

## **1984 Income Tax Convention and Final Protocol**

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**Status:** *In Force*

### **CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the Republic of Korea and the Government of the Democratic Socialist Republic of Sri Lanka, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

#### **Article 1 Personal Scope**

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

#### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, or of political subdivisions or of its local authorities, irrespective of the manner in which they are levied.
2. The taxes to which this Convention shall apply are:

(a) In Korea:

- (i) the income tax;
  - (ii) the corporation tax; and
  - (iii) the inhabitant tax;
- (hereinafter referred to as "Korean tax");

(b) In Sri Lanka:

the income tax including the income tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commission, (hereinafter referred to as "Sri Lanka tax").

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

#### **Article 3 General Definitions**

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

- (a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and subsoil and their natural resources may be exercised;
- (b) the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka, which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the sea bed, subsoil and the natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Sri Lanka, as the context requires;
- (d) the term "tax" means Korean tax or Sri Lanka tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "nationals" means:

(i) all individuals possessing the nationality of a Contracting State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(j) the term "competent authority" means, in the case of Korea, the Minister of Finance or his authorised representative; and in the case of Sri Lanka, the Commissioner-General of Inland Revenue.

2. As regards the application of the Convention 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 Convention applies.

#### **Article 4 Resident**

1. For the purposes of this Convention, 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 head or main office, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

#### **Article 5 Permanent Establishment**

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(g) an agricultural or farming estate or plantation.

3. The term "permanent establishment" likewise encompasses:

(a) a building site, construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, only if it lasts more than 183 days;

(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue for the same or a connected project within the country for a period or periods aggregating more than 183 days within any 12 month period.

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

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

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

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs (1) and (2) of this Article where a person -- other than an agent of an independent status to whom paragraph (6) of this Article applies -- is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it 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. However when the activities of such an agent are devoted wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

### **Article 6 Income From Immovable Property**

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

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

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

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

### **Article 7 Business Profits**

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

2. Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the 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) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8 Shipping and Air Transport**

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

2. Notwithstanding the provisions of paragraph (1) of this Article, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

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

### **Article 9 Associated Enterprises**

Where

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

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

### **Article 10 Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the dividends are taxable in that other Contracting State according to its own law.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the

company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### **Article 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provision of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if:
  - (a) the payer of the interest is the Government of that Contracting State or a local authority thereof; or
  - (b) the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof; or
  - (c) the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.
4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent according to the taxation law of the State in which the income arises.
5. The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the interest is taxable in that other Contracting State according to its own law.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
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 Convention.

### **Article 12 Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties are taxable in that other Contracting State according to its own law.

5. 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 person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or a fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or a fixed base is situated.

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

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other State.

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

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

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

### **Article 14 Independent Personal Services**

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State or the individual is present in that other State for a period or periods aggregating more than 183 days within any 12 month period.

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

### **Article 15 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any 12 month period;

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs (1) and (2) of this Article remuneration in respect of employment exercised aboard a ship or aircraft in international traffic, operated by an enterprise of a Contracting State, may be taxed in that Contracting State.

### **Article 16 Directors' Fees**

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

### **Article 17 Artistes and Athletes**

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

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

3. Notwithstanding the provisions of paragraph (1) of this Article, income derived by an entertainer or an athlete from his personal activities as such in a Contracting State shall be taxable only in the other Contracting State if his visit to the first-mentioned State is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities.

4. Notwithstanding the provisions of paragraph (2) of this Article, where income in respect of personal activities as such of an entertainer or an athlete in a Contracting State accrues not to that entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities, or if this person is a non-profit organisation of that other State.

### **Article 18 Pensions**

1. Subject to the provision of paragraph (2) of Article 19, pensions, annuity or other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

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

### **Article 19 Government Service**

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

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

(i) is a national of that State; or

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

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

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

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

4. The provisions of paragraph (1) and (2) of this Article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea, the Korea Trade Promotion Corporation and other government owned institutions performing functions of a governmental nature and, in the case of Sri Lanka, by government owned institutions performing functions of a governmental nature, provided that such remunerations or pensions are not paid in respect of services rendered in Korea or Sri Lanka, as the case may be, in connection with any business carried on therein.

## **Article 20 Students and Apprentices**

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

## **Article 21 Professors and Teachers**

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognized by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

## **Article 22 Other Income**

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

## **Article 23 Elimination of Double Taxation**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when express provision to the contrary is made in this Convention. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
2. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Sri Lanka tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Sri Lanka and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sri Lanka shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Sri Lanka bears to the entire income subject to Korean tax.
3. For the purposes of paragraph (2) of this Article, the term "Sri Lanka tax payable" shall be deemed to include the amount of Sri Lanka tax which would have been payable as Sri Lanka tax in accordance with Sri Lanka tax laws but for the exemption or reduction of Sri Lanka tax in accordance with the provisions of paragraph (3) of Article 11 of this Convention, or the Sri Lanka laws relating to incentives for the promotion of economic development in Sri Lanka which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in Sri Lanka in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character; Provided that the amount of the tax referred to in this paragraph shall not, however, exceed in the case of dividends, interest and royalties, an amount of 10 per cent of the gross amount of such dividends, interest and royalties.
4. Subject to the provisions of Sri Lanka tax law regarding the allowance as a credit against Sri Lanka tax of tax payable in any country other than Sri Lanka (which shall not affect the general principle hereof), the Korean tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Korea and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Korea shall be allowed as a credit against Sri Lanka tax payable in respect of that income. The credit shall not, however, exceed that proportion of Sri Lanka tax which the income from sources within Korea bears to the entire income subject to Sri Lanka tax.
5. For the purposes of paragraph (1) of this Article, the term "Korean tax payable" be deemed to include the amount of Korea tax which would have been payable as Korean tax in accordance with Korean tax laws but for the exemption or reduction of Korean tax in accordance with the Korean laws

and the provisions of paragraph (3) of Article 11 of this Convention, or relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in Korea in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be of a substantially similar character; Provided that the amount of the tax referred to in this paragraph shall not, however, exceed in the case of dividends, interest and royalties 10 percent of the gross amount of such dividends, interest and royalties.

#### **Article 24 Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, or paragraph (6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **Article 25 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in case not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs or for the purpose of giving effect to the provisions of the Convention.

#### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting

States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention and for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. 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 and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

### **Article 27 Diplomatic Agents and Consular Officers**

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

### **Article 28 Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) In Korea:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January, 1980;

(ii) in respect of other taxes for taxation years beginning on or after the first day of January, 1980.

(b) In Sri Lanka:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of April, 1980;

(ii) in respect of other taxes for taxation years beginning on or after the first day of April, 1980.

### **Article 29 Termination**

This Convention shall remain in force indefinitely but either Contracting State may, on or before June 30 in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

In such event, the Convention shall cease to have effect:

(a) In Korea:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the 1st day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(b) In Sri Lanka:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the 1st day of April in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes for taxation years beginning on or after the first day of April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto have signed this Convention.

DONE in duplicate at Seoul this twenty-eighth day of May of the year one thousand nine hundred and eighty-four in the Korean, Sinhala and English Languages, all three texts being authentic, except in the case of doubt where the English text shall prevail.

**FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA**

**FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**Final Protocol**

At the moment of signing the Convention between the Government of the Republic of Korea and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In respect of subparagraph (a) of paragraph (2) of Article 2 of the Convention, it is understood that the Convention shall apply to the Korean defence tax where charged by reference to the income tax or the corporation tax.

2. In respect of paragraphs (1) and (2) of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

3. In respect of paragraph (3) of Article 5 it is understood that

(i) the time period of 183 days specified therein will be applied only if the rate of corporation tax in Korea exceeds 30 per cent;

(ii) if the rate of corporation tax in Korea is 30 per cent or less

(a) a building site, construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of national resources, shall be deemed a permanent establishment only if it lasts more than 12 months:

(b) the furnishing of services, including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purposes will constitute a permanent establishment only where the activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 12 months.

4. In respect of paragraph (4) of Article 7, it is understood that profits attributable to a permanent establishment will be determined on the basis of an apportionment of the total profits of the enterprise to its various parts only if a taxpayer does not furnish the information and particulars necessary to determine the actual profits of the permanent establishment.

5. In respect of paragraph (2) of Article 8, it is understood that if after the date of entry into force of this Convention, Sri Lanka signs any tax Convention with a rate lower than 50 per cent, that reduced rate shall apply with respect to provision in paragraph (2) of Article 8.

6. In respect to Article 8, it is understood that the provisions of paragraph (1) of that Article shall also apply to profits from the operation of vessels engaged in fishing or connected activities.

7. With respect to paragraph 5 of Article 10, it is understood that the additional tax levied on the taxable income and the tax levied on remittances of a non-resident company will not be levied by Sri Lanka in respect of a company resident in Korea unless the rate of corporation tax in Korea exceeds 30 per cent.

8. In respect of paragraph (3) of Article 11, it is understood that the term "instrumentality" as referred to in that paragraph shall include the Export-Import Bank of Korea.

9. In respect of paragraph (3) of Article 23, it is understood that the term "the Sri Lanka laws relating to incentives for the promotion of economic development in Sri Lanka" shall be deemed to include any agreement entered into under section 17 of the Greater Colombo Economic Commission Law No. 4 of 1978.

IN WITNESS WHEREOF, the undersigned have signed the present protocol which shall have the same force and validity as if it were inserted word by word in the Convention.

DONE in duplicate at Seoul this twenty-eighth day of May of the year one thousand nine hundred and eighty-four in the Korean, Sinhala and English Languages. All three texts being authentic, except in the case of doubt where the English text shall prevail.

**FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**  
**FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA**