

Convention between
the Republic of Korea and the United States of America
for the Avoidance of Double Taxation and the Prevention
of Fiscal Evasion with Respect to Taxes on Income and
the Encouragement of International Trade and Investment

Signed at Seoul June 4, 1976
Entered into force October 20, 1979

The Government of the Republic of Korea and the Government of the United States of America, desiring to conclude a convention for the avoidance of double taxation of income and the prevention of fiscal evasion and the encouragement of international trade and investment, have appointed for that purpose as their respective Plenipotentiaries :

The Government of the Republic of Korea: Excellency Park Tong-Jin
Minister of Foreign Affairs of the Republic of Korea

The Government of the United States of America: His Excellency Richard L. Sneider
Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Korea who having communicated to each other their full powers, found in good and due form, have agreed upon the following articles.

Article 1. 【TAXES COVERED】 [1979.10.20]

(1) The taxes which are the subject of this Convention are:

- (a) In the case of Korea, the income tax and the corporation tax (the Korean tax); and
- (b) In the case of the United States the Federal income taxes imposed by the Internal Revenue Code (the United States tax).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 7 (Nondiscrimination), the Convention shall also apply to taxes of every kind imposed at the National, state or local level. For the purpose of Article 28 (Exchange of Information) this Convention shall also apply to taxes of every kind imposed at the National level.

Article 2. **【GENERAL DEFINITIONS】** [1979.10.20]

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

(a) (i) The term "Korea" means the Republic of Korea; and

(ii) When used in a geographical sense, the term "Korea" means all the territory in which the laws relating to Korean tax are in force. The term also includes :

(A) The territorial sea thereof; and

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

(b) (i) The term "United States" means the United States of America; and

(ii) When used in a geographical sense, the term "United States" means the states thereof and the District of Columbia, Such term also includes :

(A) The territorial sea thereof ; and

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

(c) The term "Contracting State" means Korea or the United States, as the context requires ;

(d) The term "person" includes an individual, a partnership a corporation, an estate, a trust, or any body of persons;

(e) (i) The term "Korea corporation" or "corporation of Korea" means a corporation (other than a United States corporation) which has its head or main office in Korea, or any entity treated as a Korean corporation for Korean tax purposes ; and

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

(f) The term "competent authority" means :

(i) In the case of Korea, the Minister of Finance or his delegate; and

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

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

(h) The term "citizen" means:

(i) In the case of Korea, a national of Korea; and

(ii) In the case of the United States, a citizen of the United States.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise would have the meaning which it has under the laws of the Contracting state

whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one Contracting State is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of this Convention.

Article 3. **【FISCAL DOMICILE】** [1979.10.20]

(1) In this Convention:

(a) The term "resident of Korea" means:

(i) A Korean corporation; and

(ii) Any other person (except a corporation or any entity treated under Korean law as a corporation) resident in Korea for purposes of its tax, but in the case of a Person acting as a partner or fiduciary only to the extent that the income derived by such person is subject to Korean tax as the income of a resident;

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

(i) A United States corporation; and

(ii) Any other person (except a corporation or any entity treated under United States law as a corporation) resident in the United States for purposes of its tax, but in the case of a person acting as a partner or fiduciary only to the extent that the income derived by such person is subject to United States tax as the income of a resident :

(c) In determining the residence of a partnership which makes a payment, a partnership shall be considered a resident of the State under the laws of which it was created or organized.

(2) Where by reason of the provisions of paragraph (1) an individual resident of both Contracting States :

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home ;

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

(c) If his center of vital interests is in neither of the Contracting States or cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode :

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

(e) If he is a citizen of both Contracting State or of neither Contracting State the competent authorities of the Contracting States shall settle the question by mutual agreement. For the purpose of this paragraph, a permanent home in the place where an individual dwells with his family.

(3) An individual who is deemed to be a resident of one of the Contracting States and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 4 (General Rules of Taxation).

Article 4. 【GENERAL RULES OF TAXATION】 [1979.10.20]

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 6 (Source of income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded :

(a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting States;

(b) By any other agreement between the Contracting States.

(3) The provisions of this convention shall nor affect Korean law so as to deny benefits accorded residents of the United States under the provisions of the Korean Foreign Capital Inducement Law No. 2598 of March 12, 1973 as amended or any similar law to encourage investment in Korea.

(4) Notwithstanding any provisions of this Convention except paragraph (5) of this Article, a Contracting State may tax a citizen or resident of that Contracting State as if this Convention had not come into effect.

(5) The provisions of paragraph (4) shall not affect :

(a) The benefits conferred by a Contracting State under Article 5 (Relief from Double Taxation), 7 (Nondiscrimination), 24 (Social Security Payments), and 27 (Mutual Agreement Procedure) ; and

(b) The benefits conferred by a Contracting State under Articles 20(Teachers), 21 (Students and Trainees) and 22 (Governmental Functions), upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(6) The competent authorities of the two Contracting States may prescribe regulations necessary to carry out the provisions of this Convention.

(7) There shall be allowed, for purposes of United States tax, in the case of a resident of Korea who is not a resident of the United States (other than an officer or employee of the Government of Korea or local authority thereof), as long as the United States Internal Revenue Code provides only one personal exemption, a deduction for personal exemptions, subject to the conditions prescribed

in sections 151 through 154 of the Internal Revenue Code as in effect on the date of the signature of this Convention, for the spouse of the taxpayer and for each child of the taxpayer present in the United States and residing with him in the United States at any time during the taxable year, but such additional deduction shall not exceed that proportion thereof which the taxpayer's gross income from source within the United States which is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864(c) of the Internal Revenue Code for the taxpayer's taxable year bears to his entire income from all source for such taxable year.

(8) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Convention. However, a Korean corporation shall be exempt from the United States personal holding company tax in any taxable year if all of its stock is owned, directly or indirectly, by one or more individuals who are residents of Korea (and not citizens of the United States) for that entire year. A Korean corporation shall be exempt from the United States accumulated earnings tax in any taxable year unless such corporation is engaged in trade or business in the United States through a permanent establishment at any time during such year.

Article 5. **【RELIEF FROM DOUBLE TAXATION】** [1979.10.20]

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

(1) In accordance with the provisions and subject to the limitations of the law of Korea (as it may be amended from time to time without changing the principles hereof), Korea shall allow to a citizen or resident of Korea as a credit against Korean tax the appropriate amount of income taxes paid to the United States and, in the case of a Korean corporation owning at least 10 percent of the voting power of the United States corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid to the United States by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to the United States but shall not exceed that portion of Korean tax which such citizen's or resident's net income from sources within the United States bears to his entire net income for the same taxable year. For the purpose of applying the Korean credit in relation to taxes paid to the United States, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income ;

(2) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the principles hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of Korean tax and, in the case of a United States corporation owning at least, 10 percent of the voting power of a Korean corporation from which it received dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid to Korea by the Korean corporation paying such dividends with respect to the profits out of which such dividends

are paid. Such appropriate amount shall be based upon the amount of tax paid to Korea but the credit shall not exceed the limitations (for the purpose limiting the credit to the United States tax on income from sources within Korea or on income from sources outside the United States) provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Korea, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

Article 6. **【SOURCE OF INCOME】** [1979.10.20]

For purposes of this Convention :

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State.

(2) Interest shall be treated as income from sources within one Contracting States only if paid by that Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State.

Notwithstanding the preceding sentence :

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

(b) If the person paying the interest is a resident of one of the Contracting States and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment, such interest shall be deemed to be from sources within the State in which the permanent establishment is situated.

(3) Royalties described in paragraph (4) of Article 14 (Royalties) for the use of, or the right to use, property (other than as provided in paragraph (5) with respect to ships or aircraft) described in such paragraph shall be treated as income from sources within one of the Contracting States only if paid for the use of, or the right to use, such property within that Contracting State.

(4) Income from real property and royalties from the operation of mines, quarries, or other natural resources (including gains derived from the sale of such property or the right giving rise to such royalties) shall be treated as in come from sources within one of the Counteractingly States only if such property is located in that Contracting State.

(5) Income from the rental of tangible property (movable property) shall be treated as income from sources within one of the Contracting States only if such property is located in that Contracting State. Income from the rental of ships or aircraft derived by a person not engaged in the operation

of ships or aircraft in international traffic shall be treated as income from sources within a Contracting State only if the lessee is a resident of that Contracting State.

(6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, or for furnishing the personal services of other person and income received by a corporation for furnishing the personal services of its employees or others, shall be treated as income from sources within one of the Contracting States only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. For purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (3) of Article 23 (private Pensions and Annuities) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph remuneration described in Article 22 (Governmental Functions, and payments described in Article 24(Social Security Payments) shall be treated as income from sources within one of the Contracting States only if paid by or from the public fund of that Contracting State or local authority thereof.

(7) Income from the purchase and sale of intangible or, tangible personal (including movable) property (other than gain defined as royalties by paragraph (4) (b) of Article 14 (Royalties)) shall be treated as income from sources within one of the Contracting States only if such property is sold in that Contracting State.

(8) Notwithstanding paragraphs (1) through (7), industrial or commercial profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State, including income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (4) of Article 14(Royalties)), and capital gains, but only if the rights or property giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment, shall be treated as income from sources within that other Contracting State.

(9) The source of any item of income to which paragraphs (1) through (8) of this Article are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

Article 7. **【NON-DISCRIMINATION】** [1979.10.20]

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging one of the Contracting States to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which the first-mentioned Contracting State grants to its own individual residents.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the her Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first- mentioned Contracting State, is or may be subjected.

Article 8. **【BUSINESS PROFITS】** [1979.10.20]

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless such resident is engaged in industrial or commercial activity in that other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by that other Contracting State on the industrial or commercial profits of such resident but only on so much of such profits as are attributable to the permanent establishment.

(2) Where a resident of one of the Contracting States is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State

in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial activity" means the active conduct of a trade or business. It includes the conduct of manufacturing, mercantile, insurance, banking, financing, agricultural, fishing, or mining activities, the operation of ships or aircraft, the furnishing of services, and the rental of tangible personal property (including ships or aircraft). Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

(6) (a) The term "industrial or commercial profits" means income derived from industrial or commercial activity, and income derived from real property and natural resources, and dividends, interest, royalties (as defined in paragraph (4) of Article 14 (Royalties)) and capital gains but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with a permanent establishment which the recipient, being a resident of one of the Contracting States, has in the other Contracting State, whether or not such income is derived from industrial or commercial activity.

(b) To determine whether property or rights are effectively connected with a permanent establishment, the factors taken into account shall include whether the rights or property are used in or held for use in carrying on industrial or commercial activity through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

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

Article 9. **【PERMANENT ESTABLISHMENT】** [1979.10.20]

(1) For purposes of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity.

(2) The term "fixed place of business" includes but is not limited to:

- (a) A branch;
- (b) An office;

- (c) A factory;
- (d) A workshop;
- (e) A warehouse ;
- (f) A store or other sales outlet;
- (g) A mine, quarry, or other place of extraction of natural resources; and
- (h) A building site or construction or installation project which exists for more than 6 months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident ;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or deliverer ;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person ;

(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident ;

(e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or

(f) The maintenance of a building site or construction or installation project which does not exist for more than 6 months.

(4) Even if a resident of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs (1) through (3) of this Article, nevertheless he shall be deemed to have a permanent establishment in that other Contracting State if he engages in trade or business in that other Contracting State through an agent who:

(a) Has an authority to conclude contracts in the name of that resident and regularly exercises that authority in that other Contracting State, unless the exercise of the authority is limited to the purchase of goods or merchandise for the account of the resident; or

(b) Maintains in that other Contracting State a stock of goods or merchandise belonging to that resident from which he regularly fills orders or makes deliveries.

(5) Notwithstanding subparagraphs (a), (c) and (d) of paragraph (3), if a resident of one of the Contracting States has a fixed place of business in the other Contracting State and goods or merchandise are either: (a) Subjected to processing in that other Contracting State by another person (whether or not purchased in that other Contracting State) ; (b) Purchased in that other Contracting State (and such goods or merchandise are not subjected to processing outside that other Contracting State) ; such resident shall be considered to have a permanent establishment in that other Contracting State, if all or part of such goods or merchandise is sold by or on behalf of such resident for use, consumption, or disposition in that other Contracting State.

(6) Notwithstanding the provisions of paragraphs (4) and (5), a resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(7) The fact that a resident of one of the Contracting States is a related person (as defined under Article 11 (Related Persons)) with respect to a resident of the other Contracting State or with respect to a person who engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first-mentioned Contracting State has a permanent establishment in that other Contracting State.

(8) The principles set forth in paragraphs (1) through (7) shall be applied in determining for the purpose of this Convention whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States.

Article 10. **【SHIPPING AND AIR TRANSPORT】** [1979.10.20]

Notwithstanding Article 8 (Business Profits), income which a resident of one of the Contracting States derives from the operation in international traffic of ships or aircraft shall be exempt from tax by the other Contracting State. For purposes of this Article, income derived from the operation in international traffic of ships or aircraft includes income incidental to such operation, such as income derived from the use or lease of containers, trailers for the inland transportation of containers and other related equipment, but does not include other income from the inland transportation of containers.

Article 11. **【RELATED PERSONS】** [1979.10.20]

(1) Where a person subject to the taxing jurisdiction of one of the Contracting States and any other person are related and where such related persons make arrangement or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) For the purposes of this Convention, a person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons owns or

controls directly or indirectly both. for this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

Article 12. **【DIVIDENDS】** [1979.10.20]

(1) Dividends derived from sources within one of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed:

(a) 15 percent of the gross amount of the dividend; or

(b) When the recipient is a corporation, 10 percent of the gross amount of the dividend if:

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation; and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received.)

(3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, Paragraph (6) (a) of Article 8 (Business Profits) shall apply.

Article 13. **【INTEREST】** [1979.10.20]

(1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on interest derived from source within that Contracting State by a resident of the other Contracting State shall not exceed 12 percent of the gross amount thereof.

(3) Notwithstanding paragraph (1) and (2), interest derived from sources within one of the Contracting States shall be exempt from tax by that Contracting State if it is beneficially derived by the Government of the other Contracting State, by any local authority thereof, the central bank of that other Contracting State, or any instrumentality wholly owned by that Government or that central bank or both, not subject to tax by that other Contracting State on its income.

(4) Paragraph (2) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such case, paragraph (6) (a) of Article 8 (Business Profits) shall apply.

(5) Where any amount designated as interest paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

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

Article 14. **【ROYALTIES】** [1979.10.20]

(1) The tax imposed by one of the Contracting States on royalties derived from source within that Contracting State by a resident of the other Contracting State shall not exceed 15 percent of the gross amount thereof, except as provided in paragraphs (2) and (3).

(2) Royalties derived from copyrights or rights to produce or reproduce any literary, dramatic, musical, or artistic work, by a resident of one Contracting State, as well as royalties received as consideration of the use of, or the right to use, motion picture films including films and tapes used for radio or television broadcasting, may not be taxed by the other Contracting State at a rate of tax which exceeds 10 percent of the gross amount of such royalties.

(3) Paragraph (1) and (2) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with such permanent establishment. In such a case, paragraph (6) (a) of Article 8 (Business Profits) shall apply.

(4) The term "royalties" as used in this Article means:

(a) Payment of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, copy rights of motion picture films or films or tapes used for radio or television broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or knowledge, experience, or skill (know-how), or

ships or aircraft (but only if the lessor is a person not engaged in the operation in international traffic of ships or aircraft) ; and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights (other than ships or aircraft) to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights, The term does not include any royalties, rentals or other amount paid in respect of the operation of mines, quarries, or other natural resources.

(5) Where an amount is paid to a related person which would be treated as royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case, the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 15. **【INCOME FROM REAL PROPERTY】** [1979.10.20]

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

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property

Article 16. **【CAPITAL GAINS】** [1979.10.20]

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

(a) The gain is derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of property described in Article 15 (Income from Real Property) situated within the other Contracting State;

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

(c) The recipient of the gain, being an individual who is a resident of one of the Contracting States :

(i) Maintains a fixed base in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year and the property giving rise to such gains is effectively

connected with such fixed base; or

(ii) Is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) In the case of gains described in paragraph (1) (a), the provisions of Article 15 (Income from Real Property) shall apply. In the case of gains described in paragraph (1) (b), the provisions of Article 8(Business Profits) shall apply.

Article 17. **【INVESTMENT OR HOLDING COMPANIES】** [1979.10.20]

A corporation of one of the Contracting States deriving dividends, interest, royalties, or capital gains from sources within the other Contracting State shall not be entitled to the benefits of Article 12(Dividends), 13(Interest), 14(Royalties), or 16 (Capital Gains) if:

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect so such dividends, interest, royalties, or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits ; and

(b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of a Korean corporation, who are citizens of the United States).

Article 18. **【INDEPENDENT PERSONAL SERVICES】** [1979.10.20]

(1) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity, may be taxed by that Contracting State. Except as provided in paragraph (2), such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

(a) The individual is present in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year;

(b) Such income exceeds 3,000 United States dollars or its equivalent in Korean won in a taxable year; or

(c) The individual maintains a fixed base in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year, but only so much of his income as is attributable to such fixed base.

Article 19. **【DEPENDENT PERSONAL SERVICES】** [1979.10.20]

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including remuneration from services performed by an officer of a corporation, may be taxed by that Contracting State. Except as provided by paragraph (2) such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other States if:

(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year;

(b) He is an employee of a resident of the first mentioned Contracting State or of a permanent establishment maintained in the first-mentioned Contracting State;

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State; and

(d) Such income does not exceed 3,000 United States dollars or its equivalent in Korean won.

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

Article 20. **【TEACHERS】** [1979.10.20]

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

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

Article 21. **【STUDENTS AND TRAINEES】** [1979.10.20]

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

Contracting State for the primary purpose of :

(j) Studying at a university or other recognized educational institution in that other Contracting State; or

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

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization, shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

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

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

(ii) The grant, allowance, or award; and

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

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

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

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

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

(4) The benefits provided under Article 20 (Teachers) and paragraph (1) of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit.

Article 22. **【GOVERNMENTAL FUNCTIONS】** [1979.10.20]

Wages, salaries, and similar remuneration including pensions, annuities, or similar benefits, paid from public funds of one of the Contracting States to a citizen of that Contracting State for labor or personal services performed as an employee of that Contracting State or an instrumentality thereof in the discharge of governmental functions shall be exempt from tax by the other contracting State.

Article 23. **【PRIVATE PENSIONS AND ANNUITIES】** [1979.10.20]

(1) Except as provided in Article 22 (Governmental Functions), pensions and other similar remuneration paid to an individual who is a resident of one of the Contracting States in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) The term "pensions and other similar remuneration" as used in this Article, means periodic payments made (a) by reason of retirement or death in consideration for services rendered, or (b) by way or compensation for injuries received in connection with past employment.

(4) The term "annuities", as used in this Article, 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).

(5) The term "alimony", as used in this Article, means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement which is taxable to the recipient under the internal laws of the Contracting State of which he is a resident.

Article 24. **【SOCIAL SECURITY PAYMENTS】** [1979.10.20]

Social security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State (or in the case of such payments by Korea, to an individual who is a citizen of the United States) shall be taxable only in the first-mentioned Contracting State. This Article shall not apply to payments described in Article 22 (Governmental Functions).

Article 25. **【EXEMPTION FROM SOCIAL SECURITY TAXES】** [1979.10.20]

(1) The taxes imposed by Chapter 21 of the Internal Revenue Code shall not apply with respect to

wages paid for services performed in Guam by a resident of Korea while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 101 (a) (15) (H) (ii) of the United States Immigration and Nationality Act (8 U. S C. 1101(a) (15) (H) (ii)).

(2) The exemption provided in paragraph (1) shall continue only so long as the similar exemption provided by section 3121 (b) (18) of the Internal Revenue Code.

Article 26. **【DIPLOMATIC AND CONSULAR OFFICERS】** [1979.10.20]

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

Article 27. **【】** [1979.10.20]

(1) Where a resident of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view to avoiding taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree :

- (a) To the same attribution of industrial or commercial profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;
- (b) To the same allocation of income, deductions, credits, or allowances between a person subject to the taxing jurisdiction of one of the Contracting States and any related person;
- (c) To the same determination of the source of particular items of income ;
- (d) To the uniform accounting for income and deductions; or
- (e) To the same meaning of any term used in this Convention.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income, and refund

r credit of taxes shall be allowed, by the Contracting States in accordance with such agreement.

Article 28. **【EXCHANGE OF INFORMATION】** [1979.10.20]

under the laws and administrative practices of each Contracting State with respect to its own taxes.

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

(a) Disclosed to any person concerned with; or

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

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

(4) If specifically requested by the competent authority of one of the Contracting States, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and copies of unedited original documents(including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

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

(6) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (1) of Article 1 (Taxes Covered) and of the adoption of any taxes referred to in paragraph (2) of Article 1 (Taxes Covered) by transmitting the texts of any amendments or new statutes at least once a year.

(7) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions by transmitting the texts of any such materials at least once a year.

Article 29. **【EXTENSION TO TERRITORIES】** [1979.10.20]

(1) Either one of the Contracting States may, at any time while this Convention continues in force, by a written notification given to the other Contracting State through diplomatic channels, declare its desire that the operation of this Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall extend to all or any of the areas (to which this Convention is not otherwise applicable) for whose

international relations it is responsible and which impose taxes substantially similar in character to those which are the subject of this Convention. When the other Contracting State has, by a written communication through diplomatic channels, signified to the first-mentioned Contracting State that such notification is accepted in respect of such area or areas, and the notification and communication have been ratified and instruments of ratification exchanged, this Convention, in whole or in part, or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the area or areas named in the notification and shall enter into force and effect on and after the date or dates specified therein. None of the provisions of this Convention shall apply to any such area in the absence of such acceptance and exchange of instruments of ratification in respect of that area.

(2) At any time after the date of entry into force of an extension under paragraph (1), either of the Contracting States may, by 6 months prior notice of termination given to the other Contracting State through diplomatic channels, terminate the application of this Convention to any area to which it has been extended under paragraph (1), and in such event this Convention shall cease to apply and have force and effect, beginning on or after the first day of January next following the expiration of the 6-month period, to the area or areas named therein, but without affecting its continued application to Korea, the United States, or to any other area to which it has been extended under paragraph (1).

(3) In the application of this Convention, in relation to any area to which it is extended by notification by Korea or the United States, reference to "Korea" or the "United States", as the case may be, shall be construed as referring to that area.

(4) The termination in respect of Korea or the United States of this Convention under Article 32 (Termination) shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any area to which the Convention has been extended under this Article by Korea or the United States.

Article 30. **【ASSISTANCE IN COLLECTION】** [1979.10.20]

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this Article be construed so as to impose upon one of the Contracting States the obligation to carry out measures at variance with the laws, administrative practices, or public policy of either Contracting State with respect to the collection of its own taxes.

Article 31. 【ENTRY INTO FORCE】 [1979.10.20]

This Convention shall be ratified and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force on the thirtieth day following the exchange of instruments of ratification and shall then have effect for the first time:

(a) As respects the rate of withholding taxes and Article 25(Exemption from Social Security Taxes), to amounts paid on or after the first day of the second month following the date on which this Convention enters into force ;

(b) As respects other taxes, to taxable years beginning on or after January 1 of the year following the date on which this Convention enters into force.

Article 32. 【TERMINATION】 [1979.10.20]

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of taxable years beginning (or, in the case of withholding taxes and social security taxes, payments made) on or after January 1 next following the expiration of the 6-month period.

Done at Seoul in duplicate in the Korean and English languages this 4th day of June, 1976.

FOR THE REPUBLIC OF KOREA
FOR THE UNITED STATES OF AMERICA

[1979.10.20]

EXCHANGE OF NOTES

(U.S. Proposing Note)

DONE at SEOUL in duplicate in the Korean and English languages this 4th day of June 1976.

FOR THE REPUBLIC OF KOREA
Sgd./
Park Tong-Jin
FOR THE UNITED STATES OF AMERICA
Sgd./
Richard L. Sneider

U.S. Proposing Note

Seoul, June 4, 1976

His Excellency
Park Tong-Jin,
Minister of Foreign Affairs
Seoul

Excellency:

I have the honor to refer to the Income Tax Convention signed between the Governments of Korea and the United States. During the course of the negotiations leading up to the signed Convention, the Korean representatives (A) stressed the need for increased provisions in the Convention that would constitute special incentives to promote the flow of United States capital and technology to Korea and (B) stated that the Convention applies to the Korean Defense Tax imposed in connection with the taxes referred to in Article 1 (1) of the Convention.

The United States delegation was unable to agree to provisions for special investment incentives, but I want to assure you that my Government recognizes the importance which your Government places on increased investment in Korea. Accordingly, when circumstances permit, my Government will be prepared to resume discussions with a view to incorporating provisions into this Convention that will minimize the interference of the United States tax system with incentives offered by the Government of the Republic of Korea and that will be consistent with the income tax policies of the United States Government regarding other developing countries.

I should appreciate your confirmation that the government of the Republic of Korea interprets the words "Korean Tax" in Article 1 (1). as including the Korean Defense Tax assessed on the taxes referred to therein.

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

Richard L. Sneider

[1979.10.20]

EXCHANGE OF NOTES

(Korea Note In Reply)

Korea Note In Reply
June 4, 1976

His Excellency
Richard L. Sneider
Ambassador Extraordinary and
Plenipotentiary of the

United States of America to
the Republic of Korea
Excellency:

I have the honor to acknowledge the receipt of your Excellency's Note dated June 4, 1976 with regard to increased investment of the United States in Korea and with regard to the application of the Tax Convention to the Korean Defense Tax imposed in connection with the taxes referred to in Article 1 (1) of the Convention.

I have further the honor to note that the United States will be prepared, when circumstances permit, to resume discussions with a view to incorporating provisions into the Convention that will minimize the interference of the U.S tax system with incentives offered by the Government of Korea and that will be consistent with the income tax policies of the United States Government regarding other developing countries.

I have also the honor to confirm that the definition of Korean Tax in Article 1 (1). of the Tax Convention includes the Korean Defense Tax assessed on the taxes referred to therein.

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

Park Tong-Jin
Ministry of Foreign Affairs
