

1993 Income and Capital Tax Convention

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

Romania and the Republic of Hungary,

Desiring to promote and strengthen the economic relations between the two countries by concluding a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital,

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 and on capital imposed by each of the Contracting States or by its local authorities, or by its administrative-territorial units, irrespective of the manner in which they are levied.

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

3. The existing taxes to which the Convention shall apply are in particular:

(a) in the case of Romania:

tax on income derived by individuals; tax on the profits of bodies and legal persons; the tax on salaries, wages and other similar remunerations; tax on income realised from agricultural activities; tax on dividends (hereinafter referred to as "Romanian tax");

(b) in the case of Hungary:

the income tax on individuals; the corporation tax; taxes on landed property; the building tax (hereinafter referred to as "Hungarian tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws, within a reasonable period of time after such changes.

Article 3 General Definitions

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

(a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Romania or Hungary;

(b) the term "Romania" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone, over which Romania exercises sovereignty, sovereign rights or jurisdiction, in accordance with its internal law and with international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, seabed and subsoil of these waters;

(c) the term "Hungary" when used in a geographical sense means the territory of the Republic of Hungary;

(d) the term "person" includes an individual, a company and any other body of persons legally set up in one of the Contracting States;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "nationals" means:

- (i) all individuals possessing the citizenship 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;
 - (h) the term "international traffic" means any transport by a ship, boat, aircraft, railway or road vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when such transport is made solely between places situated in the other Contracting State;
 - (i) the term "competent authority" means:
 - (1) in Romania the Minister of Finance, or his authorised representative;
 - (2) in Hungary the Minister of Finance, or his authorised representative.
2. As regards the application of the Convention by each of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State, relating to the taxes which are the subject of this Convention.

Article 4 Fiscal Domicile

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 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 or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 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 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; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" likewise encompasses:
- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine months;
 - (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than nine months.
4. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise which is not accompanied with sales;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery which is not accompanied with sales;

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (f) the sale of goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition after the closing of the said fair or exhibition;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State if the person has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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, aircraft, railway and road vehicles shall not be regarded as immovable property.

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

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

Article 7 Business Profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business 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. This provision shall apply subject to limitations under domestic law.

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 profit 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 International Transport

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

2. If the place of effective management of a shipping enterprise is aboard a ship, or boat then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency and interest on funds related to the operation of ships, boats, aircraft, railway or road vehicles.

4. Notwithstanding the provisions of paragraph 1 and of Article 7, the profits derived by an enterprise of a Contracting State from the operation of ships, boats, aircraft, railway or road vehicles used mainly to transport exclusively between places situated in a Contracting State are taxable in that State.

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) 5% of the gross amount of the dividends if the recipient is a company which holds directly at least 40% of the capital of the company paying the dividends;

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment or a fixed base and the holding in respect of which the dividends are paid is effectively connected with such a permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be shall apply.

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

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting 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 15% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in:

(a) Hungary and paid to the Government of Romania or to its National Bank or to any of its financial institutions the capital of which is wholly or partly owned by the Government of Romania shall be exempt from Hungarian tax;

(b) Romania and paid to the Government of Hungary or to its National Bank or to any of its financial institutions the capital of which is wholly or partly owned by the Government of Hungary shall be exempt from Romanian tax.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. Penalty charges for late payments shall not be regarded as interest for the purpose of this Article.

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 or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, 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 local authority or an administrative-territorial unit thereof 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 Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to 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 that 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 Commission

1. Commission 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 commission 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 commission the tax so charged shall not exceed 5% of the gross amount of the commission.

3. The term "commission" as used in this Article means a payment made to a broker, a general commission agent or to any other person similar to a broker or agent in accordance with the taxation law of the Contracting State in which such payment arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the commission, being a resident of a Contracting State, has in the other Contracting State in which the commission arises, a permanent establishment with which the activity giving rise to the commission is effectively connected. In such case the provisions of Article 7 shall apply.

5. Commission shall be deemed to arise in a Contracting State when the payer is that State itself, an administrative-territorial unit or a resident of that State. Where, however, the person paying the commission, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the activities for which the payment is made was incurred, and such commission is borne by such permanent establishment then such commission shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the commission, having regard to the activities 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 that 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 Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10% 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 films or tapes used for radio or television 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment or 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 case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or an administrative-territorial unit thereof 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, owing to 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 that 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 14 Capital Gains

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

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

3. Gains from the alienation of ships, boats, aircraft, railway and road vehicles operated in international traffic and movable property pertaining to the operation of such means of transport shall be taxable only in the Contracting State where, pursuant to the provisions of Article 8, the profits from such activities are taxable.

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

Article 15 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 the resident is present in the other Contracting State for a period exceeding 183 days in any twelve month period, but only so much of the income as is derived from his activities performed in that other State.

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

Article 16 Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period concerned; and

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

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

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

Article 17 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 the supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18 Artistes And Sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, if that person is directly or indirectly controlled by the entertainer or sportsman.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or sportsman is exercised provided that his activity is mainly supported out of public funds of this State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

Article 19 Pensions

Subject to the provisions of paragraph 2 of Article 20 pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 20 Government Service

1.

(a) Remuneration, other than a pension, paid by a Contracting State or a local authority or an administrative-territorial unit thereof to an individual in respect of services rendered to that State or local authority or an administrative-territorial unit thereof 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 other Contracting State and the individual is a resident of that other Contracting State who:

(i) is a national of that State; or

(ii) did not become 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 local authority or an administrative-territorial unit thereof to an individual in respect of services rendered to that State or local authority or an administrative-territorial unit thereof 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 Article 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carded on by a Contracting State or a local authority or an administrative-territorial unit thereof.

Article 21 Students and Trainees

1. Payments which a student or a business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State for a period not exceeding 6 years, provided that such payments arise from sources outside that State.

2. Any remuneration received by a student or a business apprentice during his stay in that other Contracting State shall be exempt from tax in that other Contracting State provided that such remuneration is not exceeding the equivalent in the currency of that other Contracting State of two thousand five hundred U.S. dollars (US\$ 2500) in respect of activities in that other Contracting State and those activities are in connection with his study, research or training or are necessary for the purpose of his maintenance.

Article 22 Teachers and Researchers

Remuneration received for education or scientific research by an individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first State for the purpose of scientific research or for teaching at a university college, establishment for higher education, or at a similar establishment shall be exempt from tax for a period not exceeding two years in the first State provided that such establishment belongs to non-profit-making legal entities.

Article 23 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 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 a 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 15, as the case may be, shall apply.

Article 24 Capital

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

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

3. Capital represented by ships, boats, aircraft, railway or road vehicles operated in international traffic, and by movable property pertaining to the operation of such ships, boats, aircraft, railway or road vehicles 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 Contracting State shall be taxable only in that State.

Article 25 Elimination of Double Taxation

The double taxation shall be eliminated as follows:

(a) In the case of Hungary:

(i) Where a resident of Hungary derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Romania, Hungary shall, subject to the provisions of subparagraphs (ii) and (iii), exempt such income or capital from tax.

(ii) Where a resident of Hungary derives items of income which, in accordance with the provisions of Articles 10, 11, 12 and 13, may be taxed in Romania, Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Romania. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Romania.

(iii) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Hungary is exempt from tax in Hungary, Hungary may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

(b) In the case of Romania:

Taxes paid by Romanian residents in respect of income or capital taxable in Hungary in accordance with the provisions of this Convention, shall be deducted from the Romanian taxes due according to the Romanian fiscal laws.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given which is attributable to the income or the capital which may be taxed in Hungary.

Article 26 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. 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.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Articles 12, and 13, apply interest, commission, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 27 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 26 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.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 28 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. 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 the 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. The information received will be treated as secret on request of the Contracting State giving the information.

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 or the 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 29 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 30 Entry Into Force

1. The Contracting States shall notify each other that their constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force 30 days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall apply:

- (a) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which the Convention enters into force;
- (b) in respect of other taxes on income, and taxes on capital, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Convention enters into force.

3. In the mutual relations between the Republic of Hungary and Romania, the application of the Multilateral Convention for the Avoidance of Double Taxation with respect to Income and Capital of Individuals signed in Miskolc on 27 May 1977 and the Multilateral Convention for the Avoidance of Double Taxation with respect to Income and Capital of Legal Entities signed in Ulan-Bator on 19 May 1978, shall cease to have effect as from the first day of applicability of this Convention.

4. The provisions of this Convention in respect of direct taxes will replace the corresponding provisions of the Convention for the Avoidance of Double Taxation in respect of Direct Taxes and Inheritance Duties signed in Budapest on 28 August 1948.

Article 31 Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination on or before the 30th June of any calendar year following after the period of five years

from the date on which the Convention enters into force. In such event the Convention shall cease to have effect:

(a) in respect of taxes withheld at source, to amounts of income derived on or after 1 January in the calendar year next following the year in which the notice is given;

(b) in respect of other taxes on income, and taxes on capital, to such taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorized hereto, have signed this Convention.

Done in duplicate at Bucharest on 16 September 1993, in the English language.

FOR ROMANIA:

Teodor Viorel Melescanu

Minister of Foreign Affairs

FOR THE REPUBLIC OF HUNGARY:

Geza Jeszensky

Minister of Foreign Affairs