TAXATION

Convention Between the
UNITED STATES OF AMERICA
and SLOVENIA

Signed at Ljubljana June 21, 1999

with

Exchange of Notes at Washington
January 27, 2000 and January 9, 2001

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

SLOVENIA

Taxation

Convention signed at Ljubljana June 21, 1999, with
Exchange of Notes at Washington,
January 27, 2000 and January 9, 2001.
Convention transmitted by the President of the United States of America
to the Senate September 13, 1999 (Treaty Doc. 106-9,
106th Congress, 1st Session);
Reported favorably by the Senate Committee on Foreign Relations
November 3, 1999 (Senate Executive Report No. 106-7,
106th Congress, 1st Session);
Advice and consent to ratification by the Senate
November 5, 1999;
Ratified by the President December 28, 1999;
Ratifications exchanged at Washington June 22, 2001;
Entered into force June 22, 2001.

CONVENTION BETWEEN
THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF SLOVENIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The United States of America and the Republic of Slovenia, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, have agreed as follows:

ARTICLE 1

General Scope

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance or benefit now or hereafter accorded:

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

3. Notwithstanding the provisions of subparagraph 2 b):

a) the provisions of Article 25 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and

b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purposes of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.

4. Notwithstanding any provision of the Convention except paragraph 5 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the

laws of the Contracting State of which the person was a citizen or long-term resident), but only for a period of 10 years following such loss.

5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2 and 5 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support), and Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Trainees, Professors and Researchers), and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

a) in the United States:

(i) the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes); and

(ii) the Federal excise taxes imposed with respect to private foundations;

b) in Slovenia:

(i) the tax on profits of legal persons;

(ii) the tax on income of individuals, including wages and salaries, income from agricultural activities, income from business, capital gains and income from immovable and movable property; and

(iii) the assets tax on banks and savings institutions.

2. The Convention shall apply also to any identical or substantially similar taxes that 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 any significant changes that have been made in their respective taxation laws or other laws affecting their obligations under the Convention, and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

General Definitions

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

a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;

c) 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;

d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;

e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury, or his delegate; and

(ii) in Slovenia: the Ministry of Finance, or its authorized representative;

f) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and the sea bed and subsoil of the submarine areas adjacent to that territorial sea, over which the United States exercises sovereign rights in accordance with international law; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

g) the term "Slovenia" means the Republic of Slovenia and, when used in a geographical sense, means the territory of the Republic of Slovenia, including the territorial sea, sea bed and subsoil adjacent to the territorial sea to the extent the Republic of Slovenia exercises its sovereign rights or jurisdiction over such territorial sea, sea area, sea bed and subsoil in accordance with its domestic legislation and international law;

h) the term "national" of a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that State; and

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

i) the term "qualified governmental entity" means:

(i) any person or body of persons that constitutes a governing body of a Contracting State, or of a political subdivision or local authority of a Contracting State;

(ii) a person that is wholly owned, directly or indirectly, by a Contracting State or a political subdivision or local authority of a Contracting State, provided (A) it is organized under the laws of the Contracting State, (B) its earnings are credited to its own account with no portion of its income inuring to the benefit of any private person, and (C) its assets vest in the Contracting State, political subdivision or local authority upon dissolution; and

(iii) a pension trust or fund of a person described in subparagraph (i) or (ii) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19 (Government Service);

provided that an entity described in either subparagraph (ii) or (iii) does not carry on commercial activities.

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

ARTICLE 4

Residence

1. Except as provided in this paragraph, 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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, except that a United States citizen or alien lawfully admitted for permanent residence (a "green card" holder) shall be considered to be a resident of the United States only if such person has a substantial presence, permanent home or habitual abode in the United States.

a) The term "resident of a Contracting State" 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 or of profits attributable to a permanent establishment in that State.

b) In the case of income derived or paid by an entity that is treated as a partnership, estate, or trust under the laws of either Contracting State, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State, either in its hands or in the hands of its partners or beneficiaries.

c) A legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:

(i) exclusively for a religious, charitable, educational, scientific, or other similar purpose; or

(ii) to provide pensions or other similar benefits to employees pursuant to a plan

is to be treated for purposes of this paragraph as a resident of that Contracting State.

d) A qualified governmental entity is to be treated as a resident of the Contracting State where it is established.

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

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

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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 endeavor to settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created or organized under the laws of one of the Contracting States or a political subdivision thereof, but not under the laws of the other Contracting State or a political subdivision thereof, such company shall be deemed to be a resident of the first-mentioned Contracting State. In all other cases, the company shall be treated as a resident of a Contracting State for purposes of this Convention only if and to the extent that the competent authorities of the Contracting States so agree pursuant to Article 25 (Mutual Agreement Procedure).

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person.

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. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts or the activity continues for more than twelve 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;

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 the activities mentioned in subparagraphs a) through e).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts that are binding on the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities that the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 that, 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 as independent agents.

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

ARTICLE 6

Income from Real Property (Immovable Property)

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

2. The term "real property" ("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 shall apply to income derived from the direct use, letting, or use in any other form of real property.

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

5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were business profits attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the Contracting State in which the property is situated agrees to terminate the election.

ARTICLE 7

Business Profits

1. The business 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 business profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where 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 business profits that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business 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.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary, and shall include only the profits derived from the assets or activities of the permanent establishment.

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

7. For the purposes of the Convention, the term "business profits" means income from any trade or business, including income derived by an enterprise from the performance of personal services, and from the rental of tangible personal property (movable property).

8. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 6 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains), Article 14 (Independent Personal Services) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

ARTICLE 8

Shipping and Air Transport

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

2. For the purposes of this Article, profits from the operation of ships or aircraft include profits derived from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or

aircraft are operated in international traffic by the lessee, or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State, shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

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

ARTICLE 9

Associated Enterprises

1. Where:

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

b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations that differ from those that would be made between independent enterprises, then, any profits that, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the other Contracting State agrees that the profits so

included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the payer is a resident and according to the laws of that State, but if the dividends are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 25 percent of the voting stock (or, in the case of Slovenia, if there is no voting stock, at least 25 percent of the statutory capital) of the company paying the dividends;

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

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

3. Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a United States Regulated Investment Company (RIC) or a United States Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 also shall not apply unless:

a) the beneficial owner of the dividends is an individual holding an interest of not more than 10 percent in the REIT;

b) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or

c) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

4. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the payer is a resident if the beneficial owner of the dividends is a resident of the other Contracting State that is a qualified governmental entity that does not control the payer of the dividend.

5. For purposes of the Convention, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payer is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the payer 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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. A Contracting State may not impose any tax on dividends paid by a resident of the other State, except insofar as the dividends are paid to a resident of the first-mentioned State or the dividends are attributable to a permanent establishment or a fixed base situated in that State, nor may it impose tax on a corporation's undistributed profits, except as provided in

paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that State.

8. A company that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from Real Property (Immovable Property)) or under paragraph 1 of Article 13 (Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 (Income from Real Property (Immovable Property)) or under paragraph 1 of Article 13 (Gains) that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of Slovenia, is an amount that is analogous to the dividend equivalent amount.

9. The tax referred to in paragraph 8 may not be imposed at a rate in excess of the rate specified in subparagraph a) of paragraph 2.

10. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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 beneficial owner of the interest is a resident of

the other Contracting State, the tax so charged shall not exceed 5 percent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State if:

a) the beneficial owner is a qualified governmental entity that does not control the person paying the interest;

b) the interest is paid or accrued with respect to debt obligations guaranteed or insured by a qualified governmental entity of that other State; or

c) the interest is paid or accrued with respect to a deferred payment for personal property (movable property) or services.

4. The term "interest" as used in this Convention 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 or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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 State, due regard being had to the other provisions of this Convention.

8. a) Notwithstanding the provisions of paragraphs 2 and 3, interest paid by a resident of a Contracting State and that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person, and paid to a resident of the other State also may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends); and

b) Notwithstanding the provisions of paragraphs 2 and 3, interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

9. In the case of the United States, the excess, if any, of the amount of interest allocable to the profits of a company resident in the other Contracting State that are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Real Property (Immovable Property)) or paragraph 1 of Article 13 (Gains) over the interest paid by that permanent establishment or trade or business in the United States shall be deemed to arise in the United States and be beneficially owned by a resident of the other Contracting State. The tax imposed under this Article on such interest shall not exceed the rate specified in paragraph 2.

10. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention means:

a) any consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including computer software, cinematographic films, audio or video tapes or disks, and other means of image or sound reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like right

or property, or for information concerning industrial, commercial, or scientific experience; and

b) gain derived from the alienation of any property described in subparagraph a), provided that such gain is contingent on the productivity, use, or disposition of the property.

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, 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 royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), 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 political or administrative 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 fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Notwithstanding the preceding provisions of this paragraph, royalties with respect to the use of, or the right to use, rights or property within a Contracting State may be deemed to arise within that State.

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 the Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Gains

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention the term "real property situated in the other Contracting State" shall include:

a) real property referred to in Article 6 (Income from Real Property (Immovable Property));

b) shares or other comparable rights, other than shares that are regularly traded on an established securities market, in a company that is a resident of the other Contracting State and that derives at least 50 percent of its value directly or indirectly from immovable property situated in the other Contracting State and an interest in a partnership, trust or estate to the extent that its assets consist of real property situated in the other Contracting State.

3. Gains from the alienation of personal property (movable property) that are attributable to a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent

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

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

5. Gains from the alienation of any property other than property referred to in paragraphs 1 through 4 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 in respect of professional services or other activities of an independent character shall be taxable only in that State, unless the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income attributable to the fixed base that is derived in respect of services performed in that other State also may be taxed by that other State.

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

3. For purposes of paragraph 1, the income that is taxable in the other Contracting State shall be determined under the principles of paragraph 3 of Article 7 (Business Profits).

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) and 19 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned;

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 described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16

Directors' Fees

Directors' fees and other compensation derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17

Artistes and Sportsmen

1. Income derived by a resident of a Contracting State as an entertainer, such as a theater, 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, which income would be exempt from tax in that other Contracting State under the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed fifteen thousand United States dollars ($15,000) or its equivalent in Slovenian tolars for the taxable year concerned.

2. Where income in respect of 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, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is wholly or mainly supported by public funds of one or both Contracting States or political subdivisions or local authorities thereof. In such a case the income is taxable only in the Contracting State in which the artiste or sportsman is a resident.

ARTICLE 18

Pensions, Social Security, Annuities, Alimony, and Child Support

1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pension distributions and other similar remuneration beneficially owned by a resident of a Contracting State, whether paid periodically or as a single sum, shall be taxable only in that State; however, that State may not tax such pension distributions and similar remuneration to the extent it has been included in taxable income in the other Contracting State prior to the distribution.

2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.

3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specific time period, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

4. Alimony paid by a resident of a Contracting State, and deductible therein, to a resident of the other Contracting State shall be taxable only in that other State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support,

which payments are taxable to the recipient under the laws of the State of which he is a resident.

5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 19

Government Service

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees) and 17 (Artistes and Sportsmen):

a) Salaries, wages and other remuneration, other than a pension, paid from the public funds of 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 in the discharge of functions of a governmental nature shall, subject to the provisions of subparagraph b), be taxable only in that State;

b) such remuneration, however, 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. Subject to the provisions of paragraph 2 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support):

a) any pension paid from the public funds of 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 in the discharge of functions of a governmental nature shall, subject to the provisions of subparagraph b), be taxable only in that State;

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

ARTICLE 20

Students, Trainees, Professors and Researchers

1. a) Except as provided in paragraph 2, an individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of :

i) studying at a university or other recognized educational institution in that other Contracting State, or

ii) securing training required to qualify him to practice a profession or professional specialty, or

iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph b) of this paragraph for a period not exceeding 5 taxable years from the date of his arrival in the other Contracting State, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

b) The amounts referred to in subparagraph a) of this paragraph are:

i) payments from abroad, other than compensation for personal services, for the purpose of his maintenance, education, study, research, or training;

ii) the grant, allowance, or award; and

iii) income from personal services performed in that other Contracting State in an aggregate amount not in excess of five thousand United States dollars ($5,000) or its equivalent in Slovenian tolars for the taxable year concerned.

2. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State, or

b) studying at a university or other recognized educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period not to exceed 12 months with respect to his income from personal services in an aggregate amount not in excess of eight thousand United States dollars ($8,000) or its equivalent in Slovenian tolars.

3. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in the other Contracting State for the purpose of teaching or carrying on research at a recognized educational or research institution shall be exempt from tax in the other Contracting State on his income from personal services for teaching or research at such institution for a period not exceeding two years from the date of the individual's arrival in that other State. In no event shall any individual have the benefits of this paragraph for more than five taxable years.

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

ARTICLE 21

Other Income

1. Items of income beneficially owned by 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 real property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the beneficial owner of the 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 income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

3. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 22

Limitation on Benefits

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:

a) an individual;

b) a qualified governmental entity;

c) a company, if

(i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or

(ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;

d) described in subparagraph 1 c)(i) of Article 4 (Residence);

e) described in subparagraph 1 c)(ii) of Article 4 (Residence), provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

f) a person other than an individual, if:

(i) On at least half the days of the taxable year persons described in subparagraphs a), b), c), d) or e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and

(ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence.

3. a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:

(i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer),

(ii) the income is connected with or incidental to the trade or business, and

(iii) the trade or business is substantial in relation to the activity in the other State generating the income.

b) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.

4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.

5. For purposes of this Article the term "recognized stock exchange" means:

a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

b) the Ljubljana Stock Exchange; and

c) the stock exchanges of Frankfurt, London, Paris and Vienna, and any other stock exchanges agreed upon by the competent authorities of both Contracting States.

ARTICLE 23

Relief from Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income:

a) the income tax paid or accrued to Slovenia by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of Slovenia and from which the United States company receives dividends, the income tax paid or accrued to Slovenia by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1 b)(i), 1 b)(ii), and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

2. Where a resident of Slovenia derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, Slovenia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the United States. Such deduction shall in no case exceed that portion of the income tax which has been computed before making the deduction which is attributable to the income which may be taxed in the United States. For the purposes of this paragraph, the taxes referred to in paragraphs 1 a) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

3. Where a United States citizen is a resident of Slovenia:

a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Slovenia who is not a United States citizen, Slovenia shall allow as a credit against Slovenian tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may

be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);

b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to Slovenia after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Slovenian tax in accordance with subparagraph a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in Slovenia to the extent necessary to avoid double taxation of such income under subparagraph b).

4. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may, nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

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 that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of United States taxation of income, United States nationals not resident in the United States are not in the same circumstances as Slovenian nationals not resident in the United States. This provision shall also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment or fixed base that a resident of a Contracting State or an enterprise of a Contracting State has in the other Contracting State shall

not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. The provisions of this paragraph 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 that it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident or enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the resident or enterprise of the first-mentioned Contracting State, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident or enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the resident or enterprise of the first-mentioned Contracting State, 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 State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 8 of Article 10 (Dividends) or paragraph 9 of Article 11 (Interest).

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

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, and the time limits prescribed in such laws for presenting claims for refund, 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 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within five 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 endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States. Assessment and collection procedures shall be suspended during the pendency of any mutual agreement proceeding.

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

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the same characterization of particular items of income, including the same characterization of income that is assimilated to income from shares by the taxation law

of one of the Contracting States and that is treated as a different class of income in the other State;

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term; and

g) that the conditions for the application of paragraph 10 of Article 10 (Dividends), paragraph 10 of Article 11 (Interest), paragraph 7 of Article 12 (Royalties), or paragraph 3 of Article 21 (Other Income) of the Convention are met.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments.

5. 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.

ARTICLE 26

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is relevant 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, including information relating to 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. The exchange of information is not restricted by Article 1 (General Scope). 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, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

b) to supply information that 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 that 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).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for purposes of its own tax. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

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

Capital

1. Capital represented by real property referred to in Article 6 (Income from Real Property (Immovable Property)), 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 personal property (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 personal property (movable property) pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships, aircraft, and containers owned by a resident of a Contracting State and operated in international traffic, and by personal property (movable property) pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.

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

ARTICLE 29

Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged 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 respect of taxes withheld at source, for amounts paid or credited on or after the first day of the third month next following the date on which the Convention enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination to the other Contracting State through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited after the expiration of the 6 month period beginning on the date on which notice of termination was given; and

b) in respect of other taxes, for taxable periods beginning on or after the expiration of the 6 month period beginning on the date on which notice of termination was given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Ljubljana in duplicate, in the English and Slovenian languages, both texts being equally authentic, this 21 day of June, 1999

FOR THE UNITED STATES OF AMERICA:

FOR THE REPUBLIC OF SLOVENIA:

KONVENCIJA MED
ZDRUŽENIMI DRŽAVAMI AMERIKE
IN REPUBLIKO SLOVENIJO O
IZOGIBANJU DVOJNEGA OBDAVČEVANJA IN
PREPREČEVANJU DAVČNIH UTAJ
V ZVEZI Z DAVKI OD DOHODKA IN PREMOŽENJA

Združene države Amerike in Republika Slovenija so se v želji, da bi sklenile konvencijo o izogibanju dvojnega obdavčevanja in preprečevanju davčnih utaj v zvezi z davki od dohodka in premoženja, dogovorile o naslednjem:

1. *člen*

SPLOŠNO PODROČJE UPORABE

1. Ta konvencija se uporablja samo za osebe, ki so rezidenti ene ali obeh držav pogodbenic, razen če ni v konvenciji drugače določeno.

2. Ta konvencija na noben način ne omejuje nobene izključitve, oprostitve, odbitka, dobropisa ali druge olajšave ali koristi, ki jih zdaj ali kasneje priznavajo:

a) zakoni ene ali druge države pogodbenice ali

b) katerikoli drug sporazum med državama pogodbenicama.

3. Ne glede na določbe pododstavka 2 b):

a) se določbe 25. člena (Postopek skupnega dogovora) te konvencije uporabljajo izključno za vsak spor glede tega, ali je ukrep s področja uporabe te konvencije, in postopki po tej konvenciji se izključno uporabljajo za tak spor, ter

b) razen če pristojni organi ne določijo, da davčni ukrep ni s področja uporabe te konvencije, se obveznosti te konvencije o enakem obravnavanju uporabljajo izključno za ta ukrep, razen za take obveznosti nacionalne obravnave ali obravnave po načelu držav z največjimi ugodnostmi, kot se lahko uporabljajo za trgovino z blagom po Splošnem sporazumu o carinah in trgovini. Nobena obveznost nacionalne obravnave ali obravnave po načelu največjih ugodnosti po kateremkoli drugem sporazumu se ne uporablja v zvezi s tem ukrepom;

c) za namene tega odstavka je "ukrep" zakon, predpis, pravilo, postopek, odločitev, upravni ukrep ali vsaka podobna določba ali ukrep.

4. Ne glede na katerokoli določbo konvencije razen petega odstavka tega člena lahko država pogodbenica obdavči svoje rezidente (kot je določeno s 4. členom (Rezidentstvo)) in zaradi državljanstva lahko obdavči svoje državljane, kot da konvencija ni začela veljati. V ta namen izraz "državljan" vključuje nekdanjega državljana ali dolgotrajnega rezidenta, čigar eden glavnih namenov izgube takega statusa je bil izogibanje davku (kot je določeno z zakoni države pogodbenice, katere državljan ali dolgotrajni rezident je bila oseba), vendar samo 10 let, ki sledijo taki izgubi.

5. Določbe četrtega odstavka ne vplivajo na:

a) koristi, ki jih je država pogodbenica podelila po drugem odstavku 9. člena (Povezana podjetja), drugem in petem odstavku 18. člena (Pokojnine, socialna varnost, anuitete, preživnina za zakonca in preživnina za otroka) in 23. členu (Oprostitev dvojnega obdavčenja), 24. členu (Enako obravnavanje) in 25. členu (Postopek skupnega dogovora), in

b) koristi, ki jih je država pogodbenica podelila po 19. členu (Državna služba), 20. členu (Študenti, pripravniki, profesorji in raziskovalci) in 27. členu (Diplomatski predstavniki in konzularni uslužbenci) posameznikom, ki niso niti državljani te države niti jim ni bilo priznano stalno prebivališče v tej državi.

2. člen

DAVKI, ZA KATERE SE UPORABLJA KONVENCIJA

1. Obstoječi davki, za katere se uporablja ta konvencija, so:

a) v Združenih državah:

(i) zvezni davki od dohodka, uvedeni z Zakonikom o notranjih prihodkih (razen dajatev za socialno varnost), in
(ii) zvezne trošarine, uvedene v zvezi z zasebnimi ustanovami;

b) v Sloveniji:

(i) davek od dobička pravnih oseb;
(ii) davek od dohodka posameznikov, vključujoč mezde in plače, dohodek iz kmetijskih dejavnosti, dohodek iz poslovanja, kapitalske dobičke in dohodek iz nepremičnin in premičnin, in
(iii) davek od premoženja bank in hranilnic.

2. Ta konvencija se uporablja tudi za kakršnekoli enake ali vsebinsko podobne dajatve, ki se dodatno uvedejo po datumu podpisa konvencije k že obstoječim davkom ali namesto njih. Pristojni organi držav pogodbenic drug drugega obvestijo o kakršnihkoli bistvenih spremembah, ki so bile izvedene v njunih davčnih zakonih ali drugih zakonih, ki vplivajo na njihove obveznosti po konvenciji, ter o vsakem uradnem objavljenem gradivu o uporabi konvencije, vključno s pojasnili, predpisi, odločbami ali sodnimi odločitvami.

3. člen

SPLOŠNE DEFINICIJE

1. Za namene te konvencije, razen če sobesedilo ne zahteva drugače:

a) izraz "oseba" vključuje posameznika, zapuščino, sklad, osebno družbo, družbo in vsako drugo telo, ki združuje več oseb;

b) izraz "družba" pomeni katerokoli korporacijo ali katerikoli subjekt, ki se v skladu z zakoni države, v kateri je organiziran, za davčne namene obravnava kot korporacija;

c) izraza "podjetje države pogodbenice" in "podjetje druge države pogodbenice" pomenita podjetje, ki ga upravlja rezident države pogodbenice, in podjetje, ki ga upravlja rezident druge države pogodbenice;

d) izraz "mednarodni promet" pomeni kakršenkoli prevoz z ladjo ali letalom, razen če gre za tak prevoz samo med kraji v državi pogodbenici;

e) izraz "pristojni organ" pomeni:

(i) v Združenih državah: finančnega ministra ali njegovega pooblaščenca in
(ii) v Sloveniji: Ministrstvo za finance ali njegovega pooblaščenega predstavnika;

f) izraz "Združene države" pomeni Združene države Amerike in vključuje njihove države in Zvezno okrožje Kolumbija; tak izraz vključuje tudi njihovo teritorialno morje ter morsko dno in podzemlje podmorskih območij ob tem teritorialnem morju, nad katerimi Združene države izvajajo suverene pravice v skladu z mednarodnim pravom; izraz pa ne vključuje Puerto Rica, Deviških otokov, Guama ali katerihkoli drugih posesti ali ozemlja Združenih držav;

g) izraz "Slovenija" pomeni Republiko Slovenijo, in ko se uporablja v zemljepisnem smislu, pomeni ozemlje Republike Slovenije, vključno s teritorialnim morjem, morskim dnom in podzemljem ob teritorialnem morju v obsegu, v katerem Republika Slovenija izvaja svoje suverene pravice ali jurisdikcijo nad takim teritorialnim morjem, morskim območjem, morskim dnom in podzemljem v skladu s svojo domačo zakonodajo in mednarodnim pravom;

h) izraz "državljan" države pogodbenice pomeni:

(i) vsakega posameznika, ki ima državljanstvo te države, in
(ii) vsako pravno osebo, osebno družbo ali združenje, katerih status izhaja iz veljavnih zakonov v tej državi;

i) izraz "upravičen vladni subjekt" pomeni:

(i) vsako osebo ali telo, ki združuje več oseb in predstavlja vladno telo države pogodbenice, politične enote ali lokalne oblasti države pogodbenice;

(ii) osebo, ki je v celoti neposredno ali posredno v lasti države pogodbenice ali politične enote ali lokalne oblasti države pogodbenice, pod pogojem, (A) da je organizirana po zakonih države pogodbenice, (B) da se njeni zaslužki knjižijo na njen račun, pri čemer noben delež njenega dohodka ne gre v dobro katerekoli zasebne osebe, in (C) da se ob likvidaciji njeno premoženje prenese na državo pogodbenico, politično enoto ali lokalno oblast, in

(iii) pokojninsko ustanovo ali sklad osebe, opisane v pododstavku i) ali ii), ki je ustanovljen in deluje izključno za upravljanje ali zagotavljanje pokojninskih koristi, opisanih v 19. členu (Državna služba);

pod pogojem, da subjekt, opisan v pododstavku ii) ali iii), ne opravlja komercialnih dejavnosti.

2. Kadarkoli država pogodbenica uporabi konvencijo, imajo vsi izrazi, ki v njej niso določeni, razen če sobesedilo ne zahteva drugače ali se pristojni organi ne dogovorijo o skupnem pomenu na podlagi določb 25. člena (Postopek skupnega dogovora), pomen, ki ga imajo takrat po pravu te države za namene davkov, za katere se konvencija uporablja; katerikoli pomen po veljavnih davčnih zakonih te države prevlada nad pomenom, ki ga ima izraz po drugih zakonih te države.

4. člen

REZIDENTSTVO

1. Razen kot določa ta odstavek, za namene te konvencije izraz "rezident države pogodbenice" pomeni vsako osebo, ki je po zakonih te države dolžna plačevati davke zaradi svojega stalnega prebivališča, prebivališča, državljanstva, sedeža uprave, kraja ustanovitve ali kateregakoli drugega merila podobne narave, s tem da se državljan Združenih držav ali tujec, ki mu je bilo zakonito priznano stalno prebivališče (imetnik "zelene karte"), šteje za rezidenta Združenih držav samo, če je taka oseba znatno prisotna, ima stalno prebivališče ali običajno bivališče v Združenih državah.

a) Izraz "rezident države pogodbenice" ne vključuje katerekoli osebe, ki je dolžna plačevati davke v tej državi samo od dohodka iz virov v tej državi ali premoženja, ki se tam nahaja, ali dobička, ki se pripiše stalni poslovni enoti v tej državi.

b) V primeru dohodka, ki ga prejme ali plača enota, ki se obravnava kot osebna družba, zapuščina ali sklad po zakonih ene ali druge države pogodbenice, se ta izraz uporablja samo v obsegu, v katerem se dohodek take osebne družbe, zapuščine ali sklada obdavči v tej državi, in sicer pri njih ali pri njihovih družbenikih ali upravičencih.

c) Pravna oseba, ki je organizirana po zakonih države pogodbenice in je na splošno v tej državi oproščena plačila davkov ter je ustanovljena in vzdrževana v tej državi:

(i) izključno za verski, dobrodelni, izobraževalni, znanstveni ali drug podoben namen ali

(ii) za zagotavljanje pokojnin ali podobnih koristi zaposlenim na podlagi načrta,

se za namene tega odstavka obravnava kot rezident te države pogodbenice.

d) Upravičen vladni subjekt se obravnava kot rezident države pogodbenice, kjer je ustanovljen.

2. Če je zaradi določb prvega odstavka posameznik rezident obeh držav pogodbenic, se njegov status določi na naslednji način:

a) šteje se za rezidenta države, v kateri ima na razpolago stalno prebivališče; če ima na razpolago stalno prebivališče v obeh državah, se šteje za rezidenta države, s katero ima tesnejše osebne in ekonomske odnose (središče življenskih interesov);

b) če ni mogoče opredeliti države, v kateri ima središče življenskih interesov, ali če nima v nobeni od obeh držav na razpolago stalnega prebivališča, se šteje za rezidenta države, v kateri ima običajno bivališče;

c) če ima običajno bivališče v obeh državah ali v nobeni od njiju, se šteje za rezidenta države, katere državljan je;

d) če je državljan obeh držav ali nobene od njiju, si pristojni organi držav pogodbenic prizadevajo rešiti vprašanje s skupnim dogovorom.

3. Če je zaradi določb prvega odstavka družba rezident obeh držav pogodbenic, potem se, če je ustanovljena ali organizirana po zakonih ene od držav pogodbenic ali njene politične enote, vendar ne po zakonih druge države pogodbenice ali njene politične enote, taka družba šteje za rezidenta prve omenjene države pogodbenice. V vseh drugih primerih se družba šteje za rezidenta države pogodbenice za namene te konvencije, samo če se tako sporazumejo in v obsegu, kot se sporazumejo pristojni organi držav pogodbenic na podlagi 25. člena (Postopek skupnega dogovora).

4. Če je zaradi določb prvega odstavka oseba, ki ni posameznik ali družba, rezident obeh držav pogodbenic, si pristojni organi držav pogodbenic prizadevajo rešiti vprašanje s skupnim dogovorom in določiti način uporabe konvencije za to osebo.

5. člen

STALNA POSLOVNA ENOTA

1. Za namene te konvencije izraz "stalna poslovna enota" pomeni stalno mesto poslovanja, prek katerega v celoti ali delno potekajo posli podjetja.

2. Izraz "stalna poslovna enota" še posebej vključuje:

a) sedež uprave,
b) podružnico,
c) pisarno,
d) tovarno,
e) delavnico in
f) rudnik, naftno ali plinsko nahajališče, kamnolom ali katerikoli drug kraj, kjer pridobivajo naravne vire.

3. Gradbišče ali projekt gradnje ali montaže ali objekt ali vrtalna ploščad ali ladja, ki se uporabljajo za raziskovanje naravnih virov, predstavljajo stalno poslovno enoto, samo če traja ali se dejavnost nadaljuje več kot dvanajst mesecev.

4. Ne glede na prejšnje določbe tega člena se šteje, da izraz "stalna poslovna enota" ne vključuje:

a) uporabe prostorov samo za namen skladiščenja, razstavljanja ali dostave dobrin ali blaga, ki pripada podjetju;

b) vzdrževanja zaloge dobrin ali blaga, ki pripada podjetju, samo za namen skladiščenja, razstavljanja ali dostave;

c) vzdrževanja zaloge dobrin ali blaga, ki pripada podjetju, samo za namene predelave s strani drugega podjetja;

d) vzdrževanja stalnega mesta poslovanja samo za namen nakupovanja dobrin ali blaga za podjetje ali zbiranja informacij za podjetje;

e) vzdrževanja stalnega mesta poslovanja samo za namen opravljanja katerekoli druge dejavnosti pripravljalne ali pomožne narave za podjetje;

f) vzdrževanja stalnega mesta poslovanja samo za kakršnokoli kombinacijo dejavnosti, omenjenih v pododstavkih od a) do e).

5. Ne glede na določbe prvega in drugega odstavka, kjer oseba, ki ni zastopnik z neodvisnim statusom, za katerega se uporablja šesti odstavek, deluje v imenu podjetja ter ima in običajno uporablja v državi pogodbenici pooblastilo za sklepanje pogodb, ki so za podjetje zavezujoče, se za to podjetje šteje, da ima stalno poslovno enoto v tej državi v zvezi z vsemi dejavnostmi, ki jih ta oseba prevzame za podjetje, razen če so dejavnosti take osebe omejene na tiste iz četrtega odstavka, zaradi katerih se to stalno mesto poslovanja po določbah tega

odstavka ne bi štelo za stalno poslovno enoto, če bi se opravljale prek stalnega mesta poslovanja.

6. Ne šteje se, da ima podjetje stalno poslovno enoto v državi pogodbenici samo zato, ker opravlja posle v tej državi prek posrednika, splošnega komisionarja ali kateregakoli drugega zastopnika z neodvisnim statusom, pod pogojem, da te osebe delujejo v okviru svojega rednega poslovanja kot samostojni zastopniki.

7. Dejstvo, da družba, ki je rezident države pogodbenice, nadzoruje družbo, ki je rezident druge države pogodbenice ali opravlja posle v tej drugi državi (prek stalne poslovne enote ali drugače) ali je pod nadzorom take družbe, še ne pomeni, da je ena od družb stalna poslovna enota druge.

6. člen

DOHODEK IZ NEPREMIČNIN

1. Dohodek rezidenta države pogodbenice, ki izhaja iz nepremičnin, ki so v drugi državi pogodbenici, vključno z dohodkom iz kmetijstva ali gozdarstva, se lahko obdavči v tej drugi državi.

2. Izraz "nepremičnine" ima pomen, ki ga določa zakonodaja države pogodbenice, v kateri je zadevna nepremičnina. Izraz vedno vključuje premoženje, ki je sestavni del nepremičnin, živino in opremo, ki se uporablja v kmetijstvu in gozdarstvu, pravice, za katere veljajo določbe splošnega prava v zvezi z zemljiško lastnino, užitek na nepremičninah in pravice do spremenljivih ali stalnih plačil kot odškodnino za izkoriščanje ali pravico do izkoriščanja nahajališč rud, virov ter drugih naravnih bogastev; ladje, čolni in letala se ne štejejo za nepremičnine.

3. Določbe prvega odstavka se uporabljajo za dohodek, ki se ustvari z neposredno uporabo, oddajanjem v najem ali vsako drugo obliko uporabe nepremičnine.

4. Določbe prvega in tretjega odstavka se uporabljajo tudi za dohodek iz nepremičnin podjetja in dohodek iz nepremičnin, ki se uporabljajo za opravljanje samostojnih osebnih storitev.

5. Rezident države pogodbenice, ki je zavezanec za davek v drugi državi pogodbenici od dohodka iz nepremičnin, ki so v drugi državi pogodbenici, si lahko za vsako davčno leto izbere, da se davek od takega dohodka izračuna na neto osnovi, kot da bi bil ta dohodek poslovni dobiček, ki se pripiše stalni poslovni enoti v taki drugi državi. Vsaka taka izbira je zavezujoča za davčno leto izbire in vsa naslednja davčna leta, razen če pristojni organ države pogodbenice, v kateri je premoženje, soglaša z razveljavitvijo izbire.

7. člen

POSLOVNI DOBIČEK

1. Poslovni dobiček podjetja države pogodbenice se obdavči samo v tej državi, razen če podjetje posluje v drugi državi pogodbenici prek stalne poslovne enote v njej. Če podjetje posluje, kot je prej omenjeno, se lahko poslovni dobiček podjetja obdavči v drugi državi, vendar samo toliko dobička, kot se pripiše tej stalni poslovni enoti.

2. V skladu z določbami tretjega odstavka, kjer podjetje države pogodbenice posluje v drugi državi pogodbenici prek stalne poslovne enote v njej, se v vsaki državi pogodbenici tej stalni poslovni enoti pripiše poslovni dobiček, za katerega bi se lahko pričakovalo, da bi ga imela, če bi bila različno in neodvisno podjetje, ki opravlja enake ali podobne dejavnosti pod istimi ali podobnimi pogoji.

3. Pri določanju poslovnega dobička stalne poslovne enote je dovoljeno odšteti stroške, ki nastanejo za namene stalne poslovne enote, vključno s primerno porazdelitvijo poslovodnih in splošnih upravnih stroškov, stroškov raziskav in razvoja, obresti in drugih stroškov, ki so nastali za namene podjetja kot celote (ali njegovega dela, ki vključuje stalno poslovno enoto) bodisi v državi, kjer je stalna poslovna enota, ali drugje.

4. Stalni poslovni enoti se ne pripiše poslovni dobiček samo zaradi razloga, ker nakupuje dobrine ali blago za podjetje.

5. Za namene prejšnjih odstavkov se dobiček, ki se pripiše stalni poslovni enoti, določi po isti metodi leto za letom, razen če ni upravičenega in zadostnega razloga za nasprotno, in vključuje samo dobiček, ki izhaja iz premoženja ali dejavnosti stalne poslovne enote.

6. Če poslovni dobiček vključuje dohodkovne postavke, ki so posebej obravnavane v drugih členih konvencije, določbe tega člena ne vplivajo na določbe tistih členov.

7. Za namene konvencije izraz "poslovni dobiček" pomeni dohodek iz vsakega trgovanja ali poslovanja, vključno z dohodkom podjetja, ki izhaja iz opravljanja osebnih storitev in iz oddajanja opredmetenega premičnega premoženja v najem.

8. Pri uporabi prvega in drugega odstavka 7. člena (Poslovni dobiček), šestega odstavka 10. člena (Dividende), petega odstavka 11. člena (Obresti), četrtega odstavka 12. člena (Licenčnine in avtorski honorarji), tretjega odstavka 13. člena (Kapitalski dobiček), 14. člena (Samostojne osebne storitve) in drugega odstavka 21. člena (Drugi dohodki) je vsak dohodek ali kapitalski dobiček, ki se pripiše stalni poslovni enoti ali stalni bazi med njenim obstojem, obdavčljiv v državi pogodbenici, kjer je taka stalna poslovna enota ali stalna baza, tudi če so plačila odložena, dokler taka stalna poslovna enota ali stalna baza ne preneha obstajati.

8. člen

POMORSKI IN LETALSKI PREVOZ

1. Dobiček podjetja države pogodbenice iz delovanja ladij ali letal v mednarodnem prometu se obdavči samo v tej državi.

2. Za namene tega člena dobiček iz delovanja ladij ali letal vključuje dobiček iz najema (časovnega ali za potovanje) ladij ali letal s posadko. Vključuje tudi dobiček iz najema praznih ladij ali letal, če najemnik uporablja te ladje ali letala v mednarodnem prometu ali če je dohodek iz najema priložnosten glede na dobiček iz delovanja ladij ali letal v mednarodnem prometu. Dobiček podjetja iz notranjega prevoza premoženja ali potnikov znotraj ene ali druge države pogodbenice se obravnava kot dobiček iz delovanja ladij ali letal v mednarodnem prometu, če se ta prevoz opravlja kot del mednarodnega prometa.

3. Dobiček podjetja države pogodbenice iz uporabe, vzdrževanja ali najema zabojnikov (vključno s priklopniki, vlekami in spremljajočo opremo za prevoz zabojnikov), uporabljenih v mednarodnem prometu, se obdavči samo v tej državi.

4. Določbe prvega in tretjega odstavka se uporabljajo tudi za dobiček iz udeležbe pri interesnem združenju (pool), mešanem podjetju ali mednarodni prevozni agenciji.

9. člen

POVEZANA PODJETJA

1. Kjer:

a) je podjetje države pogodbenice neposredno ali posredno udeleženo pri upravljanju, nadzoru ali v kapitalu podjetja druge države pogodbenice ali

b) so iste osebe neposredno ali posredno udeležene pri upravljanju, nadzoru ali v kapitalu podjetja države pogodbenice in podjetja druge države pogodbenice

in v obeh primerih obstajajo ali se uvedejo med podjetjema v njunih komercialnih ali finančnih odnosih pogoji, ki so drugačni od tistih, ki bi obstajali med neodvisnimi podjetji, se kakršenkoli dobiček, ki bi prirastel, če takih pogojev ne bi bilo, enemu od podjetij, vendar prav zaradi takih pogojev ni prirastel, lahko vključi v dobiček tega podjetja in ustrezno obdavči.

2. Kjer država pogodbenica v dobiček podjetja te države vključuje in ustrezno obdavči dobiček, za katerega je že bilo obdavčeno podjetje druge države pogodbenice v tej drugi državi, in druga država pogodbenica soglaša, da je tako vključen dobiček dobiček, ki bi prirastel podjetju prve omenjene države, če bi bili pogoji, ki obstajajo med podjetjema, taki, kot bi obstajali med neodvisnimi podjetji, ta druga država ustrezno prilagodi znesek davka, ki se v tej državi zaračuna od tega dobička. Pri določanju take prilagoditve je treba upoštevati druge določbe te konvencije in pristojni organi držav pogodbenic se po potrebi med seboj posvetujejo.

10. člen

DIVIDENDE

1. Dividende, ki jih rezident države pogodbenice plača rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Vendar se take dividende lahko obdavčijo tudi v državi pogodbenici, katere rezident je plačnik, in v skladu z zakoni te države, če pa so dividende upravičeno v lasti rezidenta druge države pogodbenice, razen če ni drugače določeno, tako obračunani davek ne presega:

a) 5 odstotkov bruto zneska dividend, če je upravičeni lastnik družba, ki ima neposredno v svoji lasti vsaj 25 odstotkov delnic z glasovalno pravico (ali v primeru Slovenije, če ni delnic z glasovalno pravico, vsaj 25 odstotkov statutarnega kapitala) družbe, ki izplačuje dividende;

b) 15 odstotkov bruto zneska dividend v vseh drugih primerih.

Ta odstavek ne vpliva na obdavčenje družbe v zvezi z dobičkom, iz katerega se izplačajo dividende.

3. Pododstavek 2 a) se ne uporablja za dividende, ki jih plača Regulirana investicijska družba Združenih držav (RID) ali Nepremičninski investicijski sklad Združenih držav (NIS). Če dividende plača RID, se uporablja pododstavek 2 b). Če dividende plača NIS, se ne uporablja pododstavek 2 b), razen če:

a) je upravičeni lastnik dividend posameznik, čigar delež v NIS ne presega 10 odstotkov;

b) se dividende plačajo glede na razred delnic, s katerimi se javno trguje, in je upravičeni lastnik dividend oseba, katere delež delnic NIS kateregakoli razreda ne presega 5 odstotkov ali

c) je upravičeni lastnik dividend oseba, katere delež v NIS ne presega 10 odstotkov, in je NIS razpršen.

4. Ne glede na drugi odstavek se dividende ne smejo obdavčiti v državi pogodbenici, katere rezident je plačnik, če je upravičeni lastnik dividend rezident druge države pogodbenice, ki je upravičen vladni subjekt, ki ne nadzoruje plačnika dividend.

5. Za namene konvencije izraz "dividende" pomeni dohodek iz delnic ali drugih pravic do udeležbe v dobičku, ki niso terjatve, in tudi dohodek, ki se davčno obravnava enako kot dohodek iz delnic po zakonih države, katere rezident je plačnik.

6. Določbe prvega in drugega odstavka se ne uporabljajo, če upravičeni lastnik dividend, ki je rezident države pogodbenice, opravlja posle v drugi državi pogodbenici, katere rezident je plačnik, prek stalne poslovne enote v njej ali opravlja v tej drugi državi samostojne osebne storitve iz stalne baze v njej in se dividende pripišejo taki stalni poslovni enoti ali stalni

bazi. V takem primeru se uporabljajo določbe 7. člena (Poslovni dobiček) ali 14. člena (Samostojne osebne storitve), odvisno od primera.

7. Država pogodbenica ne sme naložiti nobenega davka od dividend, ki jih plača rezident druge države, razen kolikor se dividende plačajo rezidentu prve omenjene države ali se dividende pripišejo stalni poslovni enoti ali stalni bazi v tej državi, niti ne sme naložiti davka od nerazdeljenega dobička korporacij, razen kot to določa osmi odstavek, tudi če so plačane dividende ali nerazdeljen dobiček v celoti ali delno sestavljeni iz dobička ali dohodka, ki nastane v tej državi.

8. Družba, ki je rezident ene od držav in ima stalno poslovno enoto v drugi državi ali se v drugi državi na neto osnovi obdavči njen dohodek, ki se lahko obdavči v drugi državi po 6. členu (Dohodek iz nepremičnin) ali po prvem odstavku 13. člena (Kapitalski dobiček), je lahko zavezana plačati davek v tej drugi državi poleg davka, dovoljenega po drugih določbah te konvencije. Tak davek pa se lahko naloži samo na del poslovnega dobička družbe, ki se pripiše stalni poslovni enoti, in na del dohodka, omenjenega v prejšnjem stavku, ki se obdavči po 6. členu (Dohodek iz nepremičnin) ali po prvem odstavku 13. člena (Kapitalski dobiček), ki v primeru Združenih držav predstavlja znesek, enakovreden dividendi od takšnega dobička ali dohodka, v primeru Slovenije pa znesek, ki je ustrezen znesku, enakovrednemu dividendi.

9. Davek iz osmega odstavka se ne sme naložiti po višji stopnji od tiste, navedene v pododstavku 2 a).

10. Določbe tega člena se ne uporabljajo, če je bil glavni namen ali eden od glavnih namenov katerekoli osebe, ki se ukvarja z nastankom ali prenosom delnic ali drugih pravic, v zvezi s katerimi se plača dividenda, zlorabiti ta člen s takim nastankom ali prenosom.

11. člen

OBRESTI

1. Obresti, ki nastanejo v državi pogodbenici in se izplačajo rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Vendar pa se lahko take obresti obdavčijo tudi v državi pogodbenici, v kateri nastanejo, in v skladu z zakoni te države, če pa je upravičeni lastnik obresti rezident druge države pogodbenice, tako zaračunani davek ne presega 5 odstotkov bruto zneska obresti.

3. Ne glede na drugi odstavek se obresti, ki nastanejo v državi pogodbenici in so upravičeno v lasti rezidenta druge države pogodbenice, lahko obdavčijo samo v tej drugi državi, če:

a) je upravičeni lastnik upravičen vladni subjekt, ki ne nadzoruje osebe, ki plačuje obresti;

b) se obresti plačajo ali prirastejo v zvezi z obveznostmi iz dolgov, za katere je dal garancijo ali jih je zavaroval upravičen vladni subjekt te druge države, ali

c) se obresti plačajo ali prirastejo v zvezi z odloženim plačilom za premično premoženje ali storitve.

4. Izraz "obresti", kot je uporabljen v tej konvenciji, pomeni dohodek iz vseh vrst terjatev ne glede na to, ali so zavarovane s hipoteko ali ne, in ne glede na to, ali imajo pravico do udeležbe v dolžnikovem dobičku ali ne, in še posebej dohodek iz državnih vrednostnih papirjev in dohodek iz obveznic ali zadolžnic, vključno s premijami in nagradami, ki pripadajo takšnim vrednostnim papirjem, obveznicam ali zadolžnicam, ter vsak drug dohodek, ki se enako davčno obravnava kot dohodek od posojenega denarja po davčni zakonodaji države pogodbenice, v kateri dohodek nastane. Dohodek, obravnavan v 10. členu (Dividende), in pogodbene kazni zaradi zamude pri plačilu se za namene te konvencije ne štejejo za obresti.

5. Določbe prvega, drugega in tretjega odstavka se ne uporabljajo, če upravičeni lastnik obresti, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici, v kateri obresti nastanejo, prek stalne poslovne enote v njej ali opravlja v tej drugi državi pogodbenici samostojne osebne storitve iz stalne baze v njej in se obresti pripišejo taki stalni poslovni enoti ali stalni bazi. V takem primeru se uporabljajo določbe 7. člena (Poslovni dobiček) ali 14. člena (Samostojne osebne storitve), odvisno od primera.

6. Šteje se, da obresti nastanejo v državi pogodbenici, kadar je plačnik rezident te države. Če pa ima oseba, ki plačuje obresti, ne glede na to, ali je rezident države pogodbenice ali ne, v državi pogodbenici stalno poslovno enoto ali stalno bazo in take obresti krije taka stalna poslovna enota ali stalna baza, se šteje, da take obresti nastanejo v državi, v kateri je stalna poslovna enota ali stalna baza.

7. Kadar zaradi posebnega odnosa med plačnikom in upravičenim lastnikom ali med njima in drugo osebo znesek obresti glede na terjatev, za katero se plačajo, presega znesek, za katerega bi se sporazumela plačnik in upravičeni lastnik, če takega odnosa ne bi bilo, se

določbe tega člena uporabljajo samo za zadnji omenjeni znesek. V takem primeru se presežni del plačil še naprej obdavčuje v skladu z zakoni vsake države, pri čemer pa je treba upoštevati druge določbe te konvencije.

8. a) Ne glede na določbe drugega in tretjega odstavka se obresti, ki jih plača rezident države pogodbenice in se določijo glede na prejemke, prodajo, dohodek, dobiček ali drug denarni tok dolžnika ali povezane osebe, vsako spremembo vrednosti kakršnegakoli premoženja dolžnika ali povezane osebe ali vsako dividendo, delitev dobička osebne družbe ali podobno plačilo dolžnika povezani osebi in ki se plačajo rezidentu druge države, lahko obdavčujejo tudi v državi pogodbenici, v kateri nastanejo, in v skladu z zakoni te države, če pa je upravičeni lastnik rezident druge države pogodbenice, se bruto znesek obresti lahko obdavči po stopnji, ki ne presega stopnje, predpisane v pododstavku 2 b) 10. člena (Dividende), in

b) ne glede na določbe drugega in tretjega odstavka lahko obresti, ki so presežna vključitev glede na preostali delež v nepremičninski hipotekarni investicijski obvodni shemi, obdavči vsaka država v skladu s svojim domačim pravom.

9. V primeru Združenih držav se za morebitni presežek zneska obresti, ki se razporedi k dobičku družbe, ki je rezident v drugi državi pogodbenici, ki se pripiše stalni poslovni enoti v Združenih državah ali je zavezan davku v Združenih državah po 6. členu (Dohodek iz nepremičnin) ali prvem odstavku 13. člena (Kapitalski dobiček), nad obrestmi, ki jih plača ta stalna poslovna enota ali trgovina ali posel v Združenih državah, šteje, da je nastal v Združenih državah in je njegov upravičeni lastnik rezident druge države pogodbenice. Davek, naložen po tem členu na takšne obresti, ne presega stopnje, navedene v drugem odstavku.

10. Določbe tega člena se ne uporabljajo, če je bil glavni namen ali eden od glavnih namenov katerekoli osebe, ki se ukvarja z nastankom ali prenosom terjatve, v zvezi s katero se obresti plačajo, zlorabiti ta člen s takim nastankom ali prenosom.

12. člen

LICENČNINE IN AVTORSKI HONORARJI

1. Licenčnine in avtorski honorarji, ki nastanejo v državi pogodbenici in se plačajo rezidentu druge države pogodbenice, se lahko obdavčijo v tej drugi državi.

2. Vendar pa se take licenčnine in avtorski honorarji lahko obdavčijo tudi v državi pogodbenici, v kateri nastanejo, in v skladu z zakoni te države, če pa je upravičeni lastnik licenčnin in avtorskih honorarjev rezident druge države pogodbenice, tako zaračunani davek ne presega 5 odstotkov bruto zneska licenčnin in avtorskih honorarjev.

3. Izraz "licenčnine in avtorski honorarji", kot je uporabljen v tej konvenciji, pomeni:

a) vsako povračilo za uporabo ali pravico do uporabe kakršnihkoli avtorskih pravic za literarno, umetniško, znanstveno ali drugo delo (vključno z računalniško programsko opremo, kinematografskimi filmi, avdio ali video trakovi ali ploščami ter drugimi sredstvi za reprodukcijo slike ali zvoka), kateregakoli patenta, blagovne znamke, vzorca ali modela, načrta, tajne formule ali postopka ali drugih podobnih pravic ali premoženja ali za informacije o industrijskih, komercialnih ali znanstvenih izkušnjah in

b) kapitalski dobiček od odtujitve kateregakoli premoženja, opisanega v pododstavku a), pod pogojem, da je tak kapitalski dobiček odvisen od produktivnosti ali uporabe premoženja ali razpolaganja s premoženjem.

4. Določbe prvega in drugega odstavka se ne uporabljajo, če upravičeni lastnik licenčnin in avtorskih honorarjev, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici prek stalne poslovne enote v njej ali v tej drugi državi opravlja samostojne osebne storitve iz stalne baze v njej ter se licenčnine in avtorski honorarji pripišejo taki stalni poslovni enoti ali stalni bazi. V takem primeru se uporabljajo določbe 7. člena (Poslovni dobiček) ali 14. člena (Samostojne osebne storitve), odvisno od primera.

5. Šteje se, da so licenčnine in avtorski honorarji nastali v državi pogodbenici, kadar je plačnik sama ta država, politična ali upravna enota, lokalna oblast ali rezident te države. Če pa ima oseba, ki plačuje licenčnine in avtorske honorarje, ne glede na to, ali je rezident države pogodbenice ali ne, v državi pogodbenici stalno poslovno enoto ali stalno bazo, v zvezi s katero je nastala obveznost za plačilo licenčnin in avtorskih honorarjev in take licenčnine in avtorske honorarje krije taka stalna poslovna enota ali stalna baza, se šteje, da so take licenčnine in avtorski honorarji nastali v državi, v kateri je stalna poslovna enota ali stalna baza. Ne glede na zgornje določbe tega odstavka se za licenčnine in avtorske honorarje v zvezi z uporabo ali pravico do uporabe pravic ali premoženja v državi pogodbenici lahko šteje, da izvirajo v tej državi.

6. Kadar zaradi posebnega odnosa med plačnikom in upravičenim lastnikom ali med njima in drugo osebo znesek licenčnin in avtorskih honorarjev glede na uporabo, pravico ali informacijo, za katero se plačujejo, presega znesek, za katerega bi se sporazumela plačnik in upravičeni lastnik, če takega odnosa ne bi bilo, se določbe tega člena uporabljajo samo za zadnji omenjeni znesek. V takem primeru se presežni del plačil še naprej obdavčuje v skladu z

zakoni vsake države pogodbenice, pri čemer pa je treba upoštevati druge določbe te konvencije.

7. Določbe tega člena se ne uporabljajo, če je bil glavni namen ali eden od glavnih namenov katerekoli osebe, ki se ukvarja z nastankom ali prenosom pravic, v zvezi s katerimi se plačujejo licenčnine in avtorski honorarji, zlorabiti ta člen s takim nastankom ali prenosom.

13. člen

KAPITALSKI DOBIČEK

1. Kapitalski dobiček, ki ga dobi rezident države pogodbenice in se pripiše odtujitvi nepremičnin, ki so v drugi državi pogodbenici, se lahko obdavči v tej drugi državi.

2. Za namene te konvencije izraz "nepremičnine, ki so v drugi državi pogodbenici" vključuje:

a) nepremičnine, ki so navedene v 6. členu (Dohodek iz nepremičnin);

b) delnice ali druge primerljive pravice, razen delnic s katerimi se redno trguje na uveljavljenem trgu vrednostnih papirjev, v družbi, ki je rezident druge države pogodbenice in dobiva najmanj 50 odstotkov svoje vrednosti neposredno ali posredno iz nepremičnin, ki so v drugi državi pogodbenici, in delež v osebni družbi, skladu ali zapuščini do obsega, do katerega njeno premoženje sestoji iz nepremičnin, ki so v drugi državi pogodbenici.

3. Kapitalski dobiček iz odtujitve premičnega premoženja, ki se pripiše stalni poslovni enoti, ki jo ima podjetje države pogodbenice v drugi državi pogodbenici, ali ki se pripiše stalni bazi, ki je na voljo rezidentu države pogodbenice v drugi državi pogodbenici za namen opravljanja samostojnih osebnih storitev, in kapitalski dobiček iz odtujitve take stalne poslovne enote (same ali s celotnim podjetjem) ali take stalne baze se lahko obdavčita v tej drugi državi.

4. Kapitalski dobiček, ki ga podjetje države pogodbenice dobi z odtujitvijo ladij, letal ali zabojnikov, ki delujejo ali se uporabljajo v mednarodnem prometu, ali premičnega premoženja, ki se nanaša na delovanje ali uporabo takih ladij, letal ali zabojnikov, se obdavči samo v tisti državi.

5. Kapitalski dobiček iz odtujitve kakršnegakoli drugega premoženja razen premoženja, navedenega v odstavkih od 1 do 4, se obdavči samo v državi pogodbenici, katere rezident je oseba, ki odtuji premoženje.

14. člen

SAMOSTOJNE OSEBNE STORITVE

1. Dohodek, ki ga dobi posameznik, ki je rezident države pogodbenice, od poklicnih storitev ali drugih samostojnih dejavnosti, se obdavči samo v tej državi, razen če ima posameznik stalno bazo, ki mu je redno na voljo v drugi državi pogodbenici za namen opravljanja njegovih dejavnosti. Če ima tako stalno bazo, se dohodek, ki se pripiše stalni bazi in ki se dobi za opravljene storitve v tej drugi državi, lahko obdavči tudi v tej drugi državi.

2. Izraz "poklicne storitve" vključuje še posebej samostojne znanstvene, literarne, umetniške, izobraževalne ali pedagoške dejavnosti kot tudi samostojne dejavnosti zdravnikov, odvetnikov, inženirjev, arhitektov, zobozdravnikov in računovodij.

3. Za namene prvega odstavka se dohodek, ki se obdavči v drugi državi pogodbenici, določi po načelih tretjega odstavka 7. člena (Poslovni dobiček).

15. člen

ODVISNE OSEBNE STORITVE

1. V skladu z določbami 16. člena (Plačila direktorjem), 18. člena (Pokojnine, socialna varnost, anuitete, preživnina za zakonca in preživnina za otroka) in 19. člena (Državna služba) se plače, mezde in drugi podobni prejemki, ki jih dobi rezident države pogodbenice iz zaposlitve, obdavčijo samo v tej državi, razen če se zaposlitev izvaja v drugi državi pogodbenici. Če se zaposlitev izvaja tako, se lahko taki prejemki, ki se od tam dobivajo, obdavčijo v tej drugi državi.

2. Ne glede na določbe prvega odstavka se prejemek, ki ga dobi rezident države pogodbenice iz zaposlitve, ki se izvaja v drugi državi pogodbenici, obdavči samo v prvi omenjeni državi, če:

a) je prejemnik navzoč v drugi državi v obdobju ali obdobjih, ki ne presegajo skupno 183 dni v kateremkoli dvanajstmesečnem obdobju, ki se začne ali konča v zadevnem davčnem letu;

b) prejemek plača delodajalec, ki ni rezident druge države, oziroma je plačan v njegovem imenu in

c) prejemka ne krije stalna poslovna enota ali stalna baza, ki jo ima delodajalec v drugi državi.

3. Ne glede na prejšnje določbe tega člena se prejemek, opisan v prvem odstavku, ki ga rezident države pogodbenice dobi iz zaposlitve kot član redne posadke ladje ali letala, ki deluje v mednarodnem prometu, lahko obdavči samo v tej državi.

16. člen

PLAČILA DIREKTORJEM

Plačila direktorjem in druga nadomestila, ki jih dobi rezident države pogodbenice od storitev, opravljenih v drugi državi pogodbenici, kot član upravnega odbora družbe, ki je rezident druge države pogodbenice, se lahko obdavčijo v tej drugi državi pogodbenici.

17. člen

UMETNIKI IN ŠPORTNIKI

1. Dohodek, ki ga dobi rezident države pogodbenice kot gledališki, filmski, radijski ali televizijski umetnik ali glasbenik ali kot športnik s takšnimi svojimi osebnimi dejavnostmi, ki jih izvaja v drugi državi pogodbenici, katerih dohodek bi bil oproščen davka v tej drugi državi pogodbenici na podlagi določb 14. člena (Samostojne osebne storitve) in 15. člena (Odvisne osebne storitve), se lahko obdavči v tej drugi državi, razen če znesek bruto prejemkov, ki jih prejme tak umetnik ali športnik iz teh dejavnosti, vključno s stroški, ki jih dobi povrnjene ali jih krijejo v njegovem imenu, ne presega petnajst tisoč ameriških dolarjev (15.000 $) oziroma njihove protivrednosti v slovenskih tolarjih za zadevno davčno leto.

2. Kadar dohodek iz dejavnosti, ki jih izvaja kot umetnik ali športnik, ne priraste samemu umetniku ali športniku, temveč drugi osebi, se ta dohodek kljub določbam 7. člena (Poslovni dobiček), 14. člena (Samostojne osebne storitve) in 15. člena (Odvisne osebne storitve) lahko obdavči v državi pogodbenici, v kateri se izvajajo dejavnosti umetnika ali športnika, razen če se ugotovi, da niso ne umetnik oziroma športnik ne z njim povezane osebe neposredno ali posredno kakorkoli udeleženi v dobičku te druge osebe, vključno s prejemanjem odloženih plačil, premij, honorarjev, dividend, delitev dobička osebnih družb ali drugih delitev dobička.

3. Določbe prvega in drugega odstavka se ne uporabljajo za dohodek, ki se dobi iz dejavnosti, ki jih izvajajo umetniki ali športniki v državi pogodbenici, če se obisk v tej državi v celoti ali pretežno financira z javnimi sredstvi ene ali obeh držav pogodbenic ali političnih enot ali njihovih lokalnih oblasti. V takem primeru se dohodek obdavči samo v državi pogodbenici, katere rezident je umetnik ali športnik.

18. člen

POKOJNINE, SOCIALNA VARNOST, ANUITETE, PREŽIVNINA ZA ZAKONCA IN PREŽIVNINA ZA OTROKA

1. V skladu z določbami drugega odstavka 19. člena (Državna služba) se izplačila pokojnin in drugi podobni prejemki, katerih upravičeni lastnik je rezident države pogodbenice, bodisi da se izplačujejo občasno ali v enkratni vsoti, obdavčijo samo v tej državi; vendar ta država ne obdavči takih izplačil pokojnin in podobnih prejemkov do obsega, do katerega so bila vključena v obdavčen dohodek v drugi državi pogodbenici pred izplačilom.

2. Ne glede na določbe prvega odstavka se plačila, ki jih država pogodbenica plača po določbah zakonodaje o socialni varnosti ali podobne zakonodaje te države rezidentu druge države pogodbenice ali državljanu Združenih držav, obdavčijo samo v prvi omenjeni državi.

3. Anuitete, ki jih dobi in katerih upravičeni lastnik je posameznik rezident države pogodbenice, se obdavčijo samo v tej državi. Izraz "anuitete", kot se uporablja v tem odstavku, pomeni določeno vsoto, plačano občasno ob določenih rokih med določenim časovnim obdobjem ali za vse življenje zaradi obveznosti plačila kot povračila za primerno in polno nadomestilo (ki niso opravljene storitve).

4. Preživnina za zakonca, ki jo plača rezident države pogodbenice in se v njej odšteje od davčne osnove, rezidentu druge države pogodbenice se obdavči samo v tej drugi državi. Izraz "preživnina za zakonca", kot se uporablja v tem odstavku, pomeni občasna plačila, izvršena na podlagi pisnega dogovora o ločitvi ali odločbe o razvezi, ločenem vzdrževanju ali obvezni podpori za katere se obdavči prejemnik po zakonih države, katere rezident je.

5. Občasna plačila, ki niso obravnavana v četrtem odstavku, za preživnino za otroka, ki se izplačujejo na podlagi pisnega dogovora o ločitvi ali odločbe o razvezi, ločenem vzdrževanju ali obvezni podpori in jih plačuje rezident države pogodbenice rezidentu druge države pogodbenice, so oproščena davka v obeh državah pogodbenicah.

19. člen

DRŽAVNA SLUŽBA

1. Ne glede na določbe 14. člena (Samostojne osebne storitve), 15. člena (Odvisne osebne storitve), 16. člena (Plačila direktorjem) in 17. člena (Umetniki in športniki):

a) se plače, mezde in drugi prejemki razen pokojnin, ki se plačujejo iz javnih sredstev države pogodbenice ali politične enote ali njene lokalne oblasti posamezniku za storitve, ki jih opravi za to državo ali enoto ali oblast pri opravljanju nalog državne narave, obdavčijo samo v tej državi v skladu z določbami pododstavka b);

b) taki prejemki pa se obdavčijo samo v drugi državi pogodbenici, če se storitve opravljajo v tej državi in je posameznik rezident te države, ki:

(i) je državljan te države ali

(ii) ni postal rezident te države samo za namen opravljanja storitev.

2. V skladu z določbami drugega odstavka 18. člena (Pokojnine, socialna varnost, anuitete, preživnina za zakonca in preživnina za otroka):

a) se vsaka pokojnina, plačana iz javnih sredstev države pogodbenice ali politične enote ali njene lokalne oblasti posamezniku za storitve, opravljene za to državo ali enoto ali oblast pri opravljanju nalog državne narave, obdavči samo v tej državi v skladu z določbami pododstavka b);

b) ta pokojnina pa se obdavči samo v drugi državi pogodbenici, če je posameznik rezident in državljan te države.

20. člen

ŠTUDENTI, PRIPRAVNIKI, PROFESORJI IN RAZISKOVALCI

1. a) Razen kot je določeno v drugem odstavku, je posameznik, ki je rezident države pogodbenice na začetku svojega obiska v drugi državi pogodbenici in je začasno navzoč v tej drugi državi pogodbenici za poglavitni namen:

(i) študiranja na univerzi ali drugi priznani izobraževalni ustanovi v tej drugi državi pogodbenici ali

(ii) zagotovitve usposabljanja, ki je potrebno, da se usposobi za opravljanje poklica ali poklicne specializacije, ali

(iii) študiranja ali opravljanja raziskav kot prejemnik štipendije, podpore ali nagrade od vladne, verske, dobrodelne, znanstvene, literarne ali izobraževalne organizacije,

oproščen davka s strani te druge države pogodbenice za zneske, opisane v pododstavku b) tega odstavka, za obdobje, ki ne presega 5 davčnih let od datuma njegovega prihoda v drugo državo pogodbenico, in za tako dodatno časovno obdobje, kot je potrebno, da kot redni študent izpolni izobraževalne zahteve kot kandidat za podiplomsko ali poklicno stopnjo priznane izobraževalne ustanove.

b) Zneski iz pododstavka a) tega odstavka so:

(i) plačila iz tujine, razen nadomestil za osebne storitve, za namen njegovega vzdrževanja, izobraževanja, študija, raziskav ali usposabljanja;

(ii) štipendija, podpora ali nagrada in

(iii) dohodek od osebnih storitev, opravljenih v tej drugi državi pogodbenici, ki v skupnem znesku ne presega pet tisoč ameriških dolarjev (5.000 $) oziroma njegove protivrednosti v slovenskih tolarjih za zadevno davčno leto.

2. Posameznik, ki je rezident države pogodbenice na začetku svojega obiska v drugi državi pogodbenici in ki je začasno navzoč v tej drugi državi pogodbenici kot uslužbenec rezidenta prve omenjene države pogodbenice ali v pogodbenem razmerju z njim za poglavitni namen:

a) pridobivanja strokovnih, poklicnih ali poslovnih izkušenj od osebe, ki ni ta rezident prve omenjene države pogodbenice, ali

b) študiranja na univerzi ali drugi priznani izobraževalni ustanovi v tej drugi državi pogodbenici,

je oproščen davka s strani te druge države pogodbenice za obdobje, ki ne presega 12 mesecev, za svoj dohodek iz osebnih storitev, ki v skupnem znesku ne presega osem tisoč ameriških dolarjev (8.000 $) oziroma njegove protivrednosti v slovenskih tolarjih.

3. Posameznik, ki je rezident države pogodbenice na začetku svojega obiska v drugi državi pogodbenici in ki je začasno navzoč v drugi državi pogodbenici za namen poučevanja ali opravljanja raziskav na priznani izobraževalni ali raziskovalni ustanovi, je v drugi državi pogodbenici oproščen davka na svoj dohodek iz osebnih storitev za poučevanje ali raziskovanje na tej ustanovi za obdobje, ki ne presega dveh let od datuma prihoda posameznika v to drugo državo. V nobenem primeru ne more katerikoli posameznik uživati koristi tega odstavka več kot pet davčnih let.

4. Ta člen se ne uporablja za dohodek iz raziskav, če se raziskave ne opravljajo v javnem interesu, pač pa predvsem za zasebno korist določene osebe ali oseb.

21. člen

DRUGI DOHODKI

1. Dohodkovne postavke, ki so upravičeno v lasti rezidenta države pogodbenice, kjerkoli nastanejo in niso obravnavane v predhodnih členih te konvencije, se obdavčijo samo v tej državi.

2. Določbe prvega odstavka se ne uporabljajo za dohodek, ki ni dohodek iz nepremičnin, kot so opredeljene v drugem odstavku 6. člena (Dohodek iz nepremičnin), če upravičeni lastnik dohodka, ki je rezident države pogodbenice, posluje v drugi državi pogodbenici prek stalne poslovne enote, ki je v njej, ali v tej drugi državi opravlja samostojne osebne storitve iz stalne baze, ki je v njej, in se dohodek pripiše takšni stalni poslovni enoti ali stalni bazi. V tem primeru se uporabljajo določbe 7. člena (Poslovni dobiček) ali 14. člena (Samostojne osebne storitve), odvisno od primera.

3. Določbe tega člena se ne uporabljajo, če je bil glavni namen ali eden glavnih namenov katerekoli osebe, ki se ukvarja z nastankom ali prenosom pravic, za katere se plača dohodek, zlorabiti ta člen s takim nastankom ali prenosom.

22. člen

OMEJITEV KORISTI

1. Rezident države pogodbenice je upravičen do koristi, ki so sicer priznane rezidentom države pogodbenice s to konvencijo, samo do obsega, določenega v tem členu.

2. Rezident države pogodbenice je upravičen do vseh koristi te konvencije, če je rezident:

a) posameznik;

b) upravičen vladni subjekt;

c) družba, če

(i) če se z vsemi delnicami v razredu ali razredih delnic, ki predstavljajo več kot 50 odstotkov glasovalnih pravic in vrednosti družbe, redno trguje na priznani borzi vrednostnih papirjev, ali

(ii) je vsaj 50 odstotkov vsakega razreda delnic v družbi neposredno ali posredno v lasti petih ali manj družb, upravičenih do koristi na podlagi alinee (i), pod pogojem, da je v primeru posrednega lastništva vsak posreden lastnik oseba, ki je upravičena do koristi konvencije na podlagi tega odstavka;

d) opisan v pododstavku 1 c) (i) 4. člena (Rezidentstvo);

e) opisan v pododstavku 1 c) (ii) 4. člena (Rezidentstvo), pod pogojem, da je več kot 50 odstotkov upravičencev, članov ali sodelavcev osebe posameznikov rezidentov v eni ali drugi državi pogodbenici, ali

f) oseba, ki ni posameznik, če:

(i) imajo vsaj polovico dni davčnega leta osebe, opisane v pododstavkih a), b), c), d) ali e), v lasti neposredno ali posredno (skozi verigo lastništva, v kateri je vsaka oseba upravičena do koristi konvencije po tem odstavku) najmanj 50 odstotkov vsakega razreda delnic ali drugih upravičenih deležev v osebi, in

(ii) se manj kot 50 odstotkov bruto dohodka osebe v davčnem letu neposredno ali posredno plača ali priraste osebam, ki niso rezidenti ene ali druge države pogodbenice (razen če se plačilo pripisuje stalni poslovni enoti v eni ali drugi državi), v obliki plačil, ki se odbijejo za namene davka od dohodka v državi rezidentstva osebe.

3. a) Rezident države pogodbenice, ki drugače ni upravičen do koristi, je upravičen do koristi te konvencije v zvezi z dohodkovno postavko, ki izvira iz druge države, če:

(i) rezident dejavno trguje ali posluje v prvi omenjeni državi (pri čemer pa ne gre za posle vlaganja ali upravljanja naložb, razen če so dejavnosti bančništvo, zavarovalništvo ali poslovanje z vrednostnimi papirji, ki jih opravljajo banka, zavarovalnica ali pooblaščen borzni posrednik),

(ii) je dohodek povezan s trgovanjem ali poslovanjem ali priložnosten glede na trgovanje ali poslovanje,

(iii) je trgovanje ali poslovanje precejšnje glede na dejavnost v drugi državi, ki ustvarja dohodek.

b) Dohodek izvira v zvezi s trgovanjem ali poslovanjem, če je predmet dejavnosti v drugi državi, ki ustvarja dohodek, poslovanje, ki je del ali dopolnitev trgovanja ali poslovanja. Dohodek je priložnosten glede na trgovanje ali poslovanje, če olajšuje trgovanje ali poslovanje v drugi državi.

4. Rezidentu države pogodbenice, ki sicer ni upravičen do koristi, se lahko priznajo koristi konvencije, če tako odloči pristojni organ države, od katere se koristi zahtevajo.

5. Za namene tega člena izraz "priznana borza vrednostnih papirjev" pomeni:

a) Sistem NASDAQ, ki je v lasti Nacionalne zveze borznih posrednikov, in katerokoli borzo, ki je registrirana pri Komisiji za vrednostne papirje in borzo Združenih držav kot nacionalna borza vrednostnih papirjev po Zakonu o trgovanju z vrednostnimi papirji Združenih držav iz leta 1934;

b) Ljubljansko borzo in

c) frankfurtsko, londonsko, pariško in dunajsko borzo in katerekoli druge borze vrednostnih papirjev, o katerih se sporazumejo pristojni organi obeh držav pogodbenic.

23. člen

OPROSTITEV DVOJNEGA OBDAVČEVANJA

1. V skladu z določbami in ob upoštevanju omejitev zakonodaje Združenih držav (kot se občasno spreminja, ne da bi se spremenilo njeno splošno načelo) Združene države dovolijo rezidentu ali državljanu Združenih držav, da se mu šteje v dobro za davek Združenih držav od dohodka:

a) davek od dohodka, ki je plačan ali priraste Sloveniji s strani ali v imenu takšnega državljana ali rezidenta, in

b) v primeru družbe Združenih držav, ki ima v lasti najmanj 10 odstotkov delnic z glasovalno pravico družbe, ki je rezident Slovenije in od katere družba Združenih držav prejema dividende, davek od dohodka, ki je plačan ali priraste Sloveniji s strani ali v imenu plačnika, za dobiček, iz katerega se plačujejo dividende.

Za namene tega odstavka se davki, navedeni v odstavkih 1b) (i), 1b) (ii) in drugem odstavku 2. člena (Davki, za katere se uporablja konvencija), štejejo kot davki od dohodka.

2. Če rezident Slovenije dobiva dohodek, ki se v skladu z določbami te konvencije lahko obdavči v Združenih državah, Slovenija dovoli kot odbitek od davka od dohodka tega rezidenta znesek, ki je enak davku od dohodka, plačanemu v Združenih državah. Tak odbitek v nobenem primeru ne sme presegati deleža davka od dohodka, ki je bil izračunan, preden se opravi odbitek, ki se pripisuje dohodku, ki se lahko obdavči v Združenih državah. Za namene tega odstavka se davki, navedeni v odstavku 1 a) in drugem odstavku 2. člena (Davki, za katere se uporablja konvencija), štejejo kot davki od dohodka.

3. Če je državljan Združenih držav rezident Slovenije:

a) za dohodkovne postavke, ki so po določbah te konvencije oproščene davka Združenih držav ali za katere velja znižana stopnja davka Združenih držav, kadar jih dobi rezident Slovenije, ki ni državljan Združenih držav, Slovenija dovoli, da se šteje v dobro za slovenski davek samo morebitni plačani davek, ki ga Združene države lahko naložijo po določbah te konvencije, ki ni davek, ki se lahko uvede samo zaradi državljanstva na podlagi zaščitne klavzule četrtega odstavka 1. člena (Splošno področje uporabe);

b) za namene izračunavanja davka Združenih držav od tistih dohodkovnih postavk, ki so navedene v pododstavku a), Združene države dovolijo, da se šteje v dobro za davek Združenih držav davek od dohodka, plačan Sloveniji po dobropisu, navedenem v pododstavku a); tako odobren dobropis ne sme zmanjšati deleža davka Združenih držav, ki se šteje v dobro za slovenski davek v skladu s pododstavkom a), in

c) za izključni namen oprostitve dvojnega obdavčevanja v Združenih državah na podlagi pododstavka b) se za dohodkovne postavke, navedene v pododstavku a) šteje, da so nastale v Sloveniji do obsega, potrebnega za izogib dvojnemu obdavčevanju takega dohodka na podlagi pododstavka b).

4. Če je v skladu s katerokoli določbo konvencije dohodek, ki ga dobi rezident države pogodbenice, oproščen davka v tej državi, pa lahko ta država vseeno pri izračunu zneska davka na preostali dohodek tega rezidenta upošteva oproščeni dohodek.

24. člen

ENAKO OBRAVNAVANJE

1. Državljani države pogodbenice ne smejo biti v drugi državi pogodbenici zavezani kakršnemukoli obdavčevanju ali kakršnikoli zahtevi v zvezi s tem, ki je bolj obremenjujoče, kot je ali je lahko obdavčevanje in s tem povezane zahteve za državljane te druge države v enakih okoliščinah. Za namene obdavčevanja dohodka Združenih držav državljani Združenih držav, ki niso rezidenti v Združenih državah, niso v enakih okoliščinah kot slovenski državljani, ki niso rezidenti v Združenih državah. Ta določba se uporablja tudi za osebe, ki niso rezidenti ene ali obeh držav pogodbenic.

2. Obdavčevanje stalne poslovne enote ali stalne baze, ki jo ima rezident države pogodbenice ali podjetje države pogodbenice v drugi državi pogodbenici, ne sme biti manj ugodno v tej drugi državi, kot je obdavčevanje podjetij ali rezidentov te druge države, ki opravljajo enake dejavnosti. Določbe tega odstavka se ne razlagajo, kot da zavezujejo državo pogodbenico, da prizna rezidentom druge države pogodbenice kakršnekoli osebne olajšave, oprostitve in zmanjšanja za davčne namene zaradi osebnega statusa ali družinskih obveznosti, ki jih priznava svojim rezidentom.

3. Razen kjer veljajo določbe prvega odstavka 9. člena (Povezana podjetja), sedmega odstavka 11. člena (Obresti) ali šestega odstavka 12. člena (Licenčnine in avtorski honorarji), se obresti, licenčnine in avtorski honorarji in druga izplačila, ki jih plača rezident ali podjetje države pogodbenice rezidentu druge države pogodbenice, za namene določitve obdavčljivega dobička rezidenta ali podjetja prve omenjene države pogodbenice odbijajo pod istimi pogoji, kot če bi bili plačani rezidentu prve omenjene države. Tudi kakršnikoli dolgovi rezidenta ali podjetja države pogodbenice rezidentu druge države pogodbenice se za namen določitve obdavčljivega premoženja rezidenta ali podjetja prve omenjene države pogodbenice odbijajo pod istimi pogoji, kot da bi bili pogodbeno dogovorjeni z rezidentom prve omenjene države.

4. Podjetja države pogodbenice, katerih kapital je v celoti ali delno, neposredno ali posredno v lasti ali pod nadzorom enega ali več rezidentov druge države pogodbenice, ne smejo biti v prvi omenjeni državi zavezana kakršnemukoli obdavčevanju ali kakršnikoli zahtevi v zvezi s tem, ki je bolj obremenjujoče, kot je ali je lahko obdavčenje in s tem povezane zahteve za druga podobna podjetja prve omenjene države.

5. Nič v tem členu se ne razlaga, kot da preprečuje eni ali drugi državi pogodbenici, da naloži davek, kot je opisan v osmem odstavku 10. člena (Dividende) ali devetem odstavku 11. člena (Obresti).

6. Določbe tega člena se uporabljajo ne glede na določbe 2. člena (Davki, za katere se uporablja konvencija) za davke vseh vrst in opisov, ki jih uvede država pogodbenica ali politična enota ali njena lokalna oblast.

25. člen

POSTOPEK SKUPNEGA DOGOVORA

1. Če oseba meni, da dejanja ene ali obeh držav pogodbenic imajo ali bodo imela zanjo za posledico obdavčevanje, ki ni v skladu z določbami te konvencije, lahko ne glede na sredstva, ki ji jih omogoča domača zakonodaja teh držav, in roke, ki jih taki zakoni predpisujejo za predložitev zahtevkov za vračilo, predloži zadevo pristojnemu organu države pogodbenice, katere rezident je; če se njen primer nanaša na prvi odstavek 24. člena (Enako obravnavanje), pa tiste države pogodbenice, katere državljan je. Zadeva mora biti vložena v petih letih od prvega obvestila o dejanju, ki je imelo za posledico obdavčenje, ki ni v skladu z določbami te konvencije.

2. Pristojni organ si prizadeva, če se mu zdi pritožba upravičena in če sam ne more priti do zadovoljive rešitve, razrešiti primer s skupnim dogovorom s pristojnim organom druge države pogodbenice, z namenom izogniti se obdavčevanju, ki ni v skladu s konvencijo. Vsak dosežen dogovor se izvaja ne glede na roke ali druge postopkovne omejitve v domačih zakonih držav pogodbenic. Postopki za odmero in pobiranje se prekinejo med postopkom skupnega dogovora.

3. Pristojni organi držav pogodbenic si prizadevajo s skupnim dogovorom razrešiti kakršnekoli težave ali dvome, ki izvirajo iz razlage ali uporabe konvencije. Še zlasti se pristojni organi držav pogodbenic lahko dogovorijo:

a) za enak pripis dohodka, odbitkov, dobropisov ali olajšav podjetja države pogodbenice njegovi stalni poslovni enoti, ki je v drugi državi pogodbenici;

b) za enako porazdelitev dohodka, odbitkov, dobropisov ali olajšav med osebami;

c) za enako opredelitev posameznih dohodkovnih postavk, vključno z enako opredelitvijo dohodka, ki ga davčna zakonodaja ene od držav pogodbenic vključuje v dohodek od delnic in se obravnava kot drugačna vrsta dohodka v drugi državi;

d) za enako opredelitev oseb;

e) za enako uporabo pravil glede izvora za posamezne dohodkovne postavke;

f) za skupen pomen izraza in

g) o tem, da so izpolnjeni pogoji za uporabo desetega odstavka 10. člena (Dividende), desetega odstavka 11. člena (Obresti), sedmega odstavka 12. člena (Licenčnine in avtorski honorarji) ali tretjega odstavka 21. člena (Drugi dohodki) konvencije.

Prav tako se lahko med seboj posvetujejo o odpravi dvojnega obdavčevanja v primerih, ki jih ne predvideva ta konvencija.

4. Pristojni organi se lahko tudi dogovorijo za povečanje določenih dolarskih zneskov, ki so omenjeni v konvenciji, da odražajo gospodarska ali denarna dogajanja.

5. Pristojni organi držav pogodbenic lahko neposredno komunicirajo drug z drugim z namenom, da bi dosegli dogovor v smislu predhodnih odstavkov.

26. člen

IZMENJAVA INFORMACIJ IN UPRAVNA POMOČ

1. Pristojni organi držav pogodbenic si izmenjujejo take informacije, ki so pomembne za izvajanje določb te konvencije ali domačih zakonov držav pogodbenic glede davkov, za katere se uporablja ta konvencija, kolikor obdavčevanje na njihovi podlagi ni v nasprotju s konvencijo, vključno z informacijami, ki se nanašajo na odmero ali pobiranje davkov, za katere se uporablja ta konvencija, njihovo izterjavo ali pregon in odločitev o pritožbah v zvezi z njimi. Izmenjava informacij ni omejena s 1. členom (Splošno področje uporabe). Vsaka informacija, ki jo prejme država pogodbenica, se obravnava kot tajna na isti način, kot se informacije, pridobljene po domačih zakonih te države, in se razkrije samo osebam ali organom (vključno s sodišči in upravnimi organi), udeleženim pri odmeri, pobiranju ali administriranju davkov, za katere se uporablja ta konvencija, njihovi izterjevi ali pregonu in odločanju o pritožbah v zvezi z njimi ali pri nadzoru nad tem. Te osebe in organi uporabljajo informacije samo v te namene. Informacije lahko razkrijejo na javnih sodnih obravnavah ali pri sodnih odločitvah.

2. V nobenem primeru se določbe prvega odstavka ne razlagajo, kot da nalagajo obveznosti državi pogodbenici:

a) da izvaja upravne ukrepe, ki niso v skladu z zakoni in upravno prakso te ali druge države pogodbenice,

b) da priskrbi informacije, ki jih ni mogoče dobiti po zakonski ali običajni upravni poti te ali druge države pogodbenice,

c) da priskrbi informacije, ki bi razkrile kakršnokoli trgovinsko, poslovno, industrijsko, komercialno ali poklicno skrivnost ali trgovinske postopke, ali informacije, katerih razkritje bi nasprotovalo javnemu redu (ordre public).

3. Če za informacijo zaprosi država pogodbenica v skladu s tem členom, pridobi druga država pogodbenica to informacijo na isti način in v istem obsegu, kot če bi bil davek prve omenjene države davek te druge države in bi ga nalagala ta druga država, ne glede na to, da morda ta druga država v tem času ne potrebuje te informacije za namene svojega lastnega davka. Na posebno zaprosilo pristojnega organa države pogodbenice pristojni organ druge države pogodbenice priskrbi informacijo po tem členu v obliki izjav prič in overjenih izvodov neredigiranih izvirnih dokumentov (vključno s knjigami, listinami, izjavami, zapisi, računi in pisanji) v istem obsegu, kot se te izjave in dokumenti lahko pridobijo po zakonih in upravni praksi te druge države v zvezi z njenimi lastnimi davki.

4. Za namene tega člena se konvencija ne glede na določbe 2. člena (Davki, za katere se uporablja konvencija) uporablja za davke vseh vrst, ki jih uvede država pogodbenica.

27. člen

DIPLOMATSKI PREDSTAVNIKI IN KONZULARNI USLUŽBENCI

Nič v tej konvenciji ne vpliva na davčne ugodnosti diplomatskih predstavnikov ali konzularnih uslužbencev, določene s splošnimi pravili mednarodnega prava ali z določbami posebnih sporazumov.

28. člen

PREMOŽENJE

1. Premoženje, ki ga predstavljajo nepremičnine, navedene v 6. členu (Dohodek iz nepremičnin), ki je v lasti rezidenta države pogodbenice in je v drugi državi pogodbenici, se lahko obdavči v tej drugi državi.

2. Premoženje, ki ga predstavlja premično premoženje, ki je del poslovnega premoženja stalne poslovne enote, ki jo ima podjetje države pogodbenice v drugi državi pogodbenici, ali premično premoženje, ki pripada stalni bazi, ki je na voljo rezidentu države pogodbenice v drugi državi pogodbenici za namen izvajanja samostojnih osebnih storitev, se lahko obdavči v tej drugi državi.

3. Premoženje, ki ga predstavljajo ladje, letala in zabojniki v lasti rezidenta države pogodbenice, ki delujejo v mednarodnem prometu, in premično premoženje, ki se nanaša na delovanje teh ladij, letal in zabojnikov, se obdavči samo v tej državi.

4. Vse druge sestavine premoženja rezidenta države pogodbenice se obdavčijo samo v tej državi.

29. člen

ZAČETEK VELJAVNOSTI

1. Ta konvencija se ratificira v skladu z veljavnimi postopki vsake države pogodbenice in listini o ratifikaciji se izmenjata, kakor hitro je to mogoče.

2. Konvencija začne veljati ob izmenjavi listin o ratifikaciji in njene določbe se uporabljajo:

a) za davke, zadržane pri viru od zneskov, plačanih ali pripisanih v dobro prvi dan tretjega meseca, ki sledi datumu, ko je konvencija začela veljati, ali po njem;

b) za druge davke za davčna obdobja, ki se začnejo prvi dan januarja, ki sledi datumu, ko je konvencija začela veljati, ali po njem.

30. člen

PRENEHANJE VELJAVNOSTI

1. Ta konvencija velja, dokler je ne odpove država pogodbenica. Ena ali druga država pogodbenica lahko odpove konvencijo z obvestilom o odpovedi po diplomatski poti drugi državi pogodbenici. V takem primeru se konvencija preneha ~~preneha~~ uporabljati:

a) za davke, zadržane pri viru od zneskov, plačanih ali pripisanih v dobro po izteku šestmesečnega obdobja, ki se začne z datumom, ko je bilo dano obvestilo o odpovedi in

b) za druge davke za davčna obdobja, ki se začnejo ob ali po izteku šestmesečnega obdobja, ki se začne na datum, ko je bilo dano obvestilo o odpovedi.

V dokaz navedenega sta podpisana, ki sta ju za to pravilno pooblastili njuni vladi, podpisala to konvencijo.

Sestavljeno v Ljubljani v dveh izvodih v angleškem in slovenskem jeziku, pri čemer sta obe besedili enako verodostojni, dne 21. junija 1999.

ZA ZDRUŽENE DRŽAVE AMERIKE:

ZA REPUBLIKO SLOVENIJO:

The Department of State refers the Embassy of the Republic of Slovenia to the Convention Between the United States of America and the Republic of Slovenia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Ljubljana June 21, 1999.

The United States instrument of ratification, a copy of which is enclosed, contains a reservation and an understanding.

The reservation reads as follows:

> (1) MAIN PURPOSE TESTS.--Paragraph 10 of Article 10 (Dividends), paragraph 10 of Article 11 (Interest), paragraph 7 of Article 12 (Royalties), paragraph 3 of Article 21 (Other Income), and subparagraph (g) of paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Convention shall be stricken in their entirety.

The understanding reads as follows:

> (1) EXCHANGE OF INFORMATION.--The United States understands that, pursuant to Article 26 of the Convention, both the competent authority of the United States and the competent authority of the Republic of Slovenia have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity, or respecting interests in a person.

As a result, the entry into force of this Convention will be subject to this reservation and this understanding, the former of which has the effect of amending the Convention signed at Ljubljana June 21, 1999

by deleting the above-referenced text from the Convention's terms.

The Department of State would be grateful to receive from the Embassy of the Republic of Slovenia a note indicating that it accepts the reservation and understanding.

Enclosure:

Copy of the United States
Instrument of Ratification

Department of State,

Washington, January 27, 2000.

NOTE: Only text of Department of State Note will be printed in this publication.

EMBASSY OF THE REPUBLIC OF SLOVENIA

No.: 1/2001

The Embassy of the Republic of Slovenia presents its compliments to the Department of State and has, with reference to the Department's note dated 27 January 2000, regarding the Convention between the Republic of Slovenia and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed in Ljubljana on 21 June 1999, the honor to communicate the following:

The Republic of Slovenia agrees that paragraph 10 of Article 10 (Dividends), paragraph 10 of Article 11 (Interest), paragraph 7 of Article 12 (Royalties), paragraph 3 of Article 21 (Other income) and paragraph 3 (g) of Article 25 (Mutual Agreement Procedure) shall be stricken in their entirety.

The Republic of Slovenia also agrees with the understanding of Article 26 as proposed by the Department of State.

The Embassy of the Republic of Slovenia avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, January 9, 2001

REPUBLIKA SLOVENIJA
WASHINGTON

UNITED STATES DEPARTMENT OF STATE
WASHINGTON, D.C.