 F 國者。居住者就其全球所得負納稅義務。外國企業就 F 國境內營業利潤或 F 國來源所得負納稅義務。

(3) 課稅年度：曆年制。

(4) 稅基：境內外所得均須課稅，稅基為依所得稅法規定扣除營業費用後之淨利。虧損僅得於以後年度扣抵。

(5) 資本利得：F 國未對資本利得單獨課稅，應併入公司所得或個人所得課稅。

(6) 稅率：公司所得稅率為 40%。外國企業取得 F 國來源所得之公司所得稅率為 45%，差額 5%係因母公司在國外之 F 國子公司給付股利予母公司時，應額外扣繳 5%，為使外國企業在 F 國設立分公司與子公司得享公平租稅待遇，爰規範外國企業在 F 國分公司之公司所得稅率為 45%。

(7) 租稅獎勵：經財政部核准，新設立企業得自營業活動開始後 8 年免納公司所得稅。另為促進 F 國工業及基礎建設發展，給付非居住者利息及權利金得申請專案核准免稅。

(8) 核定及徵收：課稅年度次年 2 月 15 日前完成所得稅年度申報。倘公司或合夥已於規定期間完成申報，除故意或詐欺者外，核課期間為 4 年，超過

核課期間之應補稅額不得開徵。已核定案件 10 年內有溢繳者，可申請退稅。

- (9)反避稅措施-移轉訂價(Transfer pricing)及資本弱化(Thin capitalization)：針對關係人交易，F 國有移轉訂價規定。資本弱化規定適用於給付非居住者關係企業利息超過扣除利息前淨利 50%，稅捐機關將否准超過部分利息費用之扣除並視其為股利。
- (10)公司間股利(Intercompany dividends)：合夥利潤分配視為股利。給付外國股東、合夥人或 F 國個人之股利，分配股利企業應扣繳 25%稅額。然 F 國居住者公司或合夥持有給付股利之 F 國公司或合夥 25%以上股權者，其股利免稅。
- (11)雙重課稅之消除：F 國採稅額扣抵法以消除國外來源所得之雙重課稅，扣抵額不超過因加計該國外來源所得，而依 F 國國內適用稅率計算增加之應納稅額。
- (12)扣繳：給付非居住者股利及利息之扣繳稅率為 25%。產業權利金及技術服務費扣繳稅率為 30%，其他權利金(例如版權)扣繳稅率為 25%。租金扣繳稅率為 25%。

2.個人所得稅

- (1)居住者採全球所得課稅；非居住者僅就 F 國來源所得課稅。
- (2)納稅義務人：F 國個人居住者為在 F 國有永久住所或一曆年度在 F 國待滿 183 天者。
- (3)稅基：勞務報酬包括工資、薪資及實物所得。非居住者個人取得 F 國來源勞務報酬，其於一曆年度在 F 國居留合計不超過 90 天且該報酬已在其居住地國課稅者，該勞務報酬在 F 國免稅。權利金所得包括使用或有權使用文學、藝術及科學作品包括電影之任何著作權。免稅所得包括保險賠償、出售購入超過 2 年動產或不動產之資本利得、出售購入超過 3 個月證券交易所得、彩券獎金、健康及社會福利金、退休金及贍養費。
- (4)稅率：採累進稅率，最高稅率為 50%。

(5)雙重課稅之消除：採一般稅額扣抵法。

3.其他租稅：F 國未課徵淨財富稅。

(二) U 國：

1.公司所得稅

(1)U 國採設算扣抵稅制，公司所繳納公司所得稅，得於盈餘分配時，由其股東將獲配股利所含稅額，自當年度個人所得稅應納稅額中扣抵。然居住者公司股東所獲配股利無須課稅。

(2)納稅義務人：除依公司法設立公司，尚包括非公司組織協會(例如運動員俱樂部所收取廣告收入或處分資產資本利得)、國營事業及非居住者公司之常設機構。合夥組織在 U 國非屬課稅實體，採透視方法，就歸屬合夥人所得課稅。

(3)居住者：主要管理控制處所或總公司設立在 U 國者。

(4)稅基：居住者公司就境內外所得課稅；非居住者公司僅就 U 國來源所得課稅。虧損得往後扣抵 5 年及往前扣抵 2 年。退休金投資所得免稅，爰雖退休基金負有納稅義務，然除其有非投資所得，退休基金原則無須繳稅。

(5)資本利得：包括企業清算利得、出售不動產利得、自購入股份之日起 3 年內出售股份利得等。

(6)稅率：公司所得稅率為 30%。

(7)核定及徵收：課稅年度採 4 月制，即每年 4 月 1 日至次年 3 月 31 日。除故意或詐欺者外，核課期間為 5 年，超過核課期間之應補稅額不得開徵。

(8)反避稅措施：所得稅法訂有實質課稅原則之一般反避稅條款，U 國稅法雖無資本弱化規定，但稅捐機關將依據一般反避稅條款剔除不合理費用之扣除。U 國公司法包含移轉訂價條款，以常規交易方法調整受控外國公司之 U 國子公司課稅所得及外國公司在 U 國常設機構利潤。

(9)雙重課稅之消除：U 國採直接稅額扣抵，然倘持有海外公司 10%以上股權公司，國外稅額扣抵範圍包括支付股利盈餘在所得來源國繳納之所得稅，

即亦包括間接稅額扣抵。U 國部分租稅協定之消除雙重課稅條款亦包括視同已納稅額扣抵(Tax Sparing)。

(10)扣繳：給付非居住者股利扣繳稅率為 15%，U 國租稅協定政策為直接投資獲配股利扣繳稅率為 0；其他股權投資則為 10%。利息扣繳稅率為 15%，支付外國銀行利息及公開市場交易債券之利息免扣繳，U 國租稅協定政策為利息扣繳稅率為零或納入許多免稅利息項目。權利金無須扣繳，U 國依照 OECD 稅約範本，權利金僅由居住地國課稅。

(11)油氣商扣繳稅款(Hydrocarbon Contractors Withholding Tax)：給付非居住者油氣商在 U 國境內開發或開採油氣及相關活動(包括初步勘查、加設油管、提供服務及運送油氣)所得，未在 U 國稅務機關註冊稅籍之油氣商，應按給付總額 30%扣繳；已註冊者，應按給付總額 15%扣繳。該扣繳稅款可自非居住者油氣商公司所得稅或其他稅目應納稅額扣抵。倘該非居住者無應納稅額或該扣繳稅額超過公司所得稅應納稅額者，可申請退稅。

2.個人所得稅

(1)納稅義務人：居住者採全球所得課稅；非居住者僅就 U 國來源所得課稅。

U 國個人居住者為在 U 國有住所或經常居所(連續待超過 6 個月)或任何 12 個月期間在 U 國合計待滿 183 天者。

(2)稅基：農林業所得、營利所得、個人提供獨立性質服務所得、受僱所得、投資所得、租金及其他所得。免稅所得包括健康或意外保險給付、社會安全給付、特定利息所得(例如聯邦固定利息債券)、促進研究、科學及藝術所得及離職金等。董事將視為員工，董事報酬按一般申報方式課稅。取得退休金所得應課稅，居住者得享 40%免稅；給付非居住者退休金按 25%稅率扣繳。資本利得部分，區分為商業交易及私人交易實現資本利得，前者視為一般營利所得，後者無須課稅。

(3)稅率：累進稅率最高為 30%。

(4)離境稅(Expatriate Tax)：U 國居住者移居他國，依據 U 國稅法成為非居住者，於離境後 10 年內，就離境時未實現資本利得負擔遞延所得稅負債，倘資本利得於離境 10 年後發生，則無須負擔離境稅。

(5)雙重課稅之消除：採稅額扣抵法。

3.其他租稅：U 國居住者全球財產課徵淨財富稅，非居住者僅就 U 國境內資產課徵淨財富稅。

三、Fredonia及Utopia租稅協定範本比較表 (詳附錄A)

四、[U-A] DTC及[F-L] DTC (詳附錄B)

五、模擬談判情形(我國代表為F2組成員，以下以F國談判立場為主)：

(一)第 1 條(適用之人)

1. U 國草案第 2 項：由於 U 國國內法視合夥組織為透視課稅實體；F 國國內法視合夥組織為公司，U 方為利其居住者合夥人適用本協定減免稅利益，於第 1 條第 2 項增訂 BEPS 行動計畫 2(消除混合錯配安排之影響)及 2017 年 OECD 稅約範本建議條文，即「基於本協定之目的，一實體或安排取得或經由其取得之所得，如任一方締約國之稅法視該實體或安排為全部或部分透視課稅，於一方締約國基於租稅目的視該所得為其居住者之所得範圍內，應認定係該一方締約國之居住者取得之所得」。F 方認為納入本項無損 F 國合夥組織適用本協定，且 F 國僅對取得 U 國居住者證明之 U 國居住者給予協定利益，爰原則可同意納入本項，惟為保留談判籌碼，於談判過程詢問 U 方納入本項理由及解釋 U 國國內「部分透視課稅實體」，並表示 F 國其他租稅協定尚無納入本條文前例，其稅捐機關向納稅義務人解釋本條文有所困難。最終雙方套案協商，同意納入本項。

2. U 國草案第 3 項：為明確租稅協定不限制一國對其居住者課稅原則，U 國於本項納入 BEPS 行動計畫 6(防止租稅協定濫用)及 2017 年 OECD 稅約範本建議之保留條款(savings clause)。鑑於本項係屬釐清性質，納入與否課稅效果

均相同，然 F 方考量[U-A] DTC 未納入本項，且 F 國租稅協定並無前例，建議刪除，U 方最後同意刪除本項。

(二)第 2 條(適用之租稅)

1. F 國草案第 1 項及第 2 項：參照 OECD 及 UN 稅約範本，概括規定協定適用稅目，避免協定生效後雙方新開徵屬所得稅性質之租稅被排除於適用範圍外，致影響協定適用。F 方考量 F 國對雇主課徵薪資稅(payroll tax)，屬第 2 項「對企業給付之工資或薪俸總額所課徵之租稅(taxes on the total amounts of wages or salaries paid by enterprises)」涵蓋範圍，欲納入此 2 項，並詢問 U 方不納入原因。U 方表示，U 國未開徵薪資稅，且[U-A] DTC 及[F-L] DTC 均未納入此 2 項，建議刪除。F 方經確認未來薪資稅雙方產生重複課稅時，可納入本協定適用稅目，爰同意刪除此 2 項。F2 組指導談判專家指出，協定談判中對不傷害我方議題讓步，可同時要求對方在其他議題讓步做為補償，亦可使對方認知其他議題對我方之重要性，惟不宜驟然做出讓步決定，應先徵詢談判團隊其他成員意見。
2. F 國草案第 3 項及 U 國草案第 1 項：規範雙方適用本協定之現行稅目。由於僅 U 國開徵淨財富稅，F 方建議刪除 U 國適用稅目中未產生雙重課稅之資本稅。另依據 OECD 稅約範本第 23 條註釋第 70 節，併同刪除 U 方草案第 23 條第 1 項第 b 款消除資本稅重複課稅及第 22 條(資本)。另外，由於 U 國開徵油氣商扣繳稅款(Hydrocarbon Contractors Withholding Tax)，F 方進一步詢問 U 國草案公司稅法(Corporate Tax Law)是否已涵蓋該稅目。
3. F 國草案第 4 項：規範相互通知稅法變動。F 方草案「雙方領域主管機關應於『每年底(at the end of each year)』通知對方有關其稅法之重大修訂」，F 方考量 U 國課稅年度採 4 月制，前述文字恐不適用 U 國，主動建議刪除該文字。F2 組指導談判專家指出，站在對方立場考量之真誠態度，可增加對方信賴感，有助雙方締結可執行協定及增進未來稅務合作關係。

(三)第 3 條(一般定義)

1. F 國草案第 1 項第 c 款及第 d 款：規範「人」及「公司」定義。由於合夥組織在 F 國視同公司課稅，依據 OECD 稅約範本第 3 條註釋第 2 節，可將合夥納入「人」或「公司」定義。U 方認為僅須將合夥納入「公司」定義即可，F 方同意 U 方意見，雙方已達共識。
2. U 國草案第 1 項第 e 款及第 k 款：規範「企業」及「營業」定義。OECD 稅約範本於 2000 年刪除第 14 條執行業務(Independent personal service)條文，並於「營業」定義將執行業務及其他具有獨立性質活動納入。F 方考量其草案未納入執行業務條文，爰同意 U 方草案。
3. F 國草案第 1 項第 f 款：規範「國際運輸」定義，包括一方締約國企業以「鐵路及陸路運輸工具」所經營之運輸業務。由於 F 國與 U 國陸路相鄰，配合第 8 條國際運輸所得僅由企業居住地國課稅，F 方欲保留該國企業經營鐵路及陸路運輸石油、礦產及農產品所得之課稅權，另表示該國與 Lilliput 因非鄰國，爰[F-L] DTC 未納入該草案。雙方決定併同 F 國草案第 8 條(國際運輸)第 1 項、第 13 條(財產交易所)第 3 項及第 15 條(受僱所得)第 3 項一起討論。
4. U 國草案第 1 項第 i 款：由於退休金於 U 國負有納稅義務，U 方參考 2017 年 OECD 稅約範本於本款及第 4 條(居住者)定義納入退休金。
5. U 國草案第 2 項：規範協定未定義名詞之處理。U 國草案增訂未於本協定界定之任何名詞，除上下文另有規定或「主管機關依據第 25 條相互協議程序達成決議」外，依本協定適用租稅當時之法律規定辦理。F 方表示該國國內法不允許雙方主管機關協議凌駕於其國內法，且即便未納入前揭 U 國草案文字，雙方仍得依執行相互協議程序(MAP)，就協定未定義名詞尋求共識。

(四)第 4 條(居住者)

1. 第 1 項：規範居住者定義。判斷法人居住者標準，F 國草案採設立登記地；U 國草案採管理處所所在地。雙方同意將兩者皆納入判斷標準。
2. 第 2 項：考量去性別化議題，F 方建議本項第 a 款及第 b 款涉及性別用詞「he」修正為「the individual」，並表示 U 國草案第 17 條(表演人與運動員)亦採

Sportsperson 中性文字，然 U 方表示其草案係參照 2017 年 OECD 稅約範本文字，F 方同意採納 U 國草案。

3. 第 3 項：規範個人以外雙重居住者之破除僵局法則。F 國草案採用 OECD 稅約範本 2017 年以前版本，以實際管理處所所在地認定其唯一居住者身分；U 國草案採用 OECD 稅約範本 2017 年版，即 BEPS 行動計畫 2 建議，由雙方主管機關依 MAP 方式考量各項要件(包括 PEM)個案認定，倘雙方未能達成協議，除雙方締約國主管機關同意之範圍及方式外，該人不得享有本協定所規定之任何減稅或免稅利益。由於 F 國國內法以設立登記地或主要辦公室所在地認定法人居住者身分；U 國國內法以主要管理控制處所或設立登記地認定法人居住者身分，倘一公司設立於 U 國，其實際管理控制處所於 F 國，F 國稅捐機關將認定其為 U 國居住者；倘該公司設立於 F 國，其實際管理控制處所於 U 國，依據 F 國本項草案，該公司亦將被認定為 U 國居住者，採 U 國草案綜合各項因素認定似對 F 國較為有利。惟 U 國草案第 25 相互協議程序第 5 項規範倘雙方主管機關於 2 年內無法達成 MAP 決議，全案應交付仲裁，及第 1 項納稅義務人得向任一方締約國主管機關提出 MAP 申請，F 國考量有限人力及成本，盼刪除仲裁條款及僅向居住地國主管機關提出 MAP 申請，本項雙方留待第 25 條併同討論。

(五)第 5 條(常設機構)

1. F 國草案第 3 項第 a 款：規範工程 PE 課稅範圍及構成門檻。F 方表示其參考 UN 稅約範本，將裝配(assembly)及相關監督活動(supervisory activities) 納入工程 PE 課稅範圍，查[U-A] DTC 及[F-L] DTC 均納入前揭活動，且 OECD 稅約範本第 5 條註釋第 50 節亦說明各國得自由於其雙邊租稅協定中納入前揭活動，並未禁止。另雖[U-A] DTC 及[F-L] DTC 以 6 個月為構成門檻，然現代科技發達，且 F 國與 U 國相鄰，工人跨境施工便利，致工程多半可於 4 個月期間內完工。U 方認同 F 方論點，爰本款採用 F 方草案。
2. F 國草案第 3 項第 b 款：規範企業透過其員工或其他僱用之人提供勞務之服務 PE 及其構成門檻。由於 U 國在 F 國投資之產業常伴隨相關技術服務，爰

F 國欲保留所得來源國課稅權，另 OECD 稅約範本第 5 條註釋第 135 節及第 145 節亦說明服務提供地國得對該服務所得課稅。課稅門檻則與[F-L] DTC 同，為任何 12 個月期間內持續或合計超過 120 天，倘 U 國同意納入，門檻可放寬至 6 個月。

3. F 國草案第 3 項第 c 款：規範所得來源國得對個人提供獨立性質服務所得課稅。F 方表示由於其草案未納入第 14 條(執行業務)，爰於本條增訂此款，且經查[U-A] DTC 亦納入執行業務條文，F 方並強調其對服務課稅立場頗為堅定，課稅門檻訂為 4 個月係因科技發達，大多計畫均可於該期間內完成，倘 U 國同意納入，門檻可放寬至 6 個月。
4. F 國草案第 3 項第 d 款：規範探勘天然資源活動 PE。F 國欲保留 U 國企業至 F 國探勘或開採活動所得課稅權，課稅門檻訂為任何 12 個月期間內持續或合計超過 30 天，其認為 30 天期間已足夠企業探勘發現油氣。U 方表示[F-L] DTC 課稅門檻為任何 12 個月期間內持續或合計超過 60 天，倘同意 F 國草案，恐造成 U 國企業透過在 Lilliput 國設立實體濫用[F-L] DTC 之協定競購(treaty shopping)情況。
5. U 國草案第 4 項：規範「運送」及「採購」活動不視為 PE。F 方表示現今電子商務(e-commerce)營運模式，快速供貨為其主要核心業務，爰運送活動已非屬準備或輔助性質，應視為 PE。然由於雙方草案均納入 2017 年 OECD 稅約範本第 5 條第 4 項之 1 反分解活動條款(anti-fragmentation)，即一企業在一國多處營業場所或多家關係企業於一國設立多處營業場所之活動須連結，以整體考量是否為準備或輔助性質，倘彼此活動間具互補功能並構成緊密結合營業活動(例如倉儲及配銷)，則該活動不適用第 4 項除外條款，考量第 5 條第 4 項之 1 已可防杜企業規避 PE 構成，爰同意本項納入運送活動。
6. F 國草案第 7 項：規範保險 PE。由於保險公司可能無須在所得來源國設有固定營業場所或透過非獨立代理人從事業務，即可收取保費及賺取鉅額營業利潤，爰 F 國參考 UN 稅約範本納入本項以保留所得來源國課稅權，另 OECD 稅約範本第 5 條註釋第 114 節亦說明許多 OECD 會員國亦同意本項條款。U

方認為保險所得課稅不應訂有特別規定，且[F-L] DTC 未納入本項，不同意增訂。F 方考量保險業為政府高度監管行業，銷售保險合約應經主管機關核准，在所得來源國應設有固定營業場所或營業代理人，爰同意刪除本項。

(六)第 7 條(營業利潤)

1. F 國草案第 3 項：規範計算 PE 利潤時應予減除 PE 為營業目的而發生之費用，包括行政及一般管理費用，但 PE 與總機構及企業其他部門間之權利金、管理費及其他具內部往來性質費用(銀行總分行間貸款利息除外)，除外部費用之分攤(other than towards reimbursement of actual expenses)，不得扣除。F 方表示 OECD 稅約範本第 7 條(2010 年以前版本)註釋第 34 節亦指出實務上僅分配無形資產所有權至企業某部門，及主張企業某部門自其他部門取得權利金應比照獨立企業交易價格極其困難，再者，倘企業內部往來費用可准予扣除，恐造成企業為操縱損益，將費用分配予高稅率租稅管轄地之分支機構，由於外國公司在 F 國分公司之公司所得稅稅率為 45%，企業規避稅負風險極高。
2. U 國草案第 5 項：由於 F 國草案第 5 條未將採購活動列入不構成 PE 項目，應歸屬利潤至該活動，爰 F 方建議刪除本項。

(七)第 8 條(國際運輸)

1. F 國草案第 1 項：包括「鐵路及陸路運輸工具」所經營之運輸業務所得。F 方重申其與 U 國為陸路相鄰國家，許多跨境活動均依賴鐵路及陸路運輸。倘 F 國企業經營鐵道運輸，於兩國間載運貨物，依 F 國草案將被視為國際運輸，F 國對該企業經營運輸所得具課稅權，即便該企業在 U 國設立 PE 儲存貨物，U 國不得對該 PE 歸屬利潤課稅。
2. F 國草案第 2 項：規範國際運輸利潤免稅範圍，包括光船(bare boat basis)方式出租船舶或航空器利潤、出租鐵路及陸路運輸工具利潤及使用或出租用於運送貨物或商品之貨櫃，又該等利潤應以經營國際運輸業務之附帶活動為限。F 方表示 OECD 稅約範本第 8 條註釋第 5 節說明光船租賃倘屬輔助性質，例

