

PROTOCOL
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF POLAND
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA

**AMENDING THE CONVENTION BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF POLAND AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME, SIGNED AT SEOUL
ON THE 21ST DAY OF JUNE 1991**

The Government of the Republic of Poland and the Government of the Republic of Korea,
desiring to conclude a Protocol amending the Convention between the Government of the Republic of Poland and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Seoul on the 21st day of June 1991 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Paragraph 1 of Article 2 (Taxes Covered) of the Convention shall be deleted and replaced by the following paragraph:

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

- a) In the case of Korea:
 - (i) the income tax
 - (ii) the corporation tax
 - (iii) the special tax for rural development, and
 - (iv) the local income tax

(hereinafter referred to as “Korean tax”);

- b) In the case of Poland:
 - (i) the personal income tax, and
 - (ii) the corporate income tax

(hereinafter referred to as “Polish tax”).”

ARTICLE 2

Sub-paragraph j) of paragraph 1 of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following sub-paragraph:

“j) the term “competent authority” means:

- (i) in the case of Korea, the Minister of Strategy and Finance or his authorized representative;
- (ii) in the case of Poland, the Minister of Finance or his authorized representative.”

ARTICLE 3

Paragraph 3 of Article 8 (Shipping and Air Transport) of the Convention shall be deleted.

ARTICLE 4

Article 9 (Associated Enterprises) of the Convention shall be deleted and replaced by the following Article:

“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 which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which 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 had to the other provisions of this convention and the competent authorities of the Contracting States shall if necessary consult each other.”

ARTICLE 5

Sub-paragraph b) of paragraph 3 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following sub-paragraph:

“b) Interest arising in a Contracting State in respect of loans or credits made, insured or guaranteed,

- in the case of Korea, by the Export-Import Bank of Korea, Korea Development Bank, Korea Finance Corporation(“KoFC”), Korea Trade Insurance Corporation(“K-sure”), Korea Investment Corporation and any other financial institution, performing similar functions of governmental nature, established and owned by the Government of Korea, and

- in the case of Poland, by the Korporacja Ubezpieczeń Kredytów Eksportowych S.A (KUKKE S.A.), Bank Gospodarstwa Krajowego (BGK) and any other financial institution, performing similar functions of governmental nature, established and owned by the Government of Poland,

and paid to a resident of the other Contracting State shall be taxable only in that other State.”

ARTICLE 6

1. Paragraph 2 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following paragraph:

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

2. Paragraph 3 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following paragraph:

“3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright including copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use any industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.”

ARTICLE 7

1. Paragraph 4 of Article 13 (Capital Gains) of the Convention shall be deleted and replaced by the following paragraph:

“4. Gains derived by a resident of a Contracting State from the alienation of shares, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.”

2. Immediately after paragraph 4 of Article 13 (Capital Gains) of the Convention the following paragraph 5 shall be added:

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

ARTICLE 8

Sub-paragraph a) of paragraph 2 of Article 15 (Dependent Personal Services) of the Convention shall be deleted and replaced by the following sub-paragraph:

“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 fiscal year concerned; and”

ARTICLE 9

Paragraph 4 of Article 19 (Government Service) of the Convention shall be deleted and replaced by the following paragraph:

“4. The provision of paragraphs 1, 2 and 3 of this Article shall likewise apply in respect of salaries, wages and other similar remuneration paid by:

- in the case of Korea, the Bank of Korea, the Korea Export-Import Bank, the Korea Trade Investment Promotion Agency, the Korea Trade Insurance Corporation, the Korea Investment Corporation, the Korea Finance Corporation and any other statutory body performing similar functions of governmental nature; and
- in the case of Poland, Narodowy Bank Polski, Krajowa Izba Gospodarcza, Korporacja Ubezpieczeń Kredytów Eksportowych S.A. (KUKE S.A.), Bank Gospodarstwa Krajowego (BGK) and any other statutory body performing similar functions of governmental nature.”

ARTICLE 10

Immediately after Article 22 (Other Income) of the Convention the following Article 22A (Limitation on Benefits) shall be added:

“Article 22A Limitation on Benefits

1. In respect of Articles 10, 11, 12, 13, and 22, a resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention, if the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, a debt-claim, or a right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.

2. Nothing in this Article shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes.”

ARTICLE 11

Article 23 (Relief from Double Taxation) of the Convention shall be deleted and replaced by the following Article:

“Article 23 Relief from Double Taxation

1. In Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle thereof);

a) Where a resident of Korea derives income from Poland which may be taxed in Poland under the laws of Poland in accordance with the provisions of this Convention, in respect of that income, the amount of Polish tax payable shall be allowed as a credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income;

b) Where the income derived from Poland is a dividend paid by a company which is a resident of Poland to a company which is a resident of Korea which owns at least 10 per cent of the voting shares issued by or the capital stock of the company paying the dividends, the credit shall take into account the Polish tax payable by the company in respect of the profits out of which such dividends are paid.

2. In Poland, double taxation shall be avoided as follows:

a) Where a resident of Poland derives income which, in accordance with the provisions of this Convention, may be taxed in Korea, Poland shall allow as a deduction from the Polish tax on the income of that resident, an amount equal to the tax paid in Korea.

b) Notwithstanding the provision of sub-paragraph a) and subject to the provisions of the Polish tax law, where income derived from Korea is a dividend paid by a company which is a resident of Korea to a company which is a resident of Poland which owns at least 75 per cent of the capital stock of the company paying the dividends, Poland shall also allow as a deduction from the Polish tax, the Korean tax payable by the company in respect of the profits out of which such dividends are paid.

c) Such deduction as referred to in sub-paragraphs a) and b) shall not, however, exceed in aggregate that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Korea.

d) Where in accordance with any provision of the Convention income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.”

ARTICLE 12

Article 26 (Exchange of Information) of the Convention shall be deleted and replaced by the following Article:

“Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE 13

1. Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the entry into force of this Protocol.

2. The Protocol shall enter into force on the thirtieth day after the date in which the latter of these notifications was received and its provisions shall have effect:

a) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the year following the entry into force of this Protocol;

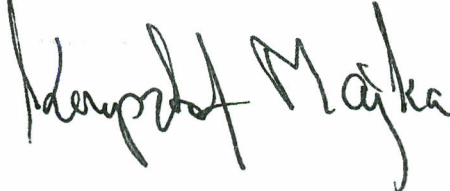
b) in respect of other taxes, for taxation years beginning on or after the first day of January of the year following the entry into force of this Protocol; and

c) in respect of Article 12 of this Protocol, to request made on or after the date of entry into force of this Protocol regarding information that relates to taxable periods beginning on or after the first day of January next following the date of signature of this Protocol.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Seoul, this 22nd day of October 2013 in the Polish, Korean and English languages, each text being equally authentic. In case there is any divergence of interpretation the English text shall prevail.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF POLAND**



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

