CONVENTION
ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

DESIRING to give effect to Article 220 of that Treaty, by virtue of which they have undertaken to enter into negotiations with one another with a view to securing for the benefit of their nationals the elimination of double taxation,

CONSIDERING the importance attached to the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

HAVE DECIDED to conclude this Convention, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Philippe de SCHOUTHEETE de TERVARENT,
Ambassador Extraordinary and Plenipotentiary;

HER MAJESTY THE QUEEN OF DENMARK:

Niels HELVEG PETERSEN,
Minister for Economic Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Theo WAIGEL,
Federal Minister for Finance;

Jürgen TRUMPF,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Ioannis PALAIOKRASSAS,
Minister for Finance;

HIS MAJESTY THE KING OF SPAIN:

Carlos SOLCHAGA CATALÁN,
Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Jean VIDAL,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF IRELAND:

Albert REYNOLDS,
Minister for Finance;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Stefano DE LUCA,
State Secretary for Finance;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Jean-Claude JUNCKER,
Minister for the Budget, Minister for Finance,
Minister for Labour;

HER MAJESTY THE QUEEEN OF THE NETHERLANDS:

P.C. NIEMAN,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Miguel BELEZA,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

David H.A. HANNAY KCMG,
Ambassador Extraordinary and Plenipotentiary;

WHO, meeting within the Council and having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

1. This Convention shall apply where, for the purposes of taxation, profits which are included in the profits of an enterprise of a Contracting State are also included or are also likely to be included in the profits of an enterprise of another Contracting State on the grounds that the principles set out in Article 4 and applied either directly or in corresponding provisions of the law of the State concerned have not been observed.

2. For the purposes of this Convention, the permanent establishment of an enterprise of a Contracting State situated in another Contracting State shall be deemed to be an enterprise of the State in which it is situated.

3. Paragraph 1 shall also apply where any of the enterprises concerned have made losses rather than profits.

ARTICLE 2

1. This Convention shall apply to taxes on income.

2. The existing taxes to which this Convention shall apply are, in particular the following:

(a) in Belgium:

- impôt des personnes physiques/personenbelasting,
- impôt des sociétés/vennootschapsbelasting,
- impôt des personnes morales/rechtspersonenbelasting,
- impôt des non-résidents/belasting der niet-verblijfhouders,
- taxe communale et la taxe d'agglomération additionnelles à l'impôt des personnes physiques/aanvullende gemeeentebelasting en agglomeratiebelasting op de personenbelasting;

(b) in Denmark:

- selskabsskat,
- indkomstskat til staten,
- kommunale indkomstskat,
- amtskommunal indkomstskat,
- særlig indkomstskat,
- kirkeskat,
- udbytteskat,
- renteskat,
- royaltyskat,
- frigørelsesafgift;

(c) in Germany:

- Einkommensteuer,
- Körperschaftsteuer;
- Gewerbesteuer, insofar as this tax is based on trading profits;

(d) in Greece:

- φόρος εισοδήματος φυσικών προσώπων,
- φόρος εισοδήματος νομικών προσώπων,
- εισφορα υπέρ των επιχειρήσεων ύδρευσης και αποχτεύσης.

(e) in Spain:

- impuesto sobre la renta de las personas fisicas,
- impuesto sobre sociedades;

(f) in France:

- impôt sur le revenu,
- impôt sur les sociétés;

(g) in Ireland:

- Income Tax,
- Corporation Tax;

(h) in Italy:

- imposta sul reddito delle persone fisiche,
- imposta sul reddito delle persone giuridiche,
- imposta locale sui redditi;

(i) in Luxembourg:

- impôt sur le revenu des personnes physiques,
- impôt sur le revenu des collectivités,
- impôt commercial, insofar as this tax is based on trading profits;

(j) in the Netherlands:

- inkomstenbelasting,
- vennootschapsbelasting;

(k) in Portugal:

- imposto sobre o rendimento das pessoas singulares,
- imposto sobre o rendimento das pessoas colectivas,
- derrama para os municípios sobre o imposto sobre o rendimento das pessoas colectivas;

(l) in the United Kingdom:

- Income Tax,
- Corporation Tax.

3. The Convention shall also apply to any identical or similar taxes which are imposed after the date of signature thereof in addition to, or in place of, existing taxes. The competent authorities of the Contracting States shall inform each other of any changes made in the respective domestic laws.

CHAPTER II

GENERAL PROVISIONS

Section I

Definitions

ARTICLE 3

1. For the purposes of this Convention: "competent authority" shall mean:

- in Belgium	: De Minister van Financiën or an authorized representative, Le Ministre des Finances or an authorized representative,
- in Denmark	: Skatteministeren or an authorized representative,
- in Germany	: Der Bundesminister der Finanzen or an authorized representative,
- in Greece	: Ὁ Ὑπουργός των Οικονομικών or an authorized representative,
- in Spain	: El Ministro de Economía y Hacienda or an authorized representative,
- in France	: Le Ministre chargé du budget or an authorized representative,
- in Ireland	: The Revenue Commissioners or an authorized representative,
- in Italy	: Il Ministro delle Finanze or an authorized representative,
- in Luxembourg	: Le Ministre des Finances or an authorized representative,
- in the Netherlands	: De Minister van Financiën or an authorized representative,
- in Portugal	: O Ministro das Finanças or an authorized representative,
- in the United Kingdom	: The Commissioners of Inland Revenue or an authorized representative,

2. Any term not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the double taxation convention between the States concerned.

Section II

Principles applying to the adjustment of profits of associated enterprises and to the attribution of profits to permanent establishments

ARTICLE 4

The following principles shall be observed in the application of this Convention:

1) Where:

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

   (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one Contracting State and an enterprise of another 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 an enterprise of a Contracting State carries on business in another Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

ARTICLE 5

Where a Contracting State intends to adjust the profits of an enterprise in accordance with the principles set out in Article 4, it shall inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Contracting State.

However, the Contracting State providing such information shall not be prevented from making the proposed adjustment.

If after such information has been given the two enterprises and the other Contracting State agree to the adjustment, Articles 6 and 7 shall not apply.

Section 3

Mutual Agreement and Arbitration Procedure

ARTICLE 6

1. Where an enterprise considers that, in any case to which this Convention applies, the principles set out in Article 4 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Contracting States concerned, present its case to the competent authority of the Contracting State of which it is an enterprise or in which its permanent establishment is situated. The case must be presented within three years of the first notification of the action which results or is likely to result in double taxation within the meaning of Article 1.

The enterprise shall at the same time notify the competent authority if other Contracting States may be concerned in the case. The competent authority shall then without delay notify the competent authorities of those other Contracting States.

2. If the complaint appears to it to be well-founded and if it is not itself able to arrive at a satisfactory solution, the competent authority shall endeavour to resolve the case by mutual agreement with the competent authority of any other Contracting State concerned, with a view to the elimination of double taxation on the basis of the principles set out in Article 4. Any mutual agreement reached shall be implemented irrespective of any time limits prescribed by the domestic law of the Contracting States concerned.

ARTICLE 7

1. If the competent authorities concerned fail to reach an agreement that eliminates the double taxation referred to in Article 6 within two years of the date on which the case was first submitted to one of the competent authorities in accordance with Article 6(1), they shall set up an advisory commission charged with delivering its opinion on the elimination of the double taxation in question.

Enterprises may have recourse to the remedies available to them under the domestic law of the Contracting States concerned; however, where the case has so been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given.

2. The submission of the case to the advisory commission shall not prevent a Contracting State from initiating or continuing judicial proceedings or proceedings for administrative penalties in relation to the same matters.

3. Where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies, paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered. This provision shall not affect the appeal if and insofar as it relates to matters other than those referred to in Article 6.

4. The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1.

5. Insofar as the provisions of paragraphs 1 to 4 are not applied, the rights of each of the associated enterprises, as laid down in Article 6, shall be unaffected.

ARTICLE 8

1. The competent authority of a Contracting State shall not be obliged to initiate the mutual agreement procedure or to set up the advisory commission referred to in Article 7 where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 one of the enterprises concerned is liable to a serious penalty.

2. Where judicial or administrative proceedings, initiated with a view to a ruling that by actions giving rise to an adjustment of profits under Article 4 one of the enterprises concerned was liable to a serious penalty, are being conducted simultaneously with any of the proceedings referred to in Articles 6 and 7, the competent authorities may stay the latter proceedings until the judicial or administrative proceedings have been concluded.

ARTICLE 9

1. The advisory commission referred to in Article 7(1) shall consist of, in addition to its Chairman:

- two representatives of each competent authority concerned; this number may be reduced to one by agreement between the competent authorities;
- an even number of independent persons of standing to be appointed by mutual agreement from the list of persons referred to in paragraph 4 or, in the absence of agreement, by the drawing of lots by the competent authorities concerned.

2. When the independent persons of standing are appointed an alternate shall be appointed for each of them according to the rules for the appointment of the independent persons in case the independent persons are prevented from carrying out their duties.

3. Where lots are drawn, each of the competent authorities may object to the appointment of any particular independent person of standing in any circumstance agreed in advance between the competent authorities concerned or in one of the following situations:

- where that person belongs to or is working on behalf of one of the tax administrations concerned;
- where that person has, or has had, a large holding in or is or has been an employee of or adviser to one or each of the associated enterprises;

- where that person does not offer a sufficient guarantee of objectivity for the settlement of the case or cases to be decided.

4. The list of independent persons of standing shall consist of all the independent persons nominated by the Contracting States. For this purpose each Contracting State shall nominate five persons and shall inform the Secretary-General of the Council of the European Communities thereof.

Such persons must be nationals of a Contracting State and resident within the territory to which this Convention applies. They must be competent and independent.

The Contracting States may make alterations to the list referred to in the first subparagraph; they shall inform the Secretary-General of the Council of the European Communities thereof without delay.

5. The representatives and independent persons of standing appointed in accordance with paragraph 1 shall elect a Chairman from among those persons of standing on the list referred to in paragraph 4, without prejudice to the right of each competent authority concerned to object to the appointment of the person of standing thus chosen in one of the situations referred to in paragraph 3.

The Chairman must possess the qualifications required for appointment to the highest judicial offices in his country or be a jurisconsult of recognized competence.

6. The members of the advisory commission shall keep secret all matters which they learn as a result of the proceedings. The Contracting States shall adopt appropriate provisions to penalize any breach of secrecy obligations. They shall, without delay inform the Commission of the European Communities of the measures taken. The Commission of the European Communities shall inform the other Contracting States.

7. The Contracting States shall take all necessary steps to ensure that the advisory commission meets without delay once cases are referred to it.

ARTICLE 10

1. For the purposes of the procedure referred to in Article 7, the associated enterprises concerned may provide any information, evidence or documents which seem to them likely to be of use to the advisory commission in reaching a decision. The enterprises and the competent authorities of the Contracting States concerned shall give effect to any request made by the advisory commission to provide information, evidence or documents. However, the competent authorities of any such Contracting State shall not be under any obligation:

(a) to carry out administrative measures at variance with its domestic law or its normal administrative practice;

(b) to supply information which is not obtainable under its domestic law or in its normal administrative practice: or

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

2. Each of the associated enterprises may, at its request, appear or be represented before the advisory commission. If the advisory commission so requests, each of the associated enterprises shall appear or be represented before it.

ARTICLE 11

1. The advisory commission referred to in Article 7 shall deliver its opinion not more than six months from the date on which the matter was referred to it.

The advisory commission must base its opinion on Article 4.

2. The advisory commission shall adopt its opinion by a simple majority of its members. The competent authorities concerned may agree on additional rules of procedure.

3. The costs of the advisory commission procedure, other than those incurred by the associated enterprises, shall be shared equally by the Contracting States concerned.

ARTICLE 12

1. The competent authorities party to the procedure referred to in Article 7 shall, acting by common consent on the basis of Article 4, take a decision which will eliminate the double taxation within six months of the date on which the advisory commission delivered its opinion.

The competent authorities may take a decision which deviates from the advisory commission's opinion. If they fail to reach agreement, they shall be obliged to act in accordance with that opinion.

2. The competent authorities may agree to publish the decision referred to in paragraph 1, subject to the consent of the enterprises concerned.

ARTICLE 13

The fact that the decisions taken by the Contracting States, concerning the taxation of profits resulting from a transaction between associated enterprises, have become final shall not prevent recourse to the procedures set out in Articles 6 and 7.

ARTICLE 14

For the purposes of this Convention, the double taxation of profits shall be regarded as eliminated if either:

(a) the profits are included in the computation of taxable profits in one State only; or

(b) the tax chargeable on those profits in one State is reduced by an amount equal to the tax chargeable on them in the other.

CHAPTER III

FINAL PROVISIONS

ARTICLE 15

Nothing in this Convention shall affect the fulfilment of wider obligations with respect to the elimination of double taxation in the case of an adjustment of profits of associated enterprises resulting either from other conventions to which the Contracting States are or will become parties or from the domestic law of the Contracting States.

ARTICLE 16

1. The territorial scope of this Convention shall be that defined in Article 227(1) of the Treaty establishing the European Economic Community, without prejudice to paragraph 2 of this Article.

2. This Convention shall not apply to:

- the French territories referred to in Annex IV to the Treaty establishing the European Economic Community,

- the Faroe Islands and Greenland.

ARTICLE 17

This Convention will be ratified by the Contracting States. The instruments of ratification will be deposited at the office of the Secretary-General of the Council of the European Communities.

ARTICLE 18

This Convention shall enter into force on the first day of the third month following that in which the instrument of ratification is deposited by the last signatory State to take that step. The Convention shall apply to proceedings referred to in Article 6(1) which are initiated after its entry into force.

ARTICLE 19

The Secretary-General of the Council of the European Communities shall inform the Contracting States of:

(a) the deposit of each instrument of ratification;

(b) the date on which this Convention will enter into force;

(c) the list of independent persons of standing appointed by the Contracting States and any alterations thereto in accordance with Article 9(4).

ARTICLE 20

This Convention is concluded for a period of five years. Six months before the expiry of that period, the Contracting States will meet to decide on the extension of this Convention and any other other relevant measure.

ARTICLE 21

Each Contracting State may, at any time, ask for a revision of this Convention. In that event, a conference to revise the Convention will be convened by the President of the Council of the European Communities.

ARTICLE 22

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all ten texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

FINAL ACT

The Plenipotentiaries of the High Contracting Parties,

meeting at Brussels, on the twenty-third day of July, in the year one thousand nine hundred and ninety, for the signature of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

have, on the occasion of signing the said Convention:

(a) adopted the following joint declarations attached to the Final Act:

- Declaration on Article 4(1)

- Declaration on Article 9(6)

- Declaration on Article 13;

(b) taken note of the following unilateral Declarations attached to this Final Act:

- Declaration of France and the United Kingdom on Article 7,

- Individual Declarations of the Contracting States on Article 8,

- Declaration of the Federal Republic of Germany on Article 16.

In witness whereof, the undersigned have signed this Final Act.

Done at Brussels on the twenty-third day of July in the year one thousand nine hundred and ninety.

JOINT DECLARATIONS

Declaration on Article 4(1)

The provisions of Article 4(1) shall cover both cases where a transaction is carried out directly between two legally distinct enterprises as well as cases where a transaction is carried out between one of the enterprises and the permanent establishment of the other enterprise situated in a third country.

Declaration on Article 9(6)

The Member States shall be entirely free as regards the nature and scope of the appropriate provisions they adopt for penalizing any breach of secrecy obligations.

Declaration on Article 13

Where, in one or more of the Contracting States concerned, the decisions regardir the taxation giving rise to the procedures referred to in Articles 6 and 7 have been altered after the procedure referred to in Article 6 has been concluded or after the decision referred to in Article 12 has been taken and where double taxation within the meaning of Article 1 results, account being taken of the application of the outcome of that procedure or that decision, Articles 6 and 7 shall apply.

UNILATERAL DECLARATIONS

Declaration on Article 7

France and the United Kingdom declare that they will apply Article 7(3).

Individual Declarations of the Contracting States on Article 8

Belgium

The term "serious penalty" means a criminal or administrative penalty in cases:

- either of a common law offence committed with the aim of tax evasion,

- or infringements of the provisions of the Code of income tax or of decisions taken in implementation thereof, committed with fraudulent intention or with the intention of causing injury.

Denmark

The concept of "serious penalty" means a penalty for the intentional infringement of provisions of the Criminal Law or of special legislation in cases which cannot be regulated by administrative means.

Cases of infringement of provisions of tax law may, as a general rule, be regulated by administrative means where it is considered that the infringement will not entail a punishment greater than a fine.

Germany

An infringement of the tax laws punishable by a "serious penalty" is constituted by any infringement of the tax laws penalised by detention, criminal or administrative fines.

Greece

Under Greek legislation governing taxation, an undertaking is liable to "severe penalties":

1) If it fails to submit declarations, or submits incorrect declarations, in respect of taxes, charges or contributions which must be withheld and paid to the State under existing provisions, or in respect of valued-added tax, turnover tax or the special tax on luxury goods, insofar as the total amount of the above taxes, charges and contributions which should have been declared and paid to the State as a result of trade or other activities carried out over a period of six months exceeds an amount of six hundred thousand (600 000) drachmae or one million (1 000 000) drachmae over a period of one calendar year.

2) If it fails to submit a declaration of income tax, insofar as the tax due in respect of the income not declared is more than three hundred thousand (300 000) drachmae.

3) If it fails to supply the taxation details laid down in the Code on Taxation Data.

4) If it supplies details as referred to under the previous case 3, which are incorrect as regards quantity or unit price or value, insofar as the inaccuracy results in a discrepancy which exceeds ten per cent (10%) of the total amount or of the total value of the goods, the provision of services or the trade generally.

5) If it fails to keep accurately the books and records required by the Code on Taxation Data, insofar as that inaccuracy has been noted in the course of a regular check, the findings of which have been confirmed either by administrative resolution of the discrepancy or because the period allowed for an appeal has expired or as a result of a definitive decision by an administrative tribunal, provided that during the management period checked the discrepancy between gross income and the income declared is more than twenty per cent (20%) and in any case not less than one million (1 000 000) drachmae.

6) If it fails to observe the obligation to keep books and records as laid down in the relevant provisions of the Code on Taxation Data.

7) If it issues false or fictitious - or itself falsifies - invoices for the sale of goods or the supply of services or any other taxation details as referred to in case 3 above.

A taxation document is regarded as false if it has been perforated or stamped in any way without the proper authentication having been entered in the relevant books of the competent tax authority, insofar as failure to make such an entry has occurred in the knowledge that such authentication is required for the taxation document. A taxation document is also regarded as false if the content and other details of the original or the copy differ from those which are recorded on the counterfoil of that document.

A taxation document is regarded as fictitious if it has been issued for a transaction or part of a transaction, transfer or any other reason not recorded in the total or for a transaction carried out by persons different from those recorded in the taxation document.

8) If it is aware of the intention of the action taken and collaborates in any way in the production of false taxation documents or is aware that the documents are false or fictitious and collaborates in any way in their issue or accepts the false, fictitious or falsified taxation documents with the intention of concealing material relevant to taxation.

Spain

The term "serious penalties" includes administrative penalties for serious tax infringements, as well as criminal penalties for offences committed with respect to the taxation authorities.

France

The term "serious penalties" includes criminal penalties and tax penalties such as penalties for failure to make a tax return after receiving a summons, for lack of good faith, for fraudulent practices, for opposition to tax inspection, for secret payments or distribution, or for abuse of rights.

Ireland

"Serious penalties" shall include penalties for

(a) failing to make a return,
(b) fraudulently or negligently making an incorrect return,
(c) failing to keep proper records,
(d) failing to make documents and records available for inspection,
(e) obstructing persons exercising statutory powers,
(f) failing to notify chargeability to tax,
(g) making a false statement to obtain an allowance.

The legislative provisions governing these offences, as at 3 July 1990, are as follows:

- Part XXXV of the Income Tax Act, 1967;
- Section 6 of the Finance Act, 1968;
- Part XIV of the Corporation Tax Act, 1976;
- Section 94 of the Finance Act, 1983.

Any subsequent provisions replacing, amending or updating the penalty code would also be comprehended.

Italy

The term "serious penalties" means penalties laid down for illicit acts, within the meaning of the domestic law, constituting a tax offence.

Luxembourg

Luxembourg considers to be a "serious penalty" what the other Contracting State declares considers to be so for the purposes of Article 8.

Netherlands

The term "serious penalty" means a penalty imposed by a judge for any action, committed intentionally, which is mentioned in Article 68 of the General Law on taxation.

Portugal

The terms "serious penalties" include criminal penalties as well as the further tax penalties applicable to infringements committed with intent to defraud or in which the fine applicable is of an amount exceeding 1 000 000 (one million) escudos.

United Kingdom

The United Kingdom will interpret the term "serious penalty" as comprising criminal sanctions and administrative sanctions in respect of the fraudulent or negligent delivery of incorrect accounts, claims or returns for tax purposes.

Declaration by the Federal Republic of Germany
on Article 16

The government of the Federal Republic of Germany reserves the right to declare, when lodging its instrument of ratification that the Convention also applies to Land Berlin.

CONVENTION
ON THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE CONVENTION ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY,

CONSIDERING that the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, in becoming members of the Union, undertook to accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, opened for signature in Brussels on 23 July 1990,

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Philippe de SCHOUTHEETE de TERVARENT
Ambassador,
Permanent Representative of Belgium to the European Union;

HER MAJESTY THE QUEEN OF DENMARK:

Mr Poul SKYTTE CHRISTOFFERSEN
Ambassador,
Permanent Representative of Denmark to the European Union;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Jochen GRÜNHAGE
Deputy Permanent Representative of the Federal Republic of Germany to the European Union;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr Pavlos APOSTOLIDES
Ambassador,
Permanent Representative of the Hellenic Republic to the European Union;

HIS MAJESTY THE KING OF SPAIN:

Mr Francisco Javier ELORZA CAVENGT
Ambassador,
Permanent Representative of Spain to the European Union;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Pierre de BOISSIEU
Ambassador,
Permanent Representative of the French Republic to the European Union;

THE PRESIDENT OF IRELAND:

Mr Denis O'LEARY
Ambassador,
Permanent Representative of Ireland to the European Union;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Luigi GUIDOBONO CAVALCHINI GAROFOLI
Ambassador,
Permanent Representative of the Italian Republic to the European Union;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Jean-Jacques KASEL
Ambassador,
Permanent Representative of Luxembourg to the European Union;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr Bernard R. BOT
Ambassador,
Permanent Representative of the Netherlands to the European Union;

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA:

Mr Manfred SCHEICH
Ambassador,
Permanent Representative of the Republic of Austria to the European Union;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Mr José Gregório FARIA QUITERES
Ambassador,
Permanent Representative of the Portuguese Republic to the European Union;

THE PRESIDENT OF THE REPUBLIC OF FINLAND:

Mr Antti SATULI
Ambassador,
Permanent Representative of the Republic of Finland to the European Union;

THE GOVERNMENT OF THE KINGDOM OF SWEDEN:

Mr Frank BELFRAGE
Ambassador,
Permanent Representative of Sweden to the European Union;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Mr J.S. WALL C.M.G., L.V.O
Ambassador,
Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the European Union;

WHO, meeting within the Committee of Permanent Representatives of the Member States to the European Union and having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Republic of Austria, the Republic of Finland and the Kingdom of Sweden hereby accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, opened for signature in Brussels on 23 July 1990.

ARTICLE 2

The Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises is hereby amended as follows:

1) In Article 2(2):

(a) subparagraph (k) shall become subparagraph (l);

(b) the following subparagraph (k) shall be added after subparagraph (j):

"(k) in Austria:

- Einkommensteuer;

- Körperschaftsteuer;";

(c) subparagraph (l) shall become subparagraph (o);

(d) the following subparagraphs (m) and (n) shall be added after subparagraph (l):

"(m) in Finland:

- valtion tuloverot/de statliga inkomstskatterna;

- yhteisöjen tulovero/inkomstskatten för samfund;

- kunnallisvero/kommunalskatten;

- kirkollisvero/kyrkoskatten;

- korkotulon lähdevero/källskatten å ränteinkomst;

- rajoitetusti verovelvollisen lähdevero/källskatten för begränsat skattskyldig;

(n) in Sweden:

- statliga inkomstskatten;

- kupongskatten;

- kommunala inkomstskatten;

- lagen om expansionsmedel;".

2) The following shall be added to Article 3(1):

"- in Austria:

Der Bundesminister für Finanzen or an authorized representative;

- in Finland:

Valtiovarainministeriö or an authorized representative;

Finansministeriet or an authorized representative;

- in Sweden:

Finansministern or an authorized representative;".

ARTICLE 3

The Secretary-General of the Council of the European Union shall transmit a certified copy of the Convention on the elimination of double taxatior in connection with the adjustment of profits of associated enterprises in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages to the Governments of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

The text of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises in the Finnish and Swedish languages is set out in Annexes I and II to this Convention. The texts drawn up in the Finnish and Swedish languages shall be authentic under the same conditions as the other texts of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

ARTICLE 4

This Convention shall be ratified by the Contracting States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Union.

ARTICLE 5

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Republic of Austria or the Republic of Finland or the Kingdom of Sweden and by one State which has ratified the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

ARTICLE 6

The Secretary-General of the Council of the European Union shall notify the Contracting States of:

(a) the deposit of each instrument of ratification;

(b) the dates of entry into force of this Convention.

ARTICLE 7

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all twelve texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Governments of each Contracting State.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

Done at Brussels on the twenty-first day of December in the year one thousand nine hundred and ninety-five.

MINUTES OF SIGNING

of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

The Plenipotentiaries of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have, on 21.XII.95 in Brussels, signed the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

On this occasion they have taken note of the following unilateral Declarations on Article 8 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises:

Declaration by the Republic of Austria:

An infringement punishable by a "serious penalty" is constituted by any intentional or negligent evasion of tax or duty that is penalized under the law on tax offences.

Declaration by the Republic of Finland

The term "serious penalties" includes criminal sanctions and such administrative sanctions which are imposed in respect of the breach of tax laws.

Declaration by the Kingdom of Sweden

An infringement of the tax laws punishable by a "serious penalty" is constituted by any infringement of the tax laws penalized by detention, criminal or administrative fines.

These minutes are to be published in the Official Journal of the European Communities.

Done at Brussels on the twenty-first day of December in the year one thousand nine hundred and ninety-five.

PROTOCOL
AMENDING THE CONVENTION
OF 23 JULY 1990
ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

DESIRING to give effect to Article 293 of the Treaty establishing the European Community, by virtue of which they have undertaken to enter into negotiations with each other with a view to securing for the benefit of their nationals the elimination of double taxation,

HAVING REGARD to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises ([1]) (hereinafter "Arbitration Convention"),

HAVING REGARD to the Convention of 21 December 1995 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises ([2]),

WHEREAS the Arbitration Convention entered into force on 1 January 1995, pursuant to Article 18 thereof; whereas it will expire on 31 December 1999 unless it is extended,

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([1]) OJ L 225, 20.8.1990, p. 10.
([2]) OJ C 26, 31.1.1996, p. 1.

HAVE DECIDED to conclude this Protocol amending the Arbitration Convention, and to this end have designated as their Plenipotentiaries:

THE KINGDOM OF BELGIUM:

Mr Jean-Jacques VISEUR
Minister for Finance;

THE KINGDOM OF DENMARK:

Ms Marianne JELVED
Minister for Economic Affairs and Nordic Co-operation;

THE FEDERAL REPUBLIC OF GERMANY:

Mr Hans EICHEL
Federal Minister for Finance;

THE HELLENIC REPUBLIC:

Mr Yannos PAPANTONIOU
Minister for Economic Affairs;

THE KINGDOM OF SPAIN:

Mr Cristóbal Ricardo MONTORO MORENO
State Secretary for Economic Affairs;

THE FRENCH REPUBLIC:

Mr Dominique STRAUSS-KAHN
Minister for Economic Affairs, Finance and Industry;

IRELAND:

Mr Charlie McCREEVY
Minister for Finance;

THE ITALIAN REPUBLIC:

Mr Vincenzo VISCO
Minister for Finance;

THE GRAND DUCHY OF LUXEMBOURG:

Mr Jean-Claude JUNCKER
Prime Minister, Ministre d'Etat, Minister for Finance, Minister for Labour and Employment;

THE KINGDOM OF THE NETHERLANDS:

Mr Wilhelmus Adrianus Franciscus Gabriël (Willem) VERMEEND
State Secretary for Finance;

THE REPUBLIC OF AUSTRIA:

Mr Rudolf EDLINGER
Federal Minister for Finance;

THE PORTUGUESE REPUBLIC:

Mr António Luciano Pacheco DE SOUSA FRANCO
Minister for Finance;

THE REPUBLIC OF FINLAND:

Mr Sauli NIINISTÖ
Deputy Prime Minister and Minister for Finance;

THE KINGDOM OF SWEDEN:

Mr Bosse RINGHOLM
Minister for Finance;

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Sir Stephen WALL, K.C.M.G., L.V.O.
Ambassador, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the European Union;

WHO, meeting within the Council and having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises is hereby amended as follows:

Article 20 shall read as follows:

"Article 20

This Convention is concluded for a period of five years. It shall be extended for further periods of five years at a time, unless a Contracting State informs the Secretary-General of the Council of the European Union of its objection thereto in writing at least six months before the expiry of any five-year period.".

ARTICLE 2

1. This Protocol shall be subject to ratification, acceptance or approval by the Signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of the European Union.

2. The Secretary-General of the Council of the European Union shall notify the Signatory States of:

(a) the deposit of each instrument of ratification, acceptance or approval;

(b) the date on which this Protocol will enter into force.

ARTICLE 3

1. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification, acceptance or approval by the last Signatory State to take this step.

2. This Protocol shall take effect as from 1 January 2000.

3. The period beginning on 1 January 2000 and ending on the date of entry into force of this Protocol shall not be taken into account in determining whether a case has been presented within the time specified in Article 6(1) of the Arbitration Convention.

ARTICLE 4

This Protocol, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all twelve texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

FINAL ACT

of the Conference of the Representatives of the Governments of the Member States meeting within the Council on 25 May 1999

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

MEETING WITHIN The Council on 25 May 1999,

RECALLING THE CONCLUSIONS OF 19 May 1998 on the extension of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the "Arbitration Convention"), in which they agreed that the Arbitration Convention should be extended for a further period of five years from the date of its expiry and that after the end of that period it should automatically be extended for further periods of five years at a time, provided that no Contracting State objected;

HAVE AGREED on the need to extend the Arbitration Convention for a further period of five years from 1 January 2000;

HAVE PROCEEDED to sign the Protocol amending the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

KONVENCIJA
O ODPRAVI DVOJNEGA OBDAVČEVANJA
V ZVEZI S PRERAČUNOM DOBIČKA POVEZANIH PODJETIJ

VISOKE POGODBENICE POGODBE O USTANOVITVI EVROPSKE GOSPODARSKE SKUPNOSTI SO SE,

Z ŽELJO uveljaviti člen 220 te pogodbe, na podlagi katere se zavezujejo, da se bodo začele med seboj pogajati, da bi v korist svojih državljanov zagotovile odpravo dvojnega obdavčevanja,

OB UPOŠTEVANJU pomena odprave dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij,

ODLOČILE skleniti to konvencijo in so v ta namen imenovale svoje pooblaščence:

ZA NJEGOVO VELIČANSTVO KRALJA BELGIJCEV:

Philippe de SCHOUTHEETE de TERVARENT,
izredni in pooblaščeni veleposlanik;

ZA NJENO VELIČANSTVO KRALJICO DANSKE:

Niels HELVEG PETERSEN,
minister za gospodarske dejavnosti;

ZA PREDSEDNIKA ZVEZNE REPUBLIKE NEMČIJE:

Theo WAIGEL,
zvezni minister za finance;

Jürgen TRUMPF,
izredni in pooblaščeni veleposlanik;

ZA PREDSEDNIKA HELENSKE REPUBLIKE:

Ioannis PALAIOKRASSAS,
minister za finance;

ZA NJEGOVO VELIČANSTVO KRALJA ŠPANIJE:

Carlos SOLCHAGA CATALÁN,
minister za gospodarske dejavnosti in finance;

ZA PREDSEDNIKA FRANCOSKE REPUBLIKE:

Jean VIDAL,
izredni in pooblaščeni veleposlanik;

ZA PREDSEDNIKA IRSKE:

Albert REYNOLDS,
minister za finance;

ZA PREDSEDNIKA ITALIJANSKE REPUBLIKE:

Stefano DE LUCA,
državni sekretar za finance;

ZA NJEGOVO KRALJEVO VISOKOST VELIKEGA VOJVODO LUKSEMBURŠKEGA:

Jean-Claude JUNCKER,
minister za proračun, minister za finance,
minister za delo;

ZA NJENO VELIČANSTVO KRALJICO NIZOZEMSKE:

P. C. NIEMAN,
izredni in pooblaščeni veleposlanik;

ZA PREDSEDNIKA PORTUGALSKE REPUBLIKE:

Miguel BELEZA,
minister za finance;

ZA NJENO VELIČANSTVO KRALJICO ZDRUŽENEGA KRALJESTVA VELIKE BRITANIJE IN SEVERNE IRSKE:

David H. A. HANNAY KCMG,
izredni in pooblaščeni veleposlanik;

KI so se na srečanju v Svetu po izmenjavi pooblastil v pravilni in predpisani obliki,

DOGOVORILI O NASLEDNJEM:

POGLAVJE I

PODROČJE UPORABE KONVENCIJE

ČLEN 1

1. Ta konvencija se uporablja kadar je za namene obdavčenja dobiček, ki je vključen v dobiček podjetja države pogodbenice, vključen ali bo verjetno vključen tudi v dobiček podjetja v drugi državi pogodbenici, z utemeljitvijo, da se niso upoštevala načela iz člena 4, ki se uporabljajo neposredno ali v ustreznih določbah zakonodaje zadevne države.

2. Za namene te konvencije se stalna poslovna enota podjetja države pogodbenice v drugi državi pogodbenici obravnava kot podjetje države, v kateri se nahaja.

3. Kadar katero izmed zadevnih podjetij posluje z izgubo in ne z dobičkom, se prav tako uporablja odstavek 1.

ČLEN 2

1. Ta konvencija se uporablja za davke od dohodka.
2. Ta konvencija se uporablja predvsem za naslednje obstoječe davke:

(a) v Belgiji:

- impôt des personnes physiques/personenbelasting,
- impôt des sociétés/vennootschapsbelasting,
- impôt des personnes morales/rechtspersonenbelasting,
- impôt des non-résidents/belasting der niet-verblijfhouders,
- taxe communale et la taxe d'agglomération additionnelles à l'impôt des personnes physiques/aanvullende gemeentebelasting en agglomeratiebelasting op de personenbelasting;

(b) na Danskem:

- selskabsskat,
- indkomstskat til staten,
- kommunale indkomstskat,
- amtskommunal indkomstskat,
- særlig indkomstskat,
- kirkeskat,
- udbytteskat,
- renteskat,
- royaltyskat,
- frigøerelsesafgift;

(c) v Nemčiji:

- Einkommensteuer,
- Körperschaftsteuer,
- Gewerbesteuer, kolikor ta davek temelji na dobičku iz poslovanja;

(d) v Grčiji:

- Φόρος εισοδήματος φυσικών προσώπων,
- Φόρος εισοδήματος νομικών προσώπων,
- εισφορά υπέρ των επιχειρήσεων ύδρευσης και αποχέτευσης;

(e) v Španiji:

- impuesto sobre la renta de las personas fisicas,
- impuesto sobre sociedades;

(f) v Franciji:

- impôt sur le revenu,
- impôt sur les sociétés;

(g) na Irskem:

- Income Tax,
- Corporation Tax;

(h) v Italiji:

- imposta sul reddito delle persone fisiche,
- imposta sul reddito delle persone giuridiche,
- imposta locale sui redditi;

(i) v Luksemburgu:

- impôt sur le revenu des personnes physiques,
- impôt sur le revenu des collectivités,
- impôt commercial, kolikor ta davek temelji na dobičku iz trgovanja;

(j) na Nizozemskem:

- inkomstenbelasting,
- vennootschapsbelasting;

(k) na Portugalskem:

- imposto sobre o rendimento das pessoas singulares,
- imposto sobre o rendimento das pessoas colectivas,
- derrama para os municípios sobre o imposto sobre o rendimento das pessoas colectivas;

(l) v Združenem kraljestvu:

- Income Tax,
- Corporation Tax.

3. Konvencija se poleg ali namesto obstoječih davkov uporablja tudi za vse enake ali podobne davke, uvedene po datumu podpisa te konvencije. Pristojni organi držav pogodbenic se med seboj obveščajo o vseh spremembah v njihovih domačih zakonodajah.

POGLAVJE II

SPLOŠNE DOLOČBE

Oddelek I

Opredelitve pojmov

ČLEN 3

1. Za namene te konvencije »pristojni organ« pomeni:

-	v Belgiji:	De Minister van Financiën ali pooblaščeni predstavnik, Le Ministre des Finances ali pooblaščeni predstavnik,
-	na Danskem:	Skatteministeren ali pooblaščeni predstavnik,
-	v Nemčiji:	Der Bundesminister der Finanzen ali pooblaščeni predstavnik,
-	v Grčiji:	Ο Υπουργός των Οικονομικών ali pooblaščeni predstavnik,
-	v Španiji:	El Ministro de Economía y Hacienda ali pooblaščeni predstavnik,
-	v Franciji:	Le Ministre chargé du budget ali pooblaščeni predstavnik,
-	na Irskem:	The Revenue Commissioners ali pooblaščeni predstavnik,
-	v Italiji:	Il Ministro delle finanze ali pooblaščeni predstavnik,
-	v Luksemburgu:	Le Ministre des Finances ali pooblaščeni predstavnik,
-	na Nizozemskem:	De Minister van Financiën ali pooblaščeni predstavnik,
-	na Portugalskem:	O Ministro das Finanças ali pooblaščeni predstavnik,
-	v Združenem kraljestvu:	The Commissioners of Inland Revenue ali pooblaščeni predstavnik.

2. Katerikoli izraz, ki ni opredeljen v tej konvenciji ima enak pomen, razen če kontekst zahteva drugače, kot v konvenciji o izogibanju dvojnega obdavčevanja med zadevnimi državami.

Oddelek II

Načela, ki se uporabljajo za preračun dobička povezanih podjetij in za določanje dobička stalnim poslovnim enotam

ČLEN 4

Pri uporabi te konvencije se upoštevajo naslednja načela:

1) Kadar:

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

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

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

2) Kadar podjetje države pogodbenice posluje v drugi državi pogodbenici preko stalne poslovne enote v tej državi, se tej stalni poslovni enoti pripiše dobiček, za katerega bi se lahko pričakovalo, da bi ga imela, če bi bila različno in ločeno podjetje, ki bi opravljalo enake ali podobne dejavnosti pod istimi ali podobnimi pogoji ter povsem neodvisno poslovalo s podjetjem, katerega stalna poslovna enota je.

ČLEN 5

Kadar država pogodbenica namerava preračunati dobiček podjetja v skladu z načeli iz člena 4, mora o tej nameri pravočasno obvestiti podjetje in mu ponuditi možnost, da o tem obvesti drugo podjetje in mu s tem ponudi možnost, da to drugo podjetje nato obvesti drugo državo pogodbenico.

Vendar pa se državi pogodbenici, ki posreduje take informacije, ne preprečuje izvedba predlaganega preračuna.

Če se po posredovanju takih informacij obe podjetji in druga država pogodbenica strinjajo s preračunom, se ne uporabita člena 6 in 7.

Oddelek III

Postopek skupnega dogovora in arbitraže

ČLEN 6

1. Kadar podjetje meni, da v kakršnem koli primeru, za katerega se uporablja ta konvencija, načela iz člena 4 niso bila upoštevana, lahko ne glede na pravna sredstva, ki mu jih omogoča domača zakonodaja zadevnih držav pogodbenic, predloži zadevo pristojnemu organu države pogodbenice, katere podjetje je ali v kateri ima stalno poslovno enoto. Zadeva mora biti predložena v treh letih od prvega uradnega obvestila o dejanju, ki povzroči ali bi lahko povzročilo dvojno obdavčevanje v smislu člena 1.

Podjetje hkrati uradno obvesti pristojni organ, če se zadeva lahko nanaša tudi na druge države pogodbenice. Pristojni organ nato nemudoma uradno obvesti pristojne organe teh drugih držav pogodbenic.

2. Če pristojni organ meni, da je pritožba utemeljena, in če sam ne najde zadovoljive rešitve, si prizadeva rešiti zadevo v skupnem dogovoru s pristojnim organom katere koli druge zadevne države članice z namenom odprave dvojnega obdavčevanja na podlagi načel iz člena 4. Vsak dosežen skupni dogovor se izvede ne glede na roke, predpisane v domačih zakonodajah zadevnih držav članic.

ČLEN 7

1. Če zadevni pristojni organi ne dosežejo dogovora, ki odpravi dvojno obdavčevanje iz člena 6, v dveh letih od datuma, ko je bil primer prvič predložen enemu od pristojnih organov v skladu s členom 6 (1), ustanovijo svetovalno komisijo, ki je zadolžena za podajo mnenja o odpravi zadevnega dvojnega obdavčevanja.

Podjetja lahko uporabijo pravna sredstva, ki jih imajo v skladu z domačo zakonodajo zadevnih držav pogodbenic; vendar če je bil primer predložen sodišču, se doba dveh let iz prvega pododstavka šteje od datuma, ko je bila izrečena sodba končnega pritožbenega sodišča.

2. Predložitev primera svetovalni komisiji ne preprečuje državi pogodbenici uvedbe ali nadaljevanja sodnih postopkov ali postopkov za izrek upravnih kazni v zvezi z istimi zadevami.

3. Kadar domača zakonodaja države pogodbenice ne dovoljuje pristojnim organom te države odstopati od odločitev njihovih pravosodnih organov, se odstavek 1 ne uporabi, razen če povezano podjetje te države dopusti, da se izteče rok za pritožbo, ali če tako pritožbo umakne preden je izdana odločba. Ta določba ne vpliva na pritožbo, če in kolikor se ta nanaša na zadeve, ki niso navedene v členu 6.

4. Pristojnim organom s skupnim dogovorom in če se zadevna povezana podjetja strinjajo, ni treba upoštevati rokov iz odstavka 1.

5. Kolikor se določbe odstavkov 1 do 4 ne uporabijo, to ne vpliva na pravice posameznih povezanih podjetij, ki jih določa člen 6.

ČLEN 8

1. Pristojni organ države pogodbenice ni zavezan začeti postopka skupnega dogovora ali imenovati svetovalne komisije iz člena 7, če so pravni ali upravni postopki privedli do končne odločbe, da je lahko eno izmed zadevnih podjetij zaradi dejanj, ki povzročijo preračun prenosov dobička iz člena 4, podvrženo strogi kazni.

2. Kadar sodni ali upravni postopki, uvedeni z namenom odločitve, da je lahko eno izmed zadevnih podjetij zaradi dejanj, ki povzročijo preračun prenosov dobička iz člena 4, podvrženo strogi kazni, tečejo istočasno s katerimi koli izmed postopkov iz členov 6 in 7, lahko pristojni organ slednje ustavi, dokler se sodni ali upravni postopki ne končajo.

ČLEN 9

1. Svetovalno komisijo iz člena 7(1) poleg njenega predsednika sestavljajo:

- dva predstavnika vsakega izmed zadevnih pristojnih organov; to število se lahko zmanjša na enega na podlagi dogovora med pristojnimi organi,

- sodo število neodvisnih oseb, ki se v skupnem dogovoru imenujejo s seznama oseb iz odstavka 4 ali, če ne pride do dogovora, določijo z žrebom, ki ga izvedejo zadevni pristojni organi.

2. Ko so imenovane neodvisne osebe, se za vsako izmed njih imenuje namestnik v skladu s pravili za imenovanje neodvisnih oseb v primeru, da neodvisne osebe ne morejo opravljati svojih nalog.

3. Kadar se izvede žreb, lahko vsak pristojni organ ugovarja imenovanju katere koli posamezne neodvisne osebe zaradi okoliščin, za katere se zadevni pristojni organi predhodno dogovorijo, ali v kateri izmed naslednjih okoliščin:

- kadar ta oseba pripada ali deluje v imenu ene izmed zadevnih davčnih uprav,

- kadar ta oseba ima ali je imela velik delež oziroma je ali je bila zaposlena oziroma je bila svetovalec pri enem ali vsakem izmed povezanih podjetij,

- kadar ta oseba ne zagotavlja zadostne nepristranskosti pri reševanju primera ali primerov, o katerih je treba odločati.

4. Na seznamu neodvisnih oseb so vse neodvisne osebe, ki jih imenujejo države pogodbenice. V ta namen vsaka država pogodbenica imenuje pet oseb in o tem obvesti generalnega sekretarja Sveta Evropskih skupnosti.

Te osebe morajo biti državljani države pogodbenice in rezidenti na ozemlju, kjer se uporablja ta konvencija. Te osebe morajo biti usposobljene in neodvisne.

Države pogodbenice lahko spremenijo seznam iz prvega pododstavka; o tem morajo nemudoma obvestiti generalnega sekretarja Sveta Evropskih skupnosti.

5. Predstavniki in neodvisne osebe, imenovani v skladu z odstavkom 1, izvolijo za predsednika nekoga izmed oseb s seznama iz odstavka 4, kar pa ne vpliva na pravico vseh zadevnih pristojnih organov, da lahko ugovarjajo imenovanju tako izbrane osebe zardi ene izmed okoliščin iz odstavka 3.

Predsednik mora izpolnjevati pogoje za imenovanje na najvišje pravosodne položaje v svoji državi ali biti priznani pravnik.

6. Člani svetovalne komisije morajo varovati kot skrivnosti vse zadeve, s katerimi se seznanijo v postopkih. Države pogodbenice sprejmejo ustrezne določbe za kaznovanje vsakršne kršitve obveznosti varovanja skrivnosti. O sprejetih ukrepih nemudoma obvestijo Komisijo Evropskih skupnosti. Komisija Evropskih skupnosti obvesti ostale države pogodbenice.

7. Države pogodbenice sprejmejo vse potrebne ukrepe, s katerimi zagotovijo, da se svetovalna komisija sestane takoj, ko se ji primeri predložijo.

ČLEN 10

1. Za namene postopka iz člena 7 lahko zadevna povezana podjetja podajo kakršne koli informacije, dokaze ali dokumente, za katere menijo, da bi lahko koristili svetovalni komisiji pri sprejemanju odločitve. Podjetja in pristojni organi zadevnih držav pogodbenic na vsako zahtevo svetovalne komisije posredujejo informacije, dokaze ali dokumente. Vendar pa pristojnim organom teh držav pogodbenic ni treba:

(a) izvajati upravnih ukrepov, ki niso v skladu z njihovo domačo zakonodajo ali njihovo običajno upravno prakso;

(b) posredovati informacij, ki niso na voljo v skladu z njihovo domačo zakonodajo ali njihovo običajno upravno prakso; ali

(c) posredovati informacij, ki bi razkrile kakršne koli trgovinske, poslovne, industrijske ali poklicne skrivnosti ali trgovski proces, oziroma informacij, katerih razkritje bi bilo v nasprotju z javnim redom.

2. Vsako od povezanih podjetij lahko na svojo zahtevo nastopi ali je zastopano pred svetovalno komisijo. Če svetovalna komisija tako zahteva, mora vsako od povezanih podjetij nastopiti ali biti zastopano pred njo.

ČLEN 11

1. Svetovalna komisija iz člena 7 poda svoje mnenje najpozneje šest mesecev po datumu, ko ji je bila zadeva predložena.

Svetovalna komisija mora svoje mnenje utemeljiti na podlagi člena 4.

2. Svetovalna komisija sprejme svoje mnenje z navadno večino svojih članov. Zadevni pristojni organi se lahko dogovorijo o nadaljnjih postopkovnih pravilih.

3. Stroški postopka svetovalne komisije, razen tistih, ki jih imajo povezana podjetja, se enako razdelijo med zadevne države pogodbenice.

ČLEN 12

1. Pristojni organi, ki so stranke v postopku iz člena 7, na podlagi člena 4 sporazumno sprejmejo odločitev, ki bo odpravila dvojno obdavčevanje v šestih mesecih od datuma, ko je svetovalna komisija podala svoje mnenje.

Pristojni organi lahko sprejmejo odločitev, ki ni skladna z mnenjem svetovalne komisije. Če ne dosežejo dogovora, so dolžni delovati v skladu s tem mnenjem.

2. Pristojni organi se lahko dogovorijo, da bodo s soglasjem zadevnih podjetij objavili odločitev iz odstavka 1.

ČLEN 13

Dejstvo, da so odločitve, ki so jih sprejele države pogodbenice v zvezi z obdavčevanjem dobička iz transakcij med povezanimi podjetji, postale dokončne, ne preprečuje uporabe postopkov iz členov 6 in 7.

ČLEN 14

Za namene te konvencije se dvojno obdavčevanje dobička obravnava kot odpravljeno, če:

(a) je dobiček vključen v izračun obdavčljivih dobičkov samo v eni državi; ali

(b) je davek, ki se obračunava na te dobičke v eni državi, zmanjšan za znesek davka, ki se nanje obračunava v drugi državi.

POGLAVJE III

KONČNE DOLOČBE

ČLEN 15

Nič v tej konvenciji ne vpliva na izpolnjevanje širših obveznosti glede odprave dvojnega obdavčevanja v primeru preračuna dobička povezanih podjetij, ki izhajajo iz drugih konvencij, ki so jih ali jih bodo podpisale države pogodbenice, ali iz domačih zakonodaj držav pogodbenic.

ČLEN 16

1. Ozemlje uporabe te konvencije je tisto, ki je definirano v členu 227(1) Pogodbe o ustanovitvi Evropske gospodarske skupnosti, ne glede na odstavek 2 tega člena.

2. Ta konvencija se ne uporablja za:

- francoska ozemlja iz Priloge IV k Pogodbi o ustanovitvi Evropske gospodarske skupnosti,

- Ferske otoke in Grenlandijo.

ČLEN 17

Države pogodbenice bodo ratificirale to konvencijo. Listine o ratifikaciji se bodo deponirale v pisarni generalnega sekretarja Sveta Evropskih skupnosti.

ČLEN 18

Ta konvencija začne veljati prvi dan tretjega meseca po tem, ko je zadnja država podpisnica deponirala zadnjo listino o ratifikaciji. Ta konvencija se uporablja za postopke iz člena 6(1), ki se sprožijo po začetku njene veljavnosti.

ČLEN 19

Generalni sekretar Sveta Evropskih skupnosti države pogodbenice obvesti o:

(a) deponiranju vsake listine o ratifikaciji;

(b) datumu, ko ta konvencija začne veljati;

(c) seznamu neodvisnih oseb, ki so jih imenovale države pogodbenice, in kakršnih koli spremembah tega seznama v skladu s členom 9 (4).

ČLEN 20

Ta konvencija se sklene za obdobje petih let. Šest mesecev pred iztekom tega obdobja se države pogodbenice sestanejo, da bi se odločile o podaljšanju te konvencije in o kakršnem koli drugem ustreznem ukrepu.

ČLEN 21

Vsaka država pogodbenica lahko kadarkoli zahteva revizijo te konvencije. V tem primeru predsednik Sveta Evropskih skupnosti skliče konferenco za revizijo te konvencije.

ČLEN 22

Ta konvencija, sestavljena v enem izvirniku v angleškem, danskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem in španskem jeziku, pri čemer je vseh deset besedil enako verodostojnih, je deponirana v arhivu Generalnega sekretariata Sveta Evropskih skupnosti. Generalni sekretar pošlje overjeno kopijo vladi vsake države podpisnice.

SKLEPNA LISTINA

pooblaščenci visokih pogodbenic,

ki so se sestali v Bruslju triindvajsetega julija tisoč devetsto devetdeset, da podpišejo Konvencijo o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij,

so ob podpisu omenjene konvencije:

(a) sprejeli naslednje skupne izjave, priložene sklepni listini:

- Izjava o členu 4(1),
- Izjava o členu 9(6),
- Izjava o členu 13;

(b) prejeli v vednost naslednje enostranske izjave, priložene tej sklepni listini:

- Izjava Francije in Združenega kraljestva o členu 7,
- Posamične izjave držav pogodbenic o členu 8,
- Izjava Zvezne republike Nemčije o členu 16.

V POTRDITEV TEGA so spodaj podpisani pooblaščenci podpisali to sklepno listino.

V Bruslju, dne triindvajsetega julija leta tisoč devetsto devetdeset.

SKUPNE IZJAVE

Izjava o členu 4(1)

Določbe člena 4(1) zajemajo tako primere transakcij, ki se izvajajo neposredno med dvema pravno ločenima podjetjema, kot tudi primere transakcij, ki se izvajajo med enim izmed podjetij in stalno poslovno enoto drugega podjetja v tretji državi.

Izjava o členu 9(6)

Države članice se popolnoma prosto odločajo o naravi in obsegu ustreznih določb, ki jih sprejmejo za kaznovanje vsakršne kršitve obveznosti varovanja skrivnosti.

Izjava o členu 13

Kadar so bile odločitve glede obdavčevanja, ki je sprožilo postopke iz členov 6 in 7, v eni ali več zadevnih državah pogodbenicah spremenjene po končanem postopku iz člena 6 ali po sprejeti odločitvi iz člena 12 in če to privede do dvojnega obdavčevanja v smislu člena 1, pri čemer se upoštevajo dejanske posledice tega postopka ali te odločitve, se uporabljata člena 6 in 7.

ENOSTRANSKE IZJAVE

Izjava o členu 7

Francija in Združeno kraljestvo izjavljata, da bosta uporabljali člen 7(3).

Posamične izjave držav pogodbenic o členu 8

Belgija

Izraz »stroga kazen« pomeni kazen za kaznivo dejanje ali upravno kazen v primerih:

- kršitve zakona, zagrešene z namenom davčne utaje,
- ali kršitev določb Zakona o davku od dohodkov oziroma določb, sprejetih v zvezi z njegovim izvajanjem, zagrešenih z namenom goljufije ali namenom povzročanja škode.

Danska

Pojem »stroga kazen« pomeni kazen za namerno kršitev določb kazenskega prava ali posebne zakonodaje za primere, ki jih ne urejajo upravna sredstva.

Primere kršitve določb davčne zakonodaje lahko praviloma urejajo upravna sredstva, če se sodi, da zaradi kršitve ne bo izrečena kazen, višja od denarne kazni.

Nemčija

Kršitev davčne zakonodaje, ki se kaznuje s »strogo kaznijo«, pomeni vsako kršitev davčnih predpisov, ki se kaznuje s priporom, denarno kaznijo za kazensko dejanje ali upravno globo.

Grčija

V skladu z grško zakonodajo se lahko podjetje kaznuje s »strogo kaznijo«:

1. če ne odda napovedi ali odda nepravilne napovedi v zvezi z davki, dajatvami ali prispevki, ki se odtegnejo in plačajo državi v skladu z obstoječimi določbami, ali v zvezi z davkom na dodano vrednost, prometnim davkom ali posebnim davkom na luksuzno blago, kolikor skupni znesek zgoraj navedenih davkov, dajatev in prispevkov, ki bi jih morali napovedati in plačati državi zaradi trgovskih ali drugih dejavnosti, presega znesek šeststo tisoč (600.000) grških drahem v obdobju šestih mesecev oziroma en milijon (1.000.000) grških drahem v obdobju enega koledarskega leta;

2. če ne odda napovedi za davek od dohodka, kolikor znaša davčni dolg od tega dohodka, ki ni bil napovedan, več kot tristo tisoč (300.000) grških drahem;

3. če ne predloži davčnih podatkov, določenih v Pravilniku o davčnih podatkih;

4. če predloži podatke iz predhodnega primera 3, ki navajajo nepravilno količino, ceno na enoto ali vrednost, kolikor ta netočnost povzroči razliko, ki je večja kot deset odstotkov (10 %) skupnega zneska ali skupne vrednosti blaga, opravljanja storitev ali trgovanja na splošno;

5. če ne vodi dosledno poslovnih knjig in evidenc, kakor to zahteva Pravilnik o davčnih podatkih, kolikor se ta netočnost ugotovi med redno kontrolo, ugotovitve katere so bile potrjene z upravno rešitvijo spora ali zaradi izteka roka za pritožbo ali kot posledica pravnomočne odločbe upravnega sodišča, če je bila v obdobju poslovanja, ki se je kontroliralo, razlika med bruto dohodkom in napovedanim dohodkom večja kot dvajset odstotkov (20 %) in nikakor ne manjša kot en milijon (1.000.000) grških drahem;

6. če ne izpolnjuje dolžnosti vodenja poslovnih knjig in evidenc, kot to določajo ustrezne določbe Pravilnika o davčnih podatkih;

7. če izdaja poneverjene ali fiktivne - ali če samo poneverja - račune za prodajo blaga ali opravljanje storitev oziroma davčne podatke iz zgornjega primera 3.

   Davčni dokument se šteje za poneverjenega, če je bil kakorkoli preluknjan ali žigosan brez primerne overitve zabeležene v ustreznih knjigah pristojnega davčnega organa, kolikor je bilo podjetje seznanjeno z dejstvom, da mora biti overitev davčnega dokumenta zabeležena.
   Davčni dokument se šteje za poneverjenega tudi, če se vsebina ali druge podrobnosti originala ali kopije razlikujejo od tistih, ki so zabeležene na talonu tega dokumenta.
   Davčni dokument se šteje za fiktivnega, če je bil izdan za transakcijo ali del transakcije, za prenos ali iz kakšnega drugega vzroka, ki ni zabeležen v celoti, ali za transakcijo, ki so jo izvedle osebe, ki niso zabeležene v davčnem dokumentu;

8. če se zaveda namere dejanja in kakorkoli sodeluje pri izdelavi poneverjenih davčnih dokumentov ali se zaveda, da so dokumenti poneverjeni ali fiktivni, in kakor koli sodeluje pri njihovi izdaji ali sprejema poneverjene ali fiktivne davčne dokumente z namero prikrivanja podatkov v zvezi z obdavčevanjem.

Španija

Izraz »stroge kazni« vključuje upravne kazni za resne davčne kršitve, pa tudi kazni za kazniva dejanja, z ozirom na davčne organe.

Francija

Izraz »stroge kazni« vključuje kazni za kazniva dejanja in davčne kazni, kot so kazni zaradi nespoštovanja poziva za oddajo davčne napovedi, zaradi domnev o slabi veri, za goljufivo ravnanje, zaradi nasprotovanja pregledu davčne inšpekcije, za tajna izplačila ali razdelitev dobička ali zaradi zlorabe pravic.

Irska

»Stroge kazni« vključujejo kazni za primere:

(a) ko ni bila oddana davčna napoved;
(b) ko je bila oddana goljufiva ali nepravilna davčna napoved;
(c) neustreznega knjigovodstva;
(d) ko dokumenti in evidence niso na razpolago za inšpekcijski pregled;
(e) oviranja oseb, ki izvajajo svoje zakonske pristojnosti;
(f) ko ni bila prijavljena zavezanost plačilu davka;
(g) navedbe neresničnih podatkov za uveljavljanje davčne olajšave.

Te kršitve urejajo naslednje zakonske določbe, kot so bile v veljavi 3. julija 1990:

- Del XXXV Income Tax Act, 1967,
- Oddelek 6 Finance Act, 1968,
- Del XIV Corporation Tax Act, 1976,
- Oddelek 94 Finance Act, 1983.

Upoštevajo se tudi vse nadaljnje določbe, ki nadomeščajo, spreminjajo ali posodabljajo kazenski pravilnik.

Italija

Izraz »stroge kazni« pomeni kazni, izrečene za nezakonita dejanja, ki v smislu domače zakonodaje pomenijo davčne prekrške.

Luksemburg

Luksemburg za »strogo kazen« šteje tisto, kar za tako šteje druga država pogodbenica za namene iz člena 8.

Nizozemska

Izraz »stroga kazen« pomeni kazen, ki jo izreče sodnik za namerno izvršeno dejanje iz člena 68 Splošnega zakona o obdavčitvi.

Portugalska

»Stroge kazni« vključujejo kazni za kazniva dejanja in druge davčne kazni, ki se uporabljajo za kršitve z namenom goljufije ali kršitve, za katere se predpiše denarna kazen v znesku, ki presega 1.000.000 (en milijon) portugalskih eskudov.

Združeno kraljestvo

Združeno kraljestvo bo pod izrazom »stroga kazen« razumelo kazenske in upravne sankcije zaradi goljufive ali malomarne izdaje računov, zahtevkov ali napovedi za davčne namene.

Izjava Zvezne republike Nemčije o členu 16

Vlada Zvezne republike Nemčije si pridržuje pravico, da ob vložitvi svojih ratifikacijskih listin izjavi, da se Konvencija uporablja tudi za zvezno deželo Berlin.

KONVENCIJA
O PRISTOPU REPUBLIKE AVSTRIJE, REPUBLIKE FINSKE IN KRALJEVINE ŠVEDSKE H KONVENCIJI O ODPRAVI DVOJNEGA OBDAVČEVANJA V ZVEZI S PRERAČUNOM DOBIČKA POVEZANIH PODJETIJ

VISOKE POGODBENICE POGODBE O USTANOVITVI EVROPSKE SKUPNOSTI SO SE –

OB UPOŠTEVANJU dejstva, da so se Republika Avstrija, Republika Finska in Kraljevina Švedska z vstopom v Unijo zavezale pristopiti h Konvenciji o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij, ki je bila na voljo za podpis 23. julija 1990 v Bruslju –

ODLOČILE skleniti to Konvencijo in so v ta namen imenovale svoje pooblaščence:

ZA NJEGOVO VELIČANSTVO KRALJA BELGIJCEV:
g. Philippe de SCHOUTHEETE de TERVARENT
veleposlanik,
stalni predstavnik Belgije pri Evropski uniji;

ZA NJENO VELIČANSTVO KRALJICO DANSKE:
g. Poul SKYTTE CHRISTOFFERSEN
veleposlanik,
stalni predstavnik Danske pri Evropski uniji;

ZA PREDSEDNIKA ZVEZNE REPUBLIKE NEMČIJE:
g. Jochen GRÜNHAGE
namestnik stalnega predstavnika Zvezne republike Nemčije pri Evropski uniji;

ZA PREDSEDNIKA HELENSKE REPUBLIKE:
g. Pavlos APOSTOLIDES
veleposlanik,
stalni predstavnik Helenske republike pri Evropski uniji;

ZA NJEGOVO VELIČANSTVO KRALJA ŠPANIJE:
g. Francisco Javier ELORZA CAVENGT
veleposlanik,
stalni predstavnik Španije pri Evropski uniji;

ZA PREDSEDNIKA FRANCOSKE REPUBLIKE:
g. Pierre de BOISSIEU
veleposlanik,
stalni predstavnik Francoske republike pri Evropski uniji;

ZA PREDSEDNIKA IRSKE:
g. Denis O'LEARY
veleposlanik,
stalni predstavnik Irske pri Evropski uniji;

ZA PREDSEDNIKA ITALIJANSKE REPUBLIKE:
g. Luigi GUIDOBONO CAVALCHINI GAROFOLI
veleposlanik,
stalni predstavnik Italijanske republike pri Evropski uniji;

ZA NJEGOVO KRALJEVO VISOKOST VELIKEGA VOJVODO LUKSEMBURŠKEGA:
g. Jean-Jacques KASEL
veleposlanik,
stalni predstavnik Luksemburga pri Evropski uniji;

ZA NJENO VELIČANSTVO KRALJICO NIZOZEMSKE:
g. Bernard R. BOT
veleposlanik,
stalni predstavnik Nizozemske pri Evropski uniji;

ZA ZVEZNEGA PREDSEDNIKA REPUBLIKE AVSTRIJE:
g. Manfred SCHEICH
veleposlanik,
stalni predstavnik Republike Avstrije pri Evropski uniji;

ZA PREDSEDNIKA PORTUGALSKE REPUBLIKE:
g. José Gregório FARIA QUITERES
veleposlanik,
stalni predstavnik Portugalske republike pri Evropski uniji;

ZA PREDSEDNIKA REPUBLIKE FINSKE:
g. Antti SATULI
veleposlanik,
stalni predstavnik Republike Finske pri Evropski uniji;

ZA VLADO KRALJEVINE ŠVEDSKE:
g. Frank BELFRAGE
veleposlanik,
stalni predstavnik Švedske pri Evropski uniji;

ZA NJENO VELIČANSTVO KRALJICO ZDRUŽENEGA KRALJESTVA VELIKE BRITANIJE IN SEVERNE IRSKE:
g. J. S. WALL C. M. G., L. V. O
veleposlanik,
stalni predstavnik Združenega kraljestva Velika Britanija in Severna Irska pri Evropski uniji,

KI so se na zasedanju Odbora stalnih predstavnikov držav članic pri Evropski uniji po izmenjavi pooblastil v pravilni in predpisani obliki,

DOGOVORILI O NASLEDNJEM:

ČLEN 1

Republika Avstrija, Republika Finska in Kraljevina Švedska s tem pristopijo h Konvenciji o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij, ki je bila na voljo za podpis 23. julija 1990 v Bruslju.

ČLEN 2

Konvencija o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij se spremeni, kot sledi:

1) V členu 2(2):

(a) pododstavek (k) postane pododstavek (l);

(b) za pododstavkom (j) se doda naslednji pododstavek (k):

»(k) v Avstriji:

- Einkommensteuer,

- Körperschaftsteuer; «;

(c) pododstavek (l) postane pododstavek (o);

(d) za podostavkom (l) se dodata naslednja pododstavka (m) in (n):

»(m) na Finskem:

- valtion tuloverot/de statliga inkomstskatterna,
- yhteisöjen tulovero/inkomstskatten för samfund,
- kunnallisvero/kommunalskatten,
- kirkollisvero/kyrkoskatten,
- korkotulon lähdevero/källskatten å ränteinkomst,
- rajoitetusti verovelvollisen lähdevero/källskatten för begränsat skattskyldig;«;

(n) na Švedskem:

- statliga inkomstskatten,
- kupongskatten,
- kommunala inkomstskatten,
- lagen om expansionsmedel;«.

2) Členu 3(1) se doda naslednje:

»- v Avstriji:

Der Bundesminister für Finanzen ali pooblaščeni predstavnik,

- na Finskem:

Valtiovarainministeriö ali pooblaščeni predstavnik,

Finansministeriet ali pooblaščeni predstavnik,

- na Švedskem:

Finansministern ali pooblaščeni predstavnik.«.

ČLEN 3

Generalni sekretar Sveta Evropske unije pošlje overjeno kopijo Konvencije o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij v angleškem, danskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem in španskem jeziku vladam Republike Avstrije, Republike Finske in Kraljevine Švedske.

Besedili Konvencije o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij v finskem in švedskem jeziku sta v Prilogah I in II k tej konvenciji. Besedili, sestavljeni v finskem in švedskem jeziku, sta enako verodostojni kakor druga besedila Konvencije o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij.

ČLEN 4

To konvencijo ratificirajo države pogodbenice. Listine o ratifikaciji se deponirajo pri generalnem sekretarju Sveta Evropske unije.

ČLEN 5

Ta konvencija za države, ki so jo ratificirale, začne veljati prvi dan tretjega meseca, potem ko sta zadnjo listino o ratifikaciji deponirali Republika Avstrija, Republika Finska ali Kraljevina Švedska in ena od držav, ki je ratificirala Konvencijo o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij.

Ta konvencija za vsako državo pogodbenico, ki jo ratificira pozneje, začne veljati prvi dan tretjega meseca po deponiranju njene listine o ratifikaciji.

ČLEN 6

Generalni sekretar Sveta Evropske unije uradno obvesti države pogodbenice o:

(a) deponiranju vsake listine o ratifikaciji;

(b) datumih začetka veljavnosti te konvencije.

ČLEN 7

Ta konvencija, sestavljena v enem izvirniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vseh 12 besedil enako verodostojnih, se deponira v arhivu generalnega sekretariata Sveta Evropske unije. Generalni sekretar pošlje overjeno kopijo vladi vsake države pogodbenice.

V POTRDITEV TEGA so spodaj podpisani pooblaščenci podpisali to konvencijo.

V Bruslju, dne enaindvajsetega decembra leta tisoč devetsto petindevetdeset.

ZAPISNIK O PODPISU

Konvencije o pristopu Republike Avstrije,
Republike Finske in Kraljevine Švedske h Konvenciji
o odpravi dvojnega obdavčevanja v zvezi s preračunom
dobička povezanih podjetij

Pooblaščenci Kraljevine Belgije, Kraljevine Danske, Zvezne republike Nemčije, Helenske republike, Kraljevine Španije, Francoske republike, Irske, Italijanske republike, Velikega vojvodstva Luksemburg, Kraljevine Nizozemske, Republike Avstrije, Portugalske republike, Republike Finske, Kraljevine Švedske in Združenega kraljestva Velika Britanija in Severna Irska so 21. XII. 95 v Bruslju podpisali Konvencijo o pristopu Republike Avstrije, Republike Finske in Kraljevine Švedske h Konvenciji o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij.

Ob tej priložnosti so se seznanili z naslednjimi enostranskimi izjavami o členu 8 Konvencije o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij:

Izjava Republike Avstrije

Kršitev, ki se kaznuje s »strogo kaznijo«, pomeni vsako namerno ali malomarno utajo davkov ali dajatev, ki se kaznuje v skladu z zakonodajo o davčnih kršitvah.

Izjava Republike Finske

Izraz »stroge kazni« vključuje kazenske in upravne sankcije, ki so uvedene v primeru kršitve davčne zakonodaje.

Izjava Kraljevine Švedske

Kršitev davčne zakonodaje, ki se kaznuje s »strogo kaznijo«, pomeni vsako kršitev davčnih predpisov, ki se kaznuje s priporom, denarno kaznijo ali upravno globo.

Ta zapisnik se objavi v Uradnem listu Evropskih skupnosti.

V Bruslju, dne enaindvajsetega decembra leta tisoč devetsto petindevetdeset.

PROTOKOL
O SPREMEMBI KONVENCIJE
Z DNE 23. JULIJA 1990
O ODPRAVI DVOJNEGA OBDAVČEVANJA V ZVEZI
S PRERAČUNOM DOBIČKA POVEZANIH PODJETIJ

VISOKE POGODBENICE POGODBE O USTANOVITVI EVROPSKE SKUPNOSTI SO SE –

Z ŽELJO uveljaviti člen 293 Pogodbe o ustanovitvi Evropske skupnosti, na podlagi katerega so se zavezale k pogajanjem, s katerimi bi v korist svojih državljanov dosegle odpravo dvojnega obdavčevanja,

OB UPOŠTEVANJU Konvencije z dne 23. julija 1990 o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij[1] (v nadaljnjem besedilu »Arbitražna konvencija«),

OB UPOŠTEVANJU Konvencije z dne 21. decembra 1995 o pristopu Republike Avstrije, Republike Finske in Kraljevine Švedske h Konvenciji o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij[2],

KER je Arbitražna konvencija v skladu s členom 18 prav te konvencije začela veljati
1. januarja 1995; ker bo prenehala veljati 31. decembra 1999, razen če bo njena veljavnost podaljšana –

ODLOČILE skleniti ta protokol o spremembi Arbitražne konvencije in so v ta namen imenovale svoje pooblaščence:

KRALJEVINA BELGIJA:
g. Jean-Jacques VISEUR
minister za finance;

KRALJEVINA DANSKA:
ga. Marianne JELVED
ministrica za gospodarske dejavnosti in nordijsko sodelovanje;

ZVEZNA REPUBLIKA NEMČIJA:
g. Hans EICHEL
zvezni minister za finance;

HELENSKA REPUBLIKA:
g. Yannos PAPANTONIOU
minister za gospodarske dejavnosti;

KRALJEVINA ŠPANIJA:
g. Cristóbal Ricardo MONTORO MORENO
državni sekretar za gospodarske dejavnosti;

FRANCOSKA REPUBLIKA:
g. Dominique STRAUSS-KAHN
Minister za gospodarske dejavnosti, finance in industrijo;

IRSKA:
g. Charlie McCREEVY
minister za finance;

ITALIJANSKA REPUBLIKA:
g. Vincenzo VISCO
minister za finance;

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1 UL L 225, 20. 8. 1990, str. 10.
2 UL C 26, 31. 1. 1996, str. 1.

VELIKO VOJVODSTVO LUKSEMBURG:
Jean-Claude JUNCKER
predsednik vlade, Ministre d'Etat, minister za finance, minister za delo in zaposlovanje;

KRALJEVINA NIZOZEMSKA:
g. Wilhelmus Adrianus Franciscus Gabriël (Willem) VERMEEND
državni sekretar za finance;

REPUBLIKA AVSTRIJA:
g. Rudolf EDLINGER
zvezni minister za finance;

PORTUGALSKA REPUBLIKA:
g. António Luciano Pacheco DE SOUSA FRANCO
minister za finance;

REPUBLIKA FINSKA:
g. Sauli NIINISTÖ
namestnik predsednika vlade in minister za finance;

KRALJEVINA ŠVEDSKA:
g. Bosse RINGHOLM
minister za finance;

ZDRUŽENO KRALJESTVO VELIKA BRITANIJA IN SEVERNA IRSKA:
sir Stephen WALL, K.C.M.G., L.V.O.
veleposlanik, stalni predstavnik Združenega kraljestva Velika Britanija in Severna Irska pri Evropski uniji,

KI so se sestali v okviru Sveta in se po izmenjavi pooblastil v pravilni in predpisani obliki

DOGOVORILI O NASLEDNJEM:

ČLEN 1

Konvencija z dne 23. julija 1990 o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij se spremeni, kakor sledi:

Člen 20 se glasi, kakor sledi:

»Člen 20

Ta konvencija se sklene za obdobje petih let. Nato se podaljšuje vsakih pet let za enako obdobje, razen če katera od držav pogodbenic s pisnim obvestilom generalnemu sekretarju Sveta Evropske unije vsaj šest mesecev pred iztekom vsakokratnega petletnega obdobja, temu ugovarja.«.

ČLEN 2

1. Ta protokol države podpisnice ratificirajo, sprejmejo ali odobrijo. Listine o ratifikaciji, sprejetju ali odobritvi se deponirajo pri generalnemu sekretarju Sveta Evropske unije.

2. Generalni sekretar Sveta Evropske unije uradno obvesti države podpisnice o:

(a) deponiranju vsake listine o ratifikaciji, sprejetju ali odobritvi;

(b) datumu, ko ta protokol začne veljati.

ČLEN 3

1. Ta protokol začne veljati prvi dan tretjega meseca po tem, ko listino o ratifikaciji, sprejetju ali odobritvi deponira še zadnja država podpisnica.

2. Ta protokol se uveljavi s 1. januarjem 2000.

3. Obdobje od 1. januarja 2000 do dneva začetka veljavnosti tega protokola se ne upošteva pri ugotavljanju, ali je bila zadeva predstavljena v rokih iz člena 6(1) Arbitražne konvencije.

ČLEN 4

Ta protokol, sestavljen v enem izvirniku v angleškem, danskem, finskem, francoskem, grškem, irskem, italijanskem, nemškem, nizozemskem, portugalskem, španskem in švedskem jeziku, pri čemer je vseh dvanajst besedil enako verodostojnih, se deponira v arhivu generalnega sekretariata Sveta Evropske unije. Generalni sekretar pošlje overjeno kopijo vladi vsake države podpisnice.

V POTRDITEV TEGA so spodaj podpisani pooblaščenci podpisali ta protokol.

V Bruslju, dne petindvajsetega maja leta tisoč devetsto devetindevetdeset.

SKLEPNA LISTINA

Konference predstavnikov vlad držav članic,
ki so se sestali v okviru Sveta 25. maja 1999

PREDSTAVNIKI VLAD DRŽAV ČLANIC,

KI SO SE SESTALI V OKVIRU Sveta 25. maja 1999, SO SE

OB SKLICEVANJU NA SKLEPE z dne 19. maja 1998 v zvezi s podaljšanjem veljavnosti Konvencije o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij (»Arbitražne konvencije«), v katerih so se dogovorili, da je treba veljavnost Arbitražne konvencije od dneva, ko preneha veljati, podaljšati za nadaljnje petletno obdobje ter da naj se po izteku tega obdobja samodejno podaljšuje naprej, vsakič za obdobje petih let, pod pogojem, da nobena država pogodbenica temu ne ugovarja,

DOGOVORILI, da je potrebno veljavnost Arbitražne konvencije podaljšati za nadaljnjih pet let, in sicer od 1. januarja 2000 ter;

SO PREŠLI k podpisu Protokola o spremembi Konvencije z dne 23. julija 1990 o odpravi dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij.

V Bruslju, dne petindvajsetega maja leta tisoč devetsto devetindevetdeset.