如在淡季將閒置船舶、航空器或貨櫃出租之利潤，可適用第 8 條而非第 7 條（營業利潤）課稅，明列本項有助納稅義務人確認國際運輸免稅範圍。

(八)第 9 條(關係企業)：F 國草案第 2 項規範他方締約國認為一方締約國移轉訂價調整合理，始進行相對應調整。F 方表示為避免納稅義務人誤認為一方締約國作移轉訂價調整時，他方締約國必須接受且作相對應調整，造成納稅義務人怠於舉證關係企業交易價格或利潤符合常規。雖 OECD 稅約範本第 9 條註釋第 6 節已說明前揭原則，然明列本項有助闡明該原則。

(九)第 10 條(股利)

1. 第 2 項：規範所得來源國課徵上限稅率。F 方草案採單一稅率 15%；U 方草案採差別稅率，股利受益所有人為公司且其在股利支付日前 365 天期間直接持有支付股利公司 25%以上資本，股利上限稅率為 0%；其他情況為 10%。F 方表示其國內法對非居住者股利扣繳稅率為 25%，由 25%降至 0%，將造成其鉅額稅收損失，再者，F 國租稅協定尚無股利上限稅率為 0%前例，保留股利等投資所得合理課稅權為其重要協定政策，爰仍建議維持原草案。然倘 U 方同意刪除 U 方草案第 24 條(無差別待遇)，F 方可接受差別稅率，惟參考 [F-L] DTC，直接持股 25%以上者，稅率為 5%；其他情況為 15%。底線則參考 [U-A] DTC，股利支付日前 2 年直接持股 25%以上者，稅率仍為 5%；其他情況為 10%。
2. 第 3 項：由於 F 國合夥視為公司，爰 F 方草案股利定義包括合夥分配盈餘。而 U 方草案股利定義包括礦業股份及發起人股份，F 方於確認 U 國國內法確有前揭股份規定，爰同意 U 方草案。另配合 U 方前已同意 F 方草案第 3 條第 1 項第 d 款及第 4 條第 1 項有關合夥規定，本項雙方已達共識。

(十)第 11 條(利息)

1. F 國草案第 1 項及第 2 項及 U 方草案第 1 項：F 方草案規範所得來源國課徵利息上限稅率為 10%；U 方草案規範利息僅由居住地國課稅。F 方詢問 U 國為 OECD 會員國，其草案為何未按照 OECD 稅約範本准予所得來源國課徵

上限稅率，U 方表示其近期租稅政策為儘可能為資本尋求免稅待遇。F 方表示其國內法對非居住者利息扣繳稅率為 25%，由 25%降至 0%，將造成其鉅額稅收損失，再者，[F-L] DTC 訂有最惠國待遇(MFN)條款，倘與其他 OECD 會員國租稅協定按低於 10%訂定，F 國將給予相同待遇且須與 Lilliput 國就利息條文重新談判，然[F-L] DTC 才剛生效適用，又囿於 F 國有限人力資源，重啟談判實有困難。F 方進一步表示，F 國為吸引投資，其國內租稅獎勵措施包括經核准貸款之利息所得免稅，爰[F-L] DTC 第 11 條(利息)第 3 項訂有「Notwithstanding the provisions of paragraph 2, interest paid or credited to a resident of the United States of Lilliput on an approved loan shall be exempt from tax in Fredonia.」，倘本協定比照納入該項，U 國居住者仍可享利息免稅待遇。

2. F 國草案第 3 項：規範利息定義，然延遲給付違約金非屬本條所稱利息。F 方表示延遲給付違約金屬補償性質，倘歸屬為利息，貸款人須被課徵扣繳稅款，對其不公，爰參照 OECD 及 UN 稅約範本納入該文字。U 方表示因其國內法本身對延遲給付違約金不視為利息，爰未納入該文字。雙方最終同意納入，已達共識。

(十一)第 12 條(權利金)

1. F 國草案第 1 項及第 2 項及 U 方草案第 1 項：F 方草案規範所得來源國課徵權利金上限稅率為 10%；U 方草案規範權利金僅由居住地國課稅。F 方表示，與利息相同，[F-L] DTC 訂有最惠國待遇(MFN)條款，爰權利金上限稅率無法低於 10%，然[F-L] DTC 第 12 條(權利金)第 3 項訂有「Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Fredonia by a resident of the United States of Lilliput shall be exempt from tax in Fredonia.」，倘本協定比照納入該項，U 國居住者仍可享權利金免稅待遇。
2. F 國草案第 3 項：規範權利金定義，F 方表示其參考 UN 稅約範本將權利金定義包括「使用或有權使用工業、商業或科學設備之給付」。雖 OECD 稅約範本第 12 條(權利金)未包括前揭文字，然[U-A] DTC 第 12 條(權利金及技術服務費)第 4 項亦納入相同規範，再者，F 國國內法免稅之「核准工業權利金

(approved industrial royalties)」定義廣泛，即便本協定權利金定義包括「使用或有權使用工業、商業或科學設備之給付」，仍得適用 F 國租稅獎勵措施給予 U 國居住者免稅待遇。

(十二) F 國草案第 12A 條(技術服務費):[U-A] DTC 第 12 條將權利金及技術服務費合併為同一條文，F 國草案則以不同條文分別規範。F 方表示，考量數位經濟下，企業可在所得來源國未構成常設機構下遠距提供服務，致申請適用租稅協定後，其營業利潤無須在所得來源國繳稅，爰增訂本條，使所得來源國對管理、技術及諮詢性質服務給付得予課徵上限稅率 10%。

(十三)第 13 條(財產交易所得)

1. F 國草案第 3 項:包括企業轉讓經營國際運輸業務之「鐵路及陸路運輸工具」，或附屬於該等「鐵路及陸路運輸工具」營運有關之動產所產生之利得，僅由企業居住地國課稅。相較 U 方草案，F 國草案適用範圍較廣，例如企業經營出租國際運輸用航空器業務，其轉讓航空器所得亦得適用本項。雙方決定併同 F 國草案第 15 條(受僱所得)第 3 項一起討論。
2. U 國草案第 4 項:U 方參考 BEPS 行動計畫 6(防止租稅協定濫用)建議，納入本項，規範「一方締約國之居住者轉讓股份或類似權益(如合夥或信託權益)，如在轉讓前 365 天中任一時點，該股份或類似權益之 50%以上價值直接或間接來自於他方締約國依第 6 條定義之不動產，其取得之利得，他方締約國得予課稅」。鑑於本項可防止納稅義務人於處分前稀釋股權規避不動產所在地國稅負，F 方同意納入，雙方已達共識。
3. F 國草案第 5 項:規範「一方締約國居住者轉讓他方締約國居住者公司股份或類似權益(如合夥或信託權益)，如轉讓人於轉讓前 365 天任一時點，直接或間接持有公司資本 20%以上者，所得來源國得對該股份轉讓收益課稅」。U 方表示[F-L] DTC 並未納入本項，且納入本項恐影響 U 國投資人投資 F 國意願。F 方表示已考慮直接持股 25%以上者股利扣繳率讓步至 5%，且該國國內法提供許多租稅優惠，倘放棄股東轉讓股份所得課稅權，將造成過多稅收損失。

4. U 國草案第 6 項：規範「離境稅」，即 U 國居住者離境而終止其居住者身分，自離境後 10 年內轉讓財產利得，U 國仍得依其國內法課稅。BEPS 行動計畫 6(防止租稅協定濫用)指出，倘離境稅規範之納稅義務僅限該納稅人為該締約國居住者期間，不包括其終止居住者身分後取得之所得，租稅協定第 13 條(財產交易所得)與第 18 條(養老金)不會排除當一國居住者終止為該國居住者身分時所課徵之離境稅，然 U 國居住者轉換為 F 國居住者後處分財產之離境稅仍可能須 F 國稅捐機關協助徵收，爰 F 方建議 U 方同意其草案第 27 條(協助徵稅)條文。

(十四)第 15 條(受僱所得)

1. F 國草案第 3 項：包括受僱於一方締約國企業經營國際運輸業務之「鐵路及陸路運輸工具」上提供勞務而取得報酬，企業居住地國得予課稅。F 方表示國際運輸包括「鐵路及陸路運輸工具」雖非 OECD 稅約範本文字，然土耳其於 OECD 稅約範本第 8 條(海空運輸)註釋第 42 節加註保留意見³，並非前例，各國得依據其租稅政策與協定夥伴國商訂擴大國際運輸涵蓋範圍。再者，F 國農產品均以鐵路運輸方式載運至 U 國，據聞許多 U 國企業有意買下 F 國鐵路公司，依據本協定第 8 條，企業居住地國(即 U 國)對該運輸所得將取得唯一課稅權，又 F 國工人常跨境提供勞務，倘其受僱於 U 國鐵路公司，U 國依據本項亦得對其勞務報酬課稅。
2. U 國草案第 3 項：U 國草案採用 2017 年 OECD 稅約範本，規範「一方締約國之居住者因受僱於經營國際運輸業務之船舶或航空器上(不包括僅於他方締約國境內經營者)為正式職員而提供勞務取得之報酬，僅由該一方締約國課稅，不受前二項規定之限制」，即僅由所得人居住地國課稅；原規定為「…得由企業實際管理處所(PEM)所在地國課稅，不受前二項規定之限制」。由於原規定「不受前二項規定之限制(Notwithstanding the preceding provisions of this Article)」，受僱於國際運輸事業所取得之報酬，除依第 3 項得由「PEM

³ Turkey reserves the right to broaden the scope of the Article to cover transport by road vehicle and to make a corresponding change to the definition of “international traffic” in Article 3.

所在地國」課稅外，另依第 1 項前段得由「所得人居住地國」及依第 1 項後段得由「勞務提供地國」課稅，可能造成三重課稅情況，不易消除重複課稅，爰 OECD 修正本項為「僅由所得人居住地國」課稅。F 方則表示，倘本項企業居地國無課稅權而僅由所得人居住地國課稅，恐造成受僱者(例如機師)為規避稅負，轉換居住地至租稅天堂或低稅率租稅管轄區，而形成雙重不課稅情況，建議參考 2017 年 OECD 稅約範本第 15 條註釋第 9.6 節⁴，原則僅由企業居住地國課稅，倘受僱報酬由他方締約國居住者取得，他方締約國亦得課稅。

(十五)第 16 條 F 國草案(董事與高階管理人報酬)及 U 國草案(董事報酬)：F 國草案第 2 項係參照 UN 稅約範本規範高階管理人報酬得由給付地國課稅。因 U 國居住者擔任 F 國公司董事及高階管理人可能性極高，爰 F 國欲保有 U 國董事及高階管理人報酬之課稅權。增列本項係因董事可能身兼其他高階管理職務(例如財務經理)，而將董事報酬轉換為管理者薪資，規避本項課稅。U 方表示高階管理人(top level managerial position)定義未明，恐造成適用爭議，F 方建議於本協定第 3 條、議定書或以換文(exchange of letter)方式闡明。

(十六)第 17 條(表演人及運動員)：F 國草案第 3 項係參考 OECD 稅約範本第 17 條註釋第 14 節增訂，規範「表演人或運動員於一方締約國從事活動所取得之所得，如其訪問該一方締約國係完全或主要由一方或雙方締約國之政府機關、其所屬行政區或地方機關之公共基金所資助，該所得僅由表演人或運動員居住地國課稅，不適用前 2 項規定」，以促進雙方文化交流。舉例來說，倘 F 國公共基金資助 U 國管弦樂團赴 F 國演出，依據本項，無論該公共基金設立地，該演出所得僅由 U 國(表演人居住地國)課稅，活動舉行地國不得課稅。另[F-L] DTC 亦納入本項規定。

⁴ Notwithstanding the preceding provisions of this Article and Article 1, remuneration derived by an individual, whether a resident of a Contracting State or not, 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 by an enterprise of a Contracting State shall be taxable only in that Contracting State. Where, however, such remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

(十七)第 18 條 F 國草案(退休金)及 U 國草案(退休金及年金)

1. F 國草案第 1 項及第 2 項：規範除政府勞務之退休金外，因過去僱傭關係而給付之退休金或其他類似報酬，僅由居住地國課稅，F 方認為退休後移居他方締約國成為該國居住者，應比照該國居住者方式課稅，但由社會安全制度給付之退休金，所得來源地國得予課稅。
2. U 國草案第 1 項及第 2 項：規範源自一方締約國之退休金、年金及其他類似報酬且給付予他方締約國居住者，所得人居住地國得予課稅，來源地國亦得課稅，但來源地國課徵稅額不得超過給付總額 15%。F 國草案本條僅限於與過去受僱勞務相關者「in consideration of past employment」，然 U 國草案不限任何退休金亦包含政府勞務退休金計畫，爰其第 19 條(政府勞務)第 2 項未規範政府退休金之課稅權。U 國退休金提撥時不課稅，退休基金本身免稅，退休金領取時僅計入 60%所得課稅；F 國退休金提撥時不課稅，退休基金本身免稅，退休金領取時免稅，惟 F 國近期將修法對其居住者領取退休金課稅，爰可採納 U 國草案。
3. U 國草案第 3 項：規範退休金定義。F 方建議限縮退休金定義範圍，U 方同意刪除退伍軍人退休金及疾病、意外事故或殘疾給付。
4. U 國草案第 4 項：規範年金定義。F 方表示其可放棄退休金僅由所得人居住地國課稅，然盼 U 方亦可同意比照[F-L] DTC 限縮年金定義。

(十八)第 19 條(政府勞務)：F 國草案本條第 2 項參照 OECD 稅約範本，規範政府勞務退休金之課稅權，U 國草案規範所有類型退休金均依第 18 條規定課稅。F 方建議 U 國草案第 18 條第 3 項，將退休金重新分類，屬政府勞務退休金由本條規範，且僅由給付地國課稅。

(十九)第 21 條(其他所得)：F 國草案參考 UN 稅約範本，規範所得來源國亦得對其他所得課稅；U 國草案參考 OECD 稅約範本，規範其他所得僅由居住地國課稅。F 方表示，F 國國內法不對贍養費課稅，然 U 國國內法對贍養費課稅，假設 F 國居住者取得源自 U 國贍養費，依 U 國草案，U 國將喪失課稅權，且[U-A] DTC 已具所得來源國對其他所得得予課稅前例，建議比照。

(二十)第 23 條(雙重課稅之消除)

1. F 國草案第 4 項：規範「視同已納稅額扣抵」，例如 F 國國內法提供 8 年免稅之租稅獎勵，縱使 U 國企業依該獎勵在 F 國無須繳稅，U 國依據本項規定仍將給予該企業國外稅額扣抵，F 方表示[U-A] DTC 及[F-L] DTC 均有納入前例，且依據 OECD 稅約範本第 23 條註釋第 78.1 節，OECD 並未禁止「視同已納稅額扣抵」規定，爰建議納入本項。U 方表示同意納入本項前提為限縮扣抵年限為 5 年及扣抵比率為 10%，雙方未達共識。F2 組指導談判專家指出，倘對方提出建議為我方未曾考慮事項，不宜在談判中做出決定，尤其談判後期談判團隊均顯疲憊時。
2. F 國草案第 5 項：規範「基於本條及任一方締約國國內法有關消除雙重課稅規定，一方締約國居住者取得之所得，在他方締約國依據本協定應視為源自該國所得」。舉例來說，F 國企業在 U 國 PE 取得源自第 3 國且可歸屬該 PE 所得，由於 PE 非居住者，無法適用 U 國與第 3 國租稅協定消除該所得之雙重課稅，然本協定第 24 條(無差別待遇)第 3 項，要求 U 國對其境內 PE 課稅待遇不得劣於該國境內居住者企業，依據 OECD 稅約範本第 24 條註釋第 70 節規定，U 國就該所得應給予該 PE 稅額扣抵數為第 3 國稅額實徵數與 [U-3rd] DTC 適用稅率取低者。然依據本項，該所得將視為源自 U 國所得，F 國須給予雙重課稅之消除。

(二十一) U 國草案第 24 條(無差別待遇)：F 國草案未納入本條。F 方表示依據 OECD 稅約範本第 24 條註釋，許多 OECD 國家諸如加拿大、紐西蘭及澳大利亞等對本條持保留意見。另為避免 F 國國內法對外國企業分公司課徵所得稅率 45%高於其居住者公司所得稅率 40%，違反無差別待遇，爰不欲納入本條規定。然考量締結本協定可吸引更多 U 國企業投資 F 國，可同意納入本條以比照 F 國居住者給予 U 國企業在 F 國分公司所得稅率 40%。

(二十二)第 25 條(相互協議程序)

1. 第 1 項：規範納稅義務人提出 MAP 之申請，F 國草案為僅向居住地國主管機關提出 MAP 申請；U 國草案採用 BEPS 行動計畫 14(提升爭議解決機制之

效率)建議，得向任一方締約國主管機關提出 MAP 申請。F 方表示，只要確保爭議得即時解決、落實執行 MAP 行政程序及保障納稅義務人申請 MAP 權益，即可符合前揭行動計畫要求之最低標準，無論是否得向任一方締約國主管機關提出 MAP 申請。再者，大部分加入「導入防止稅基侵蝕及利潤移轉租稅協定相關措施多邊公約 (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, MLI)」國家均採行 F 國草案，又據聞 U 國考慮酌收處理 MAP 案件費用，倘採 U 國草案，預期納稅義務人將傾向向 F 國主管機關提出 MAP 申請，將增加 F 國稅務行政負擔。

2. 第 4 項：規範雙方主管機關得相互聯繫。F 國草案本項後段規範「如認為口頭意見交換為達成協議之適切方法，可透過雙方領域主管機關之代表組成委員會進行意見交換」，F 方表示面對面溝通可加速達成共識，且[U-A] DTC 及 [F-L] DTC 均有納入該規定，U 方同意納入，雙方已達共識。
3. U 國草案第 5 項：F 方重申考量其有限人力及成本，盼刪除本項仲裁條款。倘 U 方堅持納入，建議雙方主管機關於 3 年內(原 U 國草案為 2 年)無法達成 MAP 決議，全案應交付仲裁。

(二十三) F 國草案第 26 條(資訊交換)：

1. 第 1 項：規範 EOI 範圍。F 方草案本項後段參照 UN 稅約範本，增列「雙方特別應交換有助防止逃稅或避稅資訊」，F 方強調本協定已採用 BEPS 行動計畫 6(防止租稅協定濫用)建議前言，增列該文字可呼應該前言精神，即使未納入，雙方仍可交換防止逃稅或避稅資訊，U 方考量納入具釐清功能，爰同意納入，雙方已達共識。
2. F 國草案第 6 項：F 方草案參照 UN 稅約範本，規範雙方主管機關應透過諮商，制定交換資訊適當方法及技術。F 方表示該國納入本項係盼 U 方協助規劃及建置有效 EOI 技術及系統，U 方同意納入，雙方已達共識。

(二十四)第 27 條(協助徵稅)：F 方重申納入本條，F 國始得協助 U 國徵收離境稅，U 方表示同意納入本條前提為 F 方同意第 25 條 MAP 納入仲裁機制，F 方同意 MAP 條文納入仲裁，雙方已達共識。

(二十五)第 29 條(享有協定資格):F 方草案採主要目的測試(Principal Purpose Test, PPT)條文；U 方草案採利益限制(Limitation on Benefit, LOB)條文。F 方表示其採行 PPT 目的為防止協定濫用，然未限制符合 LOB 適格之人(qualified person)方得適用協定，恐在 LOB 客觀性測試機制下不經意排除原得享協定利益之人。另[U-A] DTC 亦僅納入 PPT 條文，詢問 U 方為何改變其租稅協定政策，是否實務上發現避稅案件，而 PPT 無法處理僅得以 LOB 解決。再者，F 方目前尚無能力建構執行 LOB 之準則，納入 LOB 將增加 F 國稅務行政負擔，又 PPT 條文為大部分加入 MLI 國家所採行，已可符合 BEPS 行動計畫要求之最低標準。U 方表示採行 LOB 為其近期租稅協定政策，建議本條於 PPT 條文前增加「In the case of Fredonia」文字；於 LOB 條文前增加「In the case of Utopia」文字，以利各自適用欲採行之防止協定濫用條文。雙方已達共識。

肆、會議心得與建議

一、積極參與是類國際會議，汲取租稅協定談判經驗

主辦單位幾乎每年均舉辦租稅協定基礎及進階談判會議，以協助非 OECD 國家及開發中國家培養租稅協定談判人員。租稅協定談判人員，除須具備國際租稅協定及國內稅法理論及實務專業外，仍須輔以談判技巧及流暢英語能力，方能於談判會議中爭取有利己方條款。租稅協定係本於互惠原則，商訂減、免稅措施，以消除跨境投資經貿活動租稅障礙，相較於單邊租稅優惠，一方面租稅未來確定性高，二方面避免單方稅收損失，為國際間吸引投資主要工具之一。我國目前已生效租稅協定計 32 個，仍須持續擴展我國租稅協定網絡，為避免租稅協定談判人員短缺或缺租稅協定談判經驗，有必要持續參與是類會議或國際組織舉行之租稅協定內涵會議，以培養我國租稅協定談判人才，充實租稅協定內涵專業知能。

二、和與會專家及各國代表交流，有利掌握國際租稅發展趨勢

由於本次與會專家均具備豐富租稅協定談判經驗，瞭解實際談判情境中談判團隊可能面臨挑戰，其所分享談判技巧、原則及策略，有助與會代表於談判中建立論點、有效因應及維持心理穩定。此外，本次會議所設計模擬案例亦納入 BEPS 行動計畫建議條文，經由小組討論及分組談判，可深入掌握該等條文真義及實際適用方式，有利掌握國際稅約範本最新發展趨勢。研討會休息時間，於會場外休息區亦可與其他國家代表交流互動，並藉機探詢我國與其所屬國家租稅協定推動情形，有助建立人脈與聯繫管道，拓展租稅外交，我國宜持續廣為參與。

伍、附錄

附錄 A 「Fredonia 及 Utopia 租稅協定範本比較表」

附錄 B 「Fredonia 與 Liliput 租稅協定及 Utopia 與 Atlantis 租稅協定」

{F} {CONVENTION} [U] [AGREEMENT] BETWEEN THE REPUBLIC OF FREDONIA AND THE KINGDOM OF UTOPIA FOR ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

The Republic of Fredonia and the Kingdom of Utopia,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude an agreement for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax 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:

CHAPTER I

SCOPE OF THE {F} {CONVENTION} [U] [AGREEMENT]

Article 1

PERSONAL SCOPE

1. This {F} {Convention} [U] [Agreement] shall apply to persons who are residents of one or both of the Contracting States.

[U]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 State, as the income of a resident of that 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, 23[B], 24, 25 and 28.

Article 2

TAXES COVERED

{F} {1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

附錄 A

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

{F} {3.} [U] [1.] The existing taxes to which the {F} {Convention shall apply are in particular:} [U] [Agreement shall apply are:]

a) in Fredonia, the taxes levied under the

- (i) Tax on Income Law,
- (ii) Tax on Wages Law,
- (iii) Tax on Artistes Law,
- (iv) General Income Tax Law,

hereafter referred to as “Fredonian Tax”

b) in Utopia, the taxes levied by the federal government under the

- (i) Income Tax Law,
- (ii) Corporate Tax Law, and
- (iii) Net Wealth Tax Law.

hereafter referred to as “Utopian Tax”

{F} {4.} [U] [2.] The {F} {Convention} [U] [Agreement] shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the {F} {Convention} [U] [Agreement] in addition to, or in place of, the existing taxes. {F} {At the end of each year,} the competent authorities of the Contracting States shall notify each other of [U] [any] significant changes {F} {which} [U] [that] have been made in their {F} {respective} taxation laws.

[U] [3. Notwithstanding any other provision of this Agreement, the provisions of Article 22 concerning taxes on capital shall only apply to the extent that both Contracting States levy a general tax on capital.]

CHAPTER II DEFINITIONS

Article 3 GENERAL DEFINITIONS

1. For the purposes of this {F} {Convention} [U] [Agreement], unless the context otherwise requires:

附錄 A

{F} {a) the term "Contracting State" means the Republic of Fredonia or, as the context may require; }

a) the term "Utopia", when used in a geographical sense, means the Kingdom of Utopia including any area beyond the territorial seas of the Kingdom of Utopia which, in accordance with international law and the laws of the Kingdom of Utopia, is an area within which the Kingdom of Utopia may exercise rights with respect to the seabed and subsoil and their natural resources;

b) the term "Fredonia" means the Republic of Fredonia and, when used in a geographical sense, it includes any area outside the territorial sea of the Republic of Fredonia within which the Republic of Fredonia under its legislation and in accordance with international law has rights with respect to the exploration for and the exploitation of the natural resources of the seabed and subsoil;

c) the term "person" includes an individual, a company and any other body of persons {F} {, including a partnership};

d) the term "company" means [U][any person that is a] {F} {any} body corporate or any entity, {F} {including a partnership}, which is treated as a body corporate for tax purposes;

[U][e) the term "enterprise" applies to the carrying on of any business;]

{F} {e}) [U][f)] 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;

{F} {f}) [U][g)] the term "international traffic" means any transport by a ship, aircraft {F} {or rail or road transport vehicle operated by an enterprise of a Contracting State}, except when the ship, aircraft {F} {or rail or road transport vehicle} is operated solely between places in the other Contracting State [U][and the enterprise that operates the ship or aircraft is not an enterprise of that State];

{F} {g}) [U][h)] the term "competent authority" means:

(i) in Fredonia, the Minister of Taxation or any of his authorized representatives;

(ii) in Utopia, the Minister of Finance or his authorized representative;

[U][i) the term "recognised pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that 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 State or one of its political subdivisions or local authorities; or

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(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).]

{F} {h}) [U][j)] the term "national" means:

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

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

[U][k) the term "business" includes the performance of professional services and of other activities of an independent character.]

2. As regards the application of the {F} {Convention} [U][Agreement] at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires [U][or the competent authorities agree to a different meaning pursuant to the provisions of Article 25], have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this {F} {Convention} [U][Agreement], the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, {F} {place of incorporation} [U][place of management] or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof {F} {and, in the case of Fredonia, a partnership created or organized under Fredonian law} [U][as well as a recognised pension fund of that State]. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

a) {F} {the individual} [U][he] shall be deemed to be a resident only of the State in which [U][he has] a permanent home available to {F} {the individual} [U][him]; if [U][he has] a permanent home available to {F} {the individual} [U][him] in both States, {F} {the individual} [U][he] shall be deemed to be a resident only of the State with which {F} {the individual's} [U][his] personal and economic relations are closer (centre of vital interests);

b) if the State in which [U][he has his] {F} {the} centre of vital interests {F} {of the individual

is situated} cannot be determined, or if {F}{the individual} [U][he] has not a permanent home available [U][to him] in either State, {F}{the individual} [U][he] shall be deemed to be a resident only of the State in which {F}{the individual} [U][he] has an habitual abode;

c) if {F}{the individual} [U][he] has an habitual abode in both States or in neither of them, {F}{the individual} [U][he] shall be deemed to be a resident only of the State of which {F}{the individual} [U][he] is a national;

d) if {F}{the individual} [U][he] is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, {F}{then it shall be deemed to be a resident only of the State in which its place of effective management is situated} [U][the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed by the competent authorities of the Contracting States].

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this {F}{Convention} [U][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 extraction of natural resources.

{F}{3. The term "permanent establishment" is deemed to include:

- a) a building site, a construction, assembly or installation project or supervisory activities in

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connection therewith, but only where such site, project or activities continue for a period of more than 120 days;

b) The furnishing of services by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 120 days within any twelve-month period commencing or ending in the fiscal year concerned;

c) for an individual, the performing of services in a Contracting State by that individual, but only if the individual's stay in that State, for the purpose of performing those services, is for a period or periods aggregating more than 120 days within any twelve month period commencing or ending in the fiscal year concerned.³ A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

d) activities carried on by the enterprise in the other Contracting State, which consist of, or which are connected with, the exploration or exploitation of natural resources situated in that other State, but only where activities of that nature continue for a period or periods aggregating more than 30 days in any 12-month period commencing or ending in the fiscal year concerned. }

[U][3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days.]

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 [U][or delivery] of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display [U][or delivery];

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of [U][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 sub-paragraphs a) to e),

provided that {F} {such activity or, in the case of subparagraph f)}, the overall activity of the fixed place of business [U][resulting from this combination], is of a preparatory or auxiliary character.

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a connected 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 connected 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 associated 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 connected enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, 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

a) in the name of the enterprise, or

b) 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

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 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 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.

{F}{7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.}

{F}{8}[U][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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

{F}{9}[U][8] For the purposes of this Article, a person or enterprise 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 or enterprise 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 or enterprise 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 or in the two enterprises.

CHAPTER III
TAXATION OF INCOME

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 business 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. {F} {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 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.

[U][5.No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.]

{F} {5}[U][6] For the purposes of the preceding paragraphs, 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.

{F} {6}[U][7] Where profits include items of income which are dealt with separately in other Articles of this {F} {Convention}[U][Agreement], then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

{F} {INTERNATIONAL TRANSPORT}

[U][INTERNATIONAL SHIPPING AND AIR TRANSPORT]

1. Profits {F} {of }[U][derived by] an enterprise of a Contracting State from the operation of ships, aircraft {F} {or rail or road transport vehicles} in international traffic shall be taxable only in that State.

{F} {2.For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) profits derived from the rental of rail or road transport vehicles,
- (c) profits derived from the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.}

{F} {3} [U][2] The provisions of paragraph 1 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 State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State {F} {, if it agrees that the adjustment made by the first mentioned State is justified both in principle and as regards the amount,} shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this {F} {Convention} [U][Agreement] and the competent authorities of the Contracting States shall if necessary consult each other.

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 State.
2. [U][(a)] However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that state according to the laws of that State, but if the beneficial owner

of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed {F} {15}[U][10] per cent of the gross amount of the dividends.

[U][(b) Notwithstanding the provisions of subparagraph a), dividends paid by a company that is a resident of a Contracting State shall not be taxed in that Contracting State 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).]

[U][The competent authorities of the Contracting States may by mutual agreement settle the mode of application of these limitations.] 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[U][, "jouissance" shares or "jouissance" rights, mining shares, founders' shares] or other rights, not being debt-claims, participating in profits, as well as {F} {distributions by partnerships and} income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Articles 7 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 State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other 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 State.

Article 11
INTEREST

1. Interest arising in a Contracting State and {F}{paid to}[U][beneficially owned by] a resident of the other Contracting State {F}{may be taxed}[U][shall be taxable only] in that other State.

{F}{2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.}

{F}{3.}[U][2.] The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage {F}{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. {F}{Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.}

4. The provisions of {F}{paragraphs 1 and 2}[U][paragraph 1] shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

{F}{5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 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 {F}{Convention}[U][Agreement].

Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State {F}{may be taxed} [U][shall be taxable only] in that other State [U][if such resident is the beneficial owner of the royalties].

{F}{2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.}

3. 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 {F}{(including rights related to)} literary, artistic or scientific work {F}{and broadcasting} [U][including cinematograph films], any patent, trade mark, design or model, plan, secret formula or process, {F}{or for the use of, or the right to use, industrial, commercial, or scientific equipment,} or for information concerning industrial, commercial or scientific experience.

4. The provisions of {F}{paragraphs 1 and 2} [U][paragraph 1] shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such cases the provisions of Articles 7 shall apply.

{F}{5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. However: where the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated and not in the State of which the payer is a resident.}

[U][5.] F}{6,} Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which

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 {F} {Convention} [U][Agreement].

{F} {Article 12A
TECHNICAL FEES

1. 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 State.
2. Subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the fees.
3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
 - (a) to an employee of the person making the payment;
 - (b) for teaching in an educational institution or for teaching by an educational institution; or
 - (c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7, shall apply.
5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment.
6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other

Contracting State or a third State through a permanent establishment situated in that other State or the third State and such fees are borne by that permanent establishment.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention. }

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 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains of an enterprise of a Contracting State {F} {from the alienation of} [U][that operates] ships, aircraft {F} {or rail or road transport vehicles operated} in international traffic or movable property pertaining to the operation of such ships, aircraft {F} {or rail or road transport vehicles}, shall be taxable only in that State.

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

{F} {5. Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company, or comparable interests, such as interests in a partnership or trust, which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 365 days period preceding such

alienation, held directly or indirectly at least 20 per cent of the capital of that company.}

{F}{6.}[U][5.] Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 {F}{or 5} shall be taxable only in the Contracting State of which the alienator is a resident.

[U][6. The provisions of paragraph 5 shall not affect the right of Utopia to tax, in accordance with its own law, gains that a person who moves out of Utopia derives from the alienation of property within a period of 10 years following his departure.]

Article 15

INCOME FROM EMPLOYMENT

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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived [U][by a resident of a Contracting State] in respect of an employment[U][, as a member of the regular complement of a ship or aircraft, that is] exercised aboard a ship, aircraft {F}{or rail or road transport vehicle} operated in international traffic [U][, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State] {F}{by an enterprise of a Contracting State may be taxed in that State}.

Article 16

{F} {DIRECTORS' FEES AND REMUNERATION OF TOP LEVEL MANAGERIAL OFFICIALS}

[U][DIRECTORS' FEES]

{F} {1} 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

{F} {2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.}

Article 17

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 15, 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 {F} {sportsman} [U][sportsperson], from {F} {his} [U][that resident's] personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a {F} {sportsman in his capacity} [U][sportsperson acting] as such accrues not to the entertainer or {F} {sportsman himself} [U][sportsperson] but to another person, that income may, notwithstanding the provisions of Article 15, be taxed in the Contracting State in which the activities of the entertainer or {F} {sportsman} [U][sportsperson] are exercised.

{F} {3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons who are residents of the other State if the visit to the first-mentioned State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State in which the entertainer or the sportsperson is a resident.}

Article 18

{F} {PENSIONS} [U][PENSIONS AND ANNUITIES]

1. {F} {Subject to the provisions of paragraph 2 of Article 19,} Pensions, annuities and other similar remuneration [U][arising in a Contracting State and] paid to a resident of {F} {a} [U][the other] Contracting State {F} {in consideration of past employment} [U][may be taxed]

{F} {shall be taxable only} in that [U][other] State.

[U][2. However such pensions, annuities and similar remuneration may also be taxed in the Contracting State in which they arise and according to the laws of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. For the purposes of this Agreement, the term "pensions" includes any payment under a superannuation, pension or retirement plan, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan.

4. For the purposes of the Agreement, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.]

Article 19

GOVERNMENT SERVICE

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

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

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

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

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

3. The provisions of Articles {F} {15, 16, 17, and 18} [U][14,15 and 16] shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a

local authority thereof.

Article 20

STUDENTS

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

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 {F} {Convention}[U][Agreement] shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

{F} {3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.}

[U][Article 22

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that

State.]

CHAPTER IV
METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 22
ELIMINATION OF DOUBLE TAXATION

{F} {1. The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this Agreement. Where income derived from one of the Contracting States is subject to tax in both Contracting States, relief from tax chargeable on such income shall be given in accordance with the provisions of this Article.

2. Subject to the laws of Fredonia regarding the allowance as a credit against Fredonian tax of tax payable in any country other than Fredonia, [other State] tax payable in respect of income derived from the [other State] shall be allowed as a credit against Fredonian tax payable in respect of that income. Where such income is a dividend paid to a company which is a resident of Fredonia and which owns not less than 10 per cent of the entire shares with voting power of the company paying the dividend, the credit shall take into account [other State] tax payable in respect of its income by the company paying the dividend.

3. [other country's method]

4. Where, under the laws of one of the Contracting States, any tax to which this Convention applies has been wholly or partly relieved, then for the purpose of calculating in the other Contracting State the deduction from the tax as referred to in the preceding paragraphs such tax shall be deemed to have been paid.

5. For the purposes of this Article and the provisions of the domestic laws of each Contracting State concerning elimination of double taxation, income derived by a resident of one of the Contracting States which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to be derived from that other Contracting State.}

[U][1. Tax shall be determined in the case of a resident of Utopia as follows and in accordance with the provisions and subject to the limitations of the law of the Utopia (as it may be amended from time to time without changing the general principle thereof), Utopia shall allow to a resident of Utopia

a) as a credit against Utopian tax on income

- (i) the income tax paid to by or on behalf of such resident; and
- (ii) in the case of a Utopian company owning at least 10% of the voting shares of a company that is a resident of and from which a Utopian company receives dividends, the income tax paid to by or on behalf of the distributing company with respect to the profits out of which the dividends are paid;

For the purposes of this subparagraph, the taxes referred to in paragraphs1(b) of Article 2 (Taxes covered) except, shall be considered income taxes paid to Credits allowed by reason of this Article shall not in any taxable year exceed that proportion of Utopia tax on income that taxable income arising in bears to total taxable income;

b) as a credit against Utopian tax on capital, the capital tax paid to by or on behalf of such resident. Credits allowed by reason of this subparagraph shall not in any taxable year exceed that proportion of Utopia tax on capital that taxable capital in bears to total taxable capital.

2. [other country's method]]

CHAPTER VI
SPECIAL PROVISIONS

Article 24

[U][NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on 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 State than the taxation levied on enterprises of that other 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 Article 9, paragraph 4 of Article 11, or paragraph 4 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 State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State.]

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this {F} {Convention} [U] [Agreement], he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of {F} {the} [U] [either] Contracting State {F} {of which he is a resident}. 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 {F} {Convention} [U] [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

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taxation which is not in accordance with the {F} {Convention}[U][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 {F} {Convention}[U][Agreement]. They may also consult together for the elimination of double taxation in cases not provided for in the {F} {Convention}[U][Agreement].

4. The competent authorities of the Contracting States may communicate with each other directly [U][, including through a joint commission consisting of themselves or their representatives,] for the purpose of reaching an agreement in the sense of the preceding paragraphs. {F} {When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.}

[U][5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.]

Article 26

EXCHANGE OF INFORMATION

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1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this {F} {Convention}[U][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 {F} {Convention}[U][Agreement]. {F} {In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance or evasion of such taxes.} The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and it 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, 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 States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that 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 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 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 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.

{F} {6. The competent authorities shall, through consultation, develop appropriate methods and techniques concerning the matters in respect of which exchanges of information under paragraph 1 shall be made.}

{F} {Article 27

ASSISTANCE IN RECOVERY

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of 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 this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not

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enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions 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 carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.}

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this {F} {Convention}[U][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 29

ENTITLEMENT TO BENEFITS

{F} {Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital 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 Convention.}

[U][1. Except as otherwise provided in this Article, a resident of a Contracting State shall be entitled to the benefits that would otherwise be accorded by this Agreement only if such resident is a qualified person.

2. For the purposes of this Article, a resident of a Contracting State shall be a qualified person if the resident is either:

- a) an individual;
- b) that Contracting State, any political subdivision or local authority thereof, the central bank thereof or a person that is wholly owned, directly or indirectly, by that State or any political subdivision or local authority thereof;
- c) a company, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- d) a person other than a company, if its beneficial interests are regularly traded on one or more recognised stock exchanges;
- e) a person other than an individual, provided that persons who are residents of that Contracting State and are qualified persons by reason of subparagraphs a) to d) own, directly or indirectly, more than 50 per cent of the beneficial interests of the person.

3. 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

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income if persons that are equivalent beneficiaries own, directly or indirectly, more than 75 per cent of the beneficial interests of the resident.

4. a) A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3 to a benefit that would otherwise be accorded by this Agreement with respect to an item of income shall nevertheless be entitled to such benefit if the resident is carrying on a business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless the business is carried on by a bank, an insurance company, a registered securities dealer or any other institution agreed upon by the Contracting States) and that item of income is derived in connection with, or is incidental to, that business.

b) If a resident of a Contracting State derives an item of income from a business carried on by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related enterprise of the resident, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item of income only if the business carried on by the resident in the first-mentioned Contracting State is substantial in relation to the business carried on by the resident or related enterprise in the other Contracting State. Whether a business is substantial for the purpose of this subparagraph shall be determined on the basis of all the facts and circumstances.

c) For the purposes of this paragraph, the business carried on by a partnership in which a person is a partner and the business carried on by related enterprises of a person shall be deemed to be carried on by such person.

5. A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3 or 4 to a benefit that would otherwise be accorded by this Agreement with respect to an item of income shall nevertheless be entitled to such benefit if the competent authority of the Contracting State from which the benefit is being claimed, upon request from that resident, determines, in accordance with its domestic law or administrative practice, that the establishment, acquisition or maintenance of the resident and the conduct of its operations are considered as not having as one of its principal purposes the obtaining of such benefit. The competent authority of the Contracting State to which such request has been made by a resident of the other Contracting State shall consult with the competent authority of that other State before rejecting the request.

6. For the purposes of this Article:

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a) the term “principal class of shares” means the class or classes of shares of a company which represents in the aggregate a majority of the voting power of the company;

b) 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;

c) the term “equivalent beneficiary” means any person who would be entitled to an equivalent or more favourable benefit 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 instrument as the benefit to be accorded to that item of income under this Agreement, provided that, if that person is a resident of neither of the Contracting States, the first-mentioned Contracting State has an agreement for the effective and comprehensive exchange of information relating to tax matters in effect with the state of which that person is a resident. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital, shares or voting powers, as the case may be, of the company paying the dividends as the company claiming the benefit with respect to the dividends holds those of the company paying the dividends.

d) A person shall be a related enterprise of another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

7. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.]

CHAPTER VII FINAL PROVISIONS

Article 30 ENTRY INTO FORCE

1. This {F} {Convention}[U][Agreement] shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

2. The {F} {Convention}[U][Agreement] shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in Fredonia, after the 31th December of the year in which it enters into force; and

b) in Utopia:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 April of the year next following that of entry into force;

(ii) in respect of other taxes on income and on capital, for any taxable year beginning on or after 1 April of the year next following that of entry into force;

Article 31

TERMINATION

This {F} {Convention}[U][Agreement] shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the {F} {Convention}[U][Agreement] [U][after a period of 5 years following its entry into force] by giving notice of termination, through diplomatic channels, at least six months before the end of any calendar year. In such event, the {F} {Convention}[U][Agreement] shall cease to have effect:

a) in Fredonia, after the 31th December of the year preceding that in which the Convention terminates; and

a) in Utopia:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 April of the year next following that in which the notice is given;

(ii) in respect of other taxes on income and on capital, for any taxable year beginning on or after 1 April of the year next following that in which the notice is given;

Done in duplicate at this day of in the Fredonian and in the Utopian languages, both texts being equally authentic.

CONVENTION BETWEEN THE KINGDOM OF UTOPIA AND THE REPUBLIC OF
ATLANTIS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Kingdom of Utopia and the Republic of Atlantis, desiring to further develop their economic relationship and to enhance their cooperation in tax matters, Intending to conclude an agreement for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax 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:

CHAPTER I
SCOPE OF THE CONVENTION

Article 1
PERSONAL SCOPE

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, 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 State, as the income of a resident of that State.

Article 2
TAXES COVERED

1. The existing taxes to which the Convention shall apply are:
 - a) in Utopia, the taxes levied by the federal government under the
 - (i) Income Tax Law,
 - (ii) Corporate Tax Law, and
 - (iii) Net Wealth Tax Law,

(hereafter referred to as "Utopian tax")
 - b) in Atlantis, the income and capital taxes levied under the National Tax Code
(hereafter referred to as "Atlantean tax")
2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the

existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

CHAPTER II DEFINITIONS

Article 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Utopia", when used in a geographical sense, means the Kingdom of Utopia including any area beyond the territorial seas of the Kingdom of Utopia which, in accordance with international law and the laws of the Kingdom of Utopia, is an area within which the Kingdom of Utopia may exercise rights with respect to the seabed and subsoil and their natural resources;
 - b) the term "Atlantis", means the Republic of Atlantis and when used in a geographical sense, includes any area beyond the territorial seas of Atlantis in which, in accordance with international law, Atlantis may exercise rights with respect to the seabed and subsoil and their natural resources;
 - c) the term "person" includes an individual, a company and any other body of persons;
 - d) the term "company" means any person that is a body corporate or an entity which is treated as a body corporate for tax purposes;
 - e) 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;
 - f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - g) the term "competent authority" means:
 - (i) in Utopia, the Minister of Finance or his authorized representative;
 - (ii) in Atlantis, the Ministry of Taxation;
 - h) the term "recognised pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that 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 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).

i) the term "national" means:

- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention 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 25, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that 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 State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed by the competent authorities of the Contracting States.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- g) a farm or plantation;
- h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months.

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

- a) the use of facilities solely for the purpose of storage 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 of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a connected 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 connected 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 associated enterprises at the two places, is not of a preparatory or auxiliary character,

6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, 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

- a) in the name of the enterprise, or
- b) 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
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. Paragraph 6 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 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 one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

9. For the purposes of this Article, a person or enterprise 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 or enterprise 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 or enterprise 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 or in the two enterprises.

CHAPTER III TAXATION OF INCOME

Article 6 INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a

permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

6. For the purposes of the preceding paragraphs, 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.

7. If the information available is inadequate to determine the income or profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of any law of a State relating to the determination of the tax liability of a person by making an estimate, provided that the result shall be in accordance with the principles contained in this Article.

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

Article 8 SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 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 State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the firstmentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. 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.

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 State.
2. (a) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
(b) Notwithstanding the provisions of subparagraph a), dividends paid by a company that is a resident of a Contracting State shall not be taxed in that Contracting State if the beneficial owner of the dividends is a company that is a resident of the other Contracting State and that company has had, during an uninterrupted period of two years preceding the date of payment of the

dividends, a direct shareholding of at least 25 percent of the capital or voting stock of the company paying the dividends. This subparagraph only applies to dividends attributable to that part of the shareholding that has been owned without interruption by the beneficial owner during such two-year period. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of these limitations. 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, "jouissance" shares or "jouissance" rights, mining shares, founders' 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 State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the 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 State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, 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 State.

Article 11 INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

- a) the interest is beneficially owned by the other Contracting State, a political subdivision or local authority thereof or an instrumentality of such other State, subdivision or authority, and is not subject to tax by that other State;
- b) the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to debt obligations issued at arm's length and guaranteed or insured by that other State or a political subdivision thereof or an instrumentality of such other State or subdivision which is not subject to tax by that other State;
- c) the interest is beneficially owned by a resident of the other Contracting State and is paid by the first-mentioned State, a political subdivision or local authority thereof or an instrumentality of such first-mentioned State, subdivision or authority which is not subject to tax by that first-mentioned State; or

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

5. The provisions of paragraphs 2 and 3 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 case, the provisions of Article 7 or 14, as the case may be, shall apply.

6. For the purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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 State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident.

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 the Convention.

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 State.

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

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

4. 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 motion pictures and works on film, videotape or other means of reproduction for use in connection with television), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

5. The term "fees for technical services" as used in this Article means payments of any kind to any person in consideration for services of a managerial, technical or consultancy nature (including the provision of such services through technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

(b) make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein; or

(c) consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.

For the purposes of (b) and (c) above, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person.

6. Notwithstanding paragraph 5, "fees for technical services" does not include payments:

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals making the payment; (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14;

7. The provisions of paragraphs 2 and 3 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, 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 case the provisions of Article 7 or 14, as the case may be, shall apply.

6. For the purposes of this Article, royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. However, where 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 was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the 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 royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 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 State.

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

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

6. The provisions of paragraph 5 shall not affect the right of Utopia to tax, in accordance with its own law, gains that a person who moves out of Utopia derives from the alienation of property within a period of 10 years following his departure.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect 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 twelvemonth 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 State may be taxed in that other 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, 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 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, 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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

Article 18 PENSIONS AND ANNUITIES

1. Pensions, annuities and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However such pensions, annuities and similar remuneration may also be taxed in the Contracting State in which they arise and according to the laws of that State; but the tax so charged shall not exceed 10 per cent of the gross amount of the payment.

3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or retirement plan, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan.

4. For the purposes of the Convention, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.

Article 19 GOVERNMENT SERVICE

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

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

2. The provisions of Articles 15, 16 and 17 shall apply to 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 STUDENTS

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

Article 21 OTHER INCOME

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other State, it may also be taxed in that other State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 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.

CHAPTER IV TAXATION OF CAPITAL

Article 22 CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital owned by an enterprise of a Contracting State and represented by ships and aircraft operated in international traffic, by boats engaged in inland waterways transport and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in that Contracting State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23 ELIMINATION OF DOUBLE TAXATION

1. Tax shall be determined in the case of a resident of Utopia as follows: subject to paragraphs 2 and 3 and in accordance with the provisions and to the limitations of the law of the Utopia (as it may be amended from time to time without changing the general principle thereof), Utopia shall allow to a resident of Utopia as a credit

- a) against Utopian tax on income:
- (i) the income tax paid to Atlantis by or on behalf of such resident; and
 - (ii) in the case of a Utopian company owning at least 10% of the voting shares of a company that is a resident of Atlantis and from which a Utopian company receives dividends, the income tax paid to Atlantis by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

Credits allowed by reason of this subparagraph shall not in any taxable year exceed that proportion of Utopia tax on income that taxable income arising in Atlantis bears to total taxable income.

- b) against Utopian tax on capital, the capital tax paid to Atlantis by or on behalf of such resident. Credits allowed by reason of this subparagraph shall not in any taxable year exceed that proportion of Utopia tax on capital that taxable capital in Atlantis bears to total taxable capital.

2. For the purposes of paragraph 1 of this Article, the term "income tax paid to Atlantis" shall be deemed to include, but only for the first 10 years following the coming into force of this Convention:

- a) any amount which would have been payable as Atlantean tax but for an exemption or reduction of tax granted in respect of income derived from manufacturing, extraction of natural resources, tourism, engineering or communications activities under:
- (i) sections 13 and 14 of the Tax Code of Atlantis so far as they were in force on, and have not been modified since, the date of signature of the present Convention, or have been modified only in minor respects so as not to affect their general character; or
 - (ii) any other provisions which may subsequently be made granting an exemption which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has

not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

3. Subject to the provisions of the law of Atlantis regarding the allowance as a credit against Atlantean tax for the tax payable in a territory outside Atlantis (as it may be amended from time to time without changing the general principle thereof),

- a) Utopia tax payable under the laws of Utopia and in accordance with the present Convention, whether directly or by deduction, on profits or income from sources within Utopia shall be allowed as a credit against any Atlantean tax computed by reference to the same profits or income by reference to which the Utopian is computed;
- b) in the case of a dividend paid by a Utopian company to a company which is resident of Atlantis and which controls directly or indirectly at least 10 percent of the voting power in the Utopian company, the credit shall take into account (in addition to any Utopian tax creditable under a)) the Utopian tax payable by the company in respect of the profits out of which such dividend is paid;
- c) Utopia tax payable under the laws of Utopia and in accordance with the present Convention, whether directly or by deduction, on capital situated in Utopia shall be allowed as a credit against any Atlantean tax computed by reference to the same capital by reference to which the Utopian is computed.

CHAPTER VI SPECIAL PROVISIONS

Article 24 NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 State concerned in the same circumstances are or may be subjected.

3. The taxation on 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 State than the taxation levied on enterprises of that other 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 5 of Article 11, or paragraph 4 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 State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State.

Article 25 MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. 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 Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour 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. When it seems advisable in order to reach agreement to have an oral

exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

5. Disagreements between the Contracting States regarding the interpretation or application of this Convention shall, as far as possible, be settled by the competent authorities. If a disagreement cannot be resolved by the competent authorities it may, if both competent authorities agree, be submitted for arbitration. The procedures shall be agreed upon and shall be established between the Contracting States by notes to be exchanged through diplomatic channels.

Article 26 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 Convention or to the administration or enforcement of the domestic laws 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 Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, 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.

3. In no case shall the provisions of paragraphs 1 and 2 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 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 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 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 27
DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28
ENTITLEMENT TO BENEFITS

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital 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 Convention.

**CHAPTER VII
FINAL PROVISIONS**

Article 29
ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Capitaltown as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - a) in Utopia:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 April of the year next following that of entry into force;
 - (ii) in respect of other taxes on income and on capital, for any taxable year beginning on or after 1 April of the year next following that of entry into force;
 - b) in Atlantis, after 31st December 2014.

Article 30

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention after a period of 5 years following its entry into force by giving notice of termination, through diplomatic channels, at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in Utopia:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1 April of the year next following that in which the notice is given;
 - (ii) in respect of other taxes on income and on capital, for any taxable year beginning on or after 1 April of the year next following that in which the notice is given;
- b) in Atlantis, after 31st December of the year in which the notice is given.

Done in duplicate at Capitaltown, this 27th day of June 2017, in the Utopian and Atlantean languages, both texts being equally authentic.

FOR THE KINGDOM OF UTOPIA

FOR THE REPUBLIC OF ATLANTIS

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

The Republic of Fredonia and the United States of Lilliput,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of
fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. The taxes which are the subject of this Agreement are:

- a) in Fredonia, the taxes levied under the
 - (i) Tax on Income Law,
 - (ii) Tax on Wages Law,
 - (iii) Tax on Artistes Law,
 - (iv) General Income Tax Law,(hereafter referred to as "Fredonian Tax")

- b) in the United States of Lilliput:
 - (i) the income tax (including surtax),
 - (ii) the corporation tax, and
 - (iii) the capital gains tax,(hereafter referred to as "United States of Lilliput tax").

2. The Agreement shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in either Contracting State after the date of signature of this Agreement.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
- a) the term "Fredonia" means the Republic of Fredonia and, when used in a geographical sense, it includes any area outside the territorial sea of the Republic of Fredonia within which the Republic of Fredonia under its legislation and in accordance with international law has rights with respect to the exploration for and the exploitation of the natural resources of the seabed and subsoil;
 - b) the term "United States of Lilliput" means the United States of Lilliput, including any area outside the territorial sea of the United States of Lilliput which in accordance with international law has been or may hereafter be designated, under the laws of the United States of Lilliput concerning the continental shelf, as an area within which the rights of the United States of Lilliput with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - c) the terms "one of the Contracting States" and "the other Contracting State" mean the United States of Lilliput or Fredonia, as the context requires;
 - d) the term "tax" means United States of Lilliput tax or Fredonian tax, as the context requires;
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes, including, in the case of Fredonia, a partnership;
 - f) the term "individual" means a natural person;
 - g) the term "person" includes an individual, a company and a body of persons;
 - h) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;
 - i) the term "national" means:
 - (i) in relation to Fredonia:
 - (aa) any individual possessing the citizenship of Fredonia;
 - (bb) any legal person, partnership, association and other entity deriving its status as such from the law in force in Fredonia;
 - (ii) in relation to the United States of Lilliput:
 - (aa) any citizen of the United States of Lilliput and its colonies who derives his status as such from his connection with the United States of Lilliput;
 - (bb) any legal person, association or other entity deriving its status as such from the law of the United States of Lilliput;
 - j) the term "competent authority" means,
 - (i) in the case of Fredonia, the Minister of Taxation or his authorised representative; and
 - (ii) in the case of the United States of Lilliput, the Commissioners of National Revenue or their authorised representative.

2. As regards the application at any time of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies.

Article 4 RESIDENT

1. In this Agreement, subject to the provisions of paragraphs 2 and 3 of this Article, and unless the context otherwise requires:

- a) the term "resident of Fredonia" means a person who is resident of Fredonia for the purposes of Fredonia tax;
- b) the term "resident of the United States of Lilliput" means a person who is resident in the United States of Lilliput for the purposes of United States of Lilliput tax; and
- c) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of the United States of Lilliput or a resident of Fredonia, as the context requires.

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:
- a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop;
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
3. The term "permanent establishment" is deemed to include:
- 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 180 days;
 - 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 for a project or a connected project within a Contracting State for a period or periods aggregating more than 120 days in any 12-month period commencing or ending in the fiscal year concerned.
 - c) activities carried on by the enterprise in the other Contracting State, which consist of, or which are connected with, the exploration or exploitation of natural resources situated in that other State, but only where activities of that nature continue for a period or periods aggregating more than 60 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a connected 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 connected 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 associated 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 connected 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 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, 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

- a) in the name of the enterprise, or
- b) 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
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6
INCOME FROM IMMOVABLE PROPERTY

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 each State according to its domestic law.

Article 7
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 income or profits of a permanent establishment, there shall be allowed as deductions of expenses, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.
4. In so far 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 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, 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
AIR TRANSPORT

A resident of one of the Contracting States shall be exempt from tax in the other Contracting State on income or profits from the operation of aircraft other than income or profits from voyages of aircraft confined solely to places in the other Contracting State.

Article 9
ASSOCIATED ENTERPRISES

1. Where
 - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
 and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits.

Article 10
DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - a) 5% 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) 15% 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as distribution by partnerships deriving their status as such from Fredonian law and income from other corporate rights and which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the 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 Articles 7 or 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 State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, 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 State.

6. Benefits under this Article shall not be granted if the shares in respect of which the dividend is paid were created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 11 INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest paid or credited to a resident of the United States of Lilliput on an approved loan shall be exempt from tax in Fredonia.

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. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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 State in which the permanent establishment or fixed base is situated.

6. The provisions of paragraphs 1, 2 and 3 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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.

8. Benefits under this Article shall not be granted if the loan or other indebtedness in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

Article 12 ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount thereof. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Fredonia by a resident of the United States of Lilliput shall be exempt from tax in Fredonia.

4. 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 (including rights related to literary, artistic or scientific work and broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid are 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. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, royalties are paid

- a) by a resident of one of the Contracting States with a permanent establishment or fixed base outside both Contracting States to a resident of the other Contracting State; or
- b) by a resident of one of the Contracting States or a third State with a permanent establishment or fixed base in one Contracting State to a resident of the other Contracting State,

and the obligation to pay the royalties was incurred in connection with that permanent establishment or fixed base, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the 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 royalties, having regard to the use, right, information or services 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.

8. Benefits under this Article shall not be granted if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13 Capital gains

1. Capital gains from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State in which such property is situated.

2. Capital gains from the alienation of any 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 including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other Contracting State.

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

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Capital gains from the alienation of any property other than mentioned in paragraphs 1 and 2 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph 5 of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State but is ordinarily resident in the first-mentioned Contracting State.

Article 14 INDEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 12, income derived by a resident of a Contracting State in respect 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 so much of the income as is attributable to that fixed base may be taxed in that other State; or
- b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in any period of 12 months; in that case so much of the income as is derived from his activities performed in that other State may be taxed in that other 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 DIRECTORS' FEES

1. 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Article 15 shall apply to any remuneration derived by a director of a company derived from the company as if the remuneration were remuneration of an employee in respect of an employment exercised in the State of residence of that company.

Article 17 ARTISTES AND ATHLETES

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

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself 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 athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from such activities as are referred to in paragraph 1 shall be exempt from tax in the Contracting State in

which the activities are exercised, if the visit to that State is directly or indirectly supported, wholly or substantially, from public funds of the other State.

Article 18 PENSIONS

1. Any pension (other than a pension to which Article 19 applies) or any annuity derived by an individual who is a resident of one of the Contracting States from the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term "annuity" includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19 GOVERNMENT SERVICE

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

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

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

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

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

Article 20 STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education

or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. An individual who is or was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on:

- a) the amount of such grant, allowance or award; and
- b) any income derived from that other Contracting State in respect of services in that other Contracting State if the services are performed in connection with his study, research, training or are incidental thereto.

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 State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, 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 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, 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 State.

Article 22 ELIMINATION OF DOUBLE TAXATION

1. The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this Agreement. Where income derived from one of the Contracting States is subject to tax in both Contracting States, relief from tax chargeable on such income shall be given in accordance with the provisions of paragraphs 2 and 3 of this Article.

2. Subject to the laws of Fredonia regarding the allowance as a credit against Fredonian tax of tax payable in any country other than Fredonia, United States of Lilliput tax payable in respect of income derived from the United States of Lilliput shall be allowed as a credit against Fredonian tax payable in respect of that income. Where such income is a dividend paid to a company which is a resident of Fredonia and which owns not less than 10 per cent of the entire shares with voting power of the company paying the dividend, the credit shall take into account United States of Lilliput tax payable in respect of its income by the company paying the dividend.

3. a) Subject to the provisions of the law of the United States of Lilliput regarding the allowance as a credit against United States of Lilliput tax of tax payable in a territory outside the United States of Lilliput and subject to sub-paragraph (b) of this paragraph, Fredonian tax payable under the laws of Fredonia in respect of profits, income or capital gains derived from Fredonia and in accordance with this Agreement shall be allowed as a credit against any United States of Lilliput tax computed by reference to the same profits, income or capital gains by reference to which the Fredonian tax is computed.

b) Where such income is a dividend paid by a company which is a resident of Fredonia the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividends is paid and is ultimately borne by the recipient without reference to any tax so payable. Where, however, the dividend is paid to a company which is a resident of the United States of Lilliput and which controls directly or indirectly not less than 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Fredonian tax appropriate to the dividend) the Fredonian tax payable in respect of its profits by the company paying the dividend.

4. For the purpose of paragraphs 1 and 2 of this Article profits, income and capital gains derived by a resident of one of the Contracting States which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to be derived from that other Contracting State.

5. For the purposes of paragraph 3 of this Article, the term "Fredonian tax payable" shall be deemed to include:

a) any amount which would have been payable as Fredonian tax but for an exemption or reduction of tax granted for that year of any part thereof with respect to income from business activities (other than banking or insurance business) under:

(i) Sections 15 to 20 of the Investment Incentives Law 2001 of Fredonia so far as they were in force on, and have not been modified since, the date of signature of the present Agreement, or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provisions which may subsequently be made granting an exemption which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; or

b) in the case of interest on approved loans to which paragraph 3 of Article 11 applies, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross

amount of the interest in respect of Fredonian tax which would have been payable but for the reduced rate of tax granted under Section 6(1)(b) of the Investment Incentives Law 1996 of Fredonia.

Article 23 MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, to 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 directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 24 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 Convention or to the administration or enforcement of the domestic laws 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 Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, 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.

3. In no case shall the provisions of paragraphs 1 and 2 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 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 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 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 25 DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 27 ENTITLEMENT TO BENEFITS

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital 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 Convention.

Article 26
ENTRY INTO FORCE

1. This Agreement shall enter into force on the date when the last of all such things shall have been done in the United States of Lilliput and Fredonia as are necessary to give the Agreement the force of law in the United States of Lilliput and Fredonia respectively, and shall thereupon have effect:

- a) in Fredonia, after the 30th December of the year in which it enters into force; and
- b) in the United States of Lilliput:
 - (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 1st January of the year next following that in which it enters into force;
 - (ii) as respects corporation tax, for any financial year beginning on or after on or after 1st January of the year next following that in which it enters into force.

2. The Governments of the Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

Article 27
TERMINATION

This Agreement shall continue in effect indefinitely but the Government of either Contracting State may, on or before the thirtieth day of June in any calendar year give notice of termination to the Government of the other Contracting State and, in such event, the Agreement shall cease to be effective:

- a) in Fredonia, after the 30th December of the year in which such notice is given; and
- b) in the United States of Lilliput:
 - (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 1st January of the year next following that in which such notice is given;
 - (ii) as respects corporation tax, for any financial year beginning on or after on or after 1st January of the year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Theirtown, this 28 February 2016, in the Fredonian and Lilliputian languages, both texts being equally authentic.

FOR THE REPUBLIC OF FREDONIA

FOR THE UNITED STATES OF LILLIPUT