

1992 Income and Capital Tax Agreement (English Translation)

Signed date: November 18, 1992

In force date: July 30, 1993

Effective date: January 1, 1994. See Article 28.

Status: In Force

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF POLAND AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

[TRANSLATION]

The Governments of the Republic of Poland and the Republic of Belarus, Striving to strengthen and develop neighborly relations in the economic, technical, cultural and other fields and to avoid double taxation with respect to taxes on income and capital, Have agreed as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Agreement shall apply to the following taxes:

a) in the Republic of Poland:

- the income tax on bodies corporate,
- the income tax on individuals,
- the farm tax,

(hereinafter referred to as "Polish taxes");

b) in the Republic of Belarus:

- the tax on income and profit of bodies corporate,
- the income tax on individuals,

(hereinafter referred to as "Belarussian taxes").

2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by a Contracting Party after the date of signature of the Agreement in addition to, or in place of, the existing taxes referred to in paragraph 1.

3. The taxes referred to in this Article do not include fines or interest charged by a Contracting State in connection with the taxes to which the Agreement applies.

Article 3 General Definitions

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

a) the terms "Contracting State" and "the other Contracting State" mean the Republic of Poland or the Republic of Belarus, as the context requires,

b) the term "person" means an individual or any body corporate,

c) the term "competent authority" means:

- as regards the Republic of Poland the Minister of Finance or his authorized representative,
- as regards the Republic of Belarus - the Ministry of Finance of the Republic of Belarus or its authorized representative,

d) the term "international traffic" means any transport by land, ship, aircraft, boat or pipeline, operated by a person, who is a resident of or has his place of effective management on the territory of a Contracting State, except when the transport is operated solely between places on the territory of the other Contracting State,

e) the term "territory" means:

- as regards the Republic of Poland, the territory of the Republic of Poland, the territorial waters and the economic zone and continental shelf, in regard to which the Republic of Poland may under international law wield sovereign rights and jurisdiction and on which the fiscal laws of the Republic of Poland are in force,
- as regards the Republic of Belarus, the territory constituting the state territory of the Republic of Belarus, on which the fiscal laws of the Republic of Belarus are in force.

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

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.

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 (center of vital interests);

b) if the State in which he has his center 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 a habitual abode;

c) if he has a 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 a resident of one Contracting State wholly or partly carries on business in the other Contracting State.

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;

g) warehouses made available to other persons;

h) facilities used as an outlet for manufacturing or for receiving or shipping orders;

i) a building site, a construction, assembly or installation project, if it lasts more than 12 months.

However, the competent authorities of the Contracting States may in exceptional cases, by mutual agreement, not treat such activity as a permanent establishment if work on the construction site, construction, assembly or installation project lasts more than 12 months.

3. 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 merchandise belonging to the person;

b) the maintenance of a stock of merchandise belonging to the person solely for the purpose of storage, display or delivery to third countries;

c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the person;

d) the maintenance of a fixed place of business solely for the purpose of advertising, providing information, conducting scientific research or carrying on any other activity of a preparatory or auxiliary character;

e) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of processing by other persons.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person--other than an agent of an independent status to whom paragraph 5 applies--is acting in one Contracting State on behalf of a resident of the Other Contracting State, that person shall be deemed to have a permanent establishment in the first-mentioned State, if:

a) that person exercises an authority to conclude contracts in a Contracting State on behalf of the other person in regard to every kind of activity, unless his activity is limited only purchasing goods and merchandise for the other person,

b) the person does not exercise such an authority, but has stocks of goods and merchandise in the first-mentioned Contracting State from which stock he makes deliveries on behalf of the person referred to.

5. A resident shall not be deemed to have a permanent establishment in a Contracting State merely because he carries on business in that 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.

6. The fact that a resident (other than an individual) of a Contracting State controls or is controlled by a resident (other than an individual) of the other Contracting State, or a person who carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either person a permanent establishment of the other.

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 shall be taxable 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.

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 a person used for the performance of independent personal services.

Article 7 Business Profits

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

2. Subject to the provisions of paragraph 3, where a resident 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. 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 International Traffic

1. Profits from the operation of ships, boats, aircraft or vehicles in international traffic by a resident of a Contracting State shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, income from international traffic includes income derived from any form of lease or use of the means of transport referred to in paragraph 1, including income from the operation or lease of containers and associated equipment.

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

Article 9 Associated Enterprises

Where an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State and 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 in the case when a Contracting State includes in the income of an enterprise participating in the management, control or capital of an enterprise of the other Contracting State and accordingly taxes the profit on which the enterprise of the other Contracting State is taxed in the other Contracting State, the first-mentioned Contracting State shall make an adjustment to the amount of the tax charged on such profit derived in the other Contracting State.

Article 10 Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the person 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 that tax shall not exceed:

- a) 10 percent of the gross amount of the dividends if the recipient of the dividends is the beneficial owner, who holds at least 30 percent of the capital of the company paying the dividends,
- b) 15 percent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the person 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 person 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 this case, the provisions of Article 7 or Article 14 shall apply.

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 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest originating in a Contracting State is exempt from tax in that State up to the amount allowed by its authorities, if the interest derived belongs to a resident of the other Contracting State and providing that the transaction originating the debt-claim was allowed by the authorities of the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from claims of every kind, from debts, bank deposits, government securities as well as other kinds of income, which is treated as interest under the law of the Contracting State in which such income arises.

For the purposes of this Article, penalties for late payment shall not be regarded as interest.

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

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, and a local authority or 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 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.

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

Article 12 Royalties

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

2. 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 cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, as well as for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. The provisions of 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, property or agreement in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 or Article 14 shall apply.

4. 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, the royalties are paid by a permanent establishment situated in a Contracting State, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated.

5. 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 exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 Capital Gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which a resident 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 entire capital), shall be taxable in that other State.

3. Gains derived from the alienation of ships or aircraft operated in international traffic, or property pertaining to their operation, shall be taxable only in the Contracting State of which the person making the sale is a resident.

4. Gains from the alienation of property not referred to in paragraphs 1, 2, and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income shall be taxable in the other Contracting State but only so much of it as is attributable to that fixed base.

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 Hired Labor

1. Subject to the provisions of Articles 16, 18 and 19 and 20, 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 shall be taxable 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 the calendar 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 in respect of an employment exercised aboard a means of transport operated in international traffic shall be taxable only in the Contracting State in which the enterprise's place of effective management is situated.

Article 16 Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other analogous body of a company which is a resident of the other Contracting State shall be taxable in that other State.

Article 17 Artistes and Sportsmen

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, shall be taxable 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 shall, notwithstanding the provisions of Articles 7, 14 and 15, be taxable in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18 Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other benefits paid to a resident of a Contracting State from sources in the other Contracting State shall be taxable only in the first-mentioned state.

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 re-rendered in that State and the individual is a national of that State.

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, or 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.

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 taxable 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 Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, 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, 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 or Article 14, as the case may be, shall apply.

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, shall be taxable 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 permanent establishment available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, shall be taxable in that other State.
3. Capital represented by ships, aircraft, vehicles or containers operated in international traffic or by boats engaged in inland waterways transport, or by movable property pertaining to the operation of such ships, aircraft and boats shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State may be taxable only in that State.

Article 23 Avoidance of Double Taxation

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraph 2, exempt such income or capital from tax.
2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10 and 11, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax of the first-mentioned State, as computed on such income in accordance with the laws and regulations thereof.

Article 24 Non-Discrimination

1. Persons shall not be subjected in the other Contracting State to any taxation which is other or more burdensome than the taxation to which persons of that other State in the same circumstances are subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. 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, may not be subjected in the first-mentioned State to any taxation which is more burdensome than the taxation to which similar enterprises of the first-mentioned State are subjected.

Article 25 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding 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. 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 this Agreement.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at 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 this Agreement.
3. The competent authorities of the Contracting States may endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the preceding paragraphs of this Article. 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 26 Exchange of Information

1. The competent authorities of the Contracting States shall, within the limits permitted by the laws thereof, exchange such information (including documents) for carrying out the provisions of this Agreement, and information on the domestic laws of the Contracting States, concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular information for the prevention of fraud or fiscal evasion.

Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State.

If, however, the information provided is deemed secret in a Contracting State, it may be disclosed only to only to persons or authorities (including courts and administrative authorities) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of petitions in relation to the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes, but they may disclose the information in public court proceedings or in judicial decisions. The exchange of information or documents shall also take place upon the petition of the persons concerned in particular cases.

2. 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 (law and order).

3. They shall notify each other of changes which have been made in their taxation laws.

Article 27 Members of Diplomatic Missions and Consular Posts

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

Article 28 Entry Into Force

1. The Contracting States shall notify each other through diplomatic channels of the ratification of this Agreement.

2. The Agreement shall enter into force thirty days from the exchange of instruments of ratification and its provisions shall apply to taxes on income and capital established commencing January 1 of the year following the year in which this Agreement enters into force.

Article 29 Termination

This Agreement shall remain in force indefinitely. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year commencing five years after the date this Agreement enters into force. In such event, the Agreement shall cease to have effect as regards taxes arising in any fiscal year commencing January 1 or later in the calendar year immediately following the year in which notice of termination was given.

In witness whereof the undersigned, having been duly authorized, have signed this Agreement.

Done in Minsk on November 18, 1992, in two copies, each in Polish and Belarussian, with both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND:

FOR THE GOVERNMENT OF THE REPUBLIC OF BELARUS: