N° 5286

CHAMBRE DES DEPUTES

Session ordinaire 2003-2004

P R O J E T D E L O I

portant approbation de la Convention entre le Grand-Duché de Luxembourg et la République de Turquie tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune et du Protocole y relatif, signés à Ankara, le 9 juin 2003

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(Dépôt: le 27.1.2004)

SOMMAIRE:

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ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Affaires Etrangères et du Commerce Extérieur et après délibération du Gouvernement en Conseil;

Arrêtons:

Article unique.– Notre Ministre des Affaires Etrangères et du Commerce Extérieur est autorisée à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation de la Convention entre le Grand-Duché de Luxembourg et la République de Turquie tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune et du Protocole y relatif, signés à Ankara, le 9 juin 2003.

Palais de Luxembourg, le 19 janvier 2004

Le Ministre des Affaires Etrangères et du Commerce Extérieur,
Lydie POLFER

HENRI

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TEXTE DU PROJET DE LOI

Article unique.– Sont approuvés la Convention entre le Grand-Duché de Luxembourg et la République de Turquie tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune, et le Protocole y relatif, signés à Ankara, le 9 juin 2003.

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EXPOSE DES MOTIFS

La République de Turquie, de par sa situation géographique joue un rôle d'intermédiaire entre les pays européens et les pays du Proche- et Moyen-Orient. Vaste pays, la Turquie compte 2.750 km de frontière terrestre et 5.972 km de frontière établie par les voies d'eau. Les ressources du pays, qui compte 65,3 millions d'habitants, proviennent essentiellement du secteur agricole, suivi de l'industrie et du secteur des services. L'industrie du tourisme commence également à se déployer.

Les relations entretenues par la République de Turquie avec l'Union européenne remontent jusqu'en 1964. Associée depuis cette année, la Turquie, souscrivant à l'harmonisation législative en 1970, est acceptée en tant que membre de l'Union douanière en 1995.

La République de Turquie est, bien que consciente des problèmes que posent les relations conflictuelles avec la Grèce, déterminée à joindre l'Union européenne. Cette volonté est appuyée par le nombre de changements intervenus dans les différentes législations du pays en vue d'égaler les conditions imposées par l'Union européenne. Si l'effort dans le domaine militaire parait moindre, il faut cependant relever les modifications apportées dans le domaine humanitaire du respect des droits de l'homme, comme en témoigne le dernier paquet adopté. Il convient également de saluer les réformes envisagées, et pour certaines déjà entamées, en ce qui concerne la libéralisation du marché économique, et plus particulièrement du secteur bancaire menacé à deux reprises de faillite.

Protectionniste, le Gouvernement vient d'affaiblir les critères imposés aux sociétés désirant s'implanter sur le territoire de la République. En effet, une entreprise ordinaire ne nécessitait pas moins de 53 jours et 19 différentes autorisations avant de pouvoir s'établir. Conscient du fait que, d'une part, le pays largement endetté nécessite les capitaux étrangers afin de relancer une économie peu dynamique, et que, d'autre part, pour être attrayant il fallait être compétitif, le Gouvernement a voté un paquet de lois fiscales abaissant le taux d'imposition applicable aux sociétés et introduisant des bonifications pour investissement pouvant atteindre jusqu'à 40% de l'investissement considéré.

Le Luxembourg, désireux d'aider la Turquie dans ses efforts à remplir les critères européens, et en vue de renforcer les liens unissant les deux pays, ainsi que de favoriser non seulement un échange au niveau culturel, mais également en matière d'investissements, d'implantations d'entreprises, a jugé utile et nécessaire la conclusion d'un accord bilatéral tendant à éviter les doubles irnpositions et à prévenir la fraude fiscale. Etant entendu que ces conventions fiscales ont pour but d'éliminer la double imposition juridique, elles contribuent au développement des activités commerciales, industrielles et financières entre les partenaires conventionnels.

Les négociations ont eu lieu sur la base du modèle de convention de l'OCDE avec néanmoins des références au modèle des Nations Unies. La Turquie, bien que membre de l'organisation de coopération et de développement économique, a émis un certain nombre de réserves au modèle de l'OCDE. Les dispositions retenues sont, tout en tenant compte des intérêts spécifiques des deux pays, pour la plupart conformes au modèle susvisé.

Le commentaire des articles se limite aux divergences plus ou moins importantes par rapport au modèle de convention de l'OCDE. Qui plus est, les commentaires relatifs à ce modèle sont d'une très grande utilité pour la compréhension du texte conventionnel.

Il est impossible de chiffrer l'incidence budgétaire de l'application de la Convention. On peut cependant s'attendre à ce qu'un éventuel déchet, provenant du partage de la matière imposable, soit compensé par les retombées fiscales dues à l'intensification des opérations commerciales et financières entre les deux pays.

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COMMENTAIRE DES ARTICLES DE LA CONVENTION

Les articles 1 et 2 délimitent le champ d'application de la Convention en définissant les personnes ainsi que les impôts visés. Ils sont conformes au modèle de l'OCDE.

Le paragraphe 1er du Protocole dispose que, dans le cas où la Turquie introduit un impôt similaire à l'impôt luxembourgeois sur la fortune, cet impôt sera automatiquement couvert par la Convention, à moins que les autorités compétentes en jugent différemment.

Les articles 3, 4 et 5 définissent certains termes et expressions couramment utilisés dans la Convention pour autant que ces définitions ne se trouvent pas dans les articles relatifs aux différentes catégories de revenu. Selon le paragraphe 1er de *l'article 3*, il y a rapprochement des notions de siège social et de siège de direction officiel (legal head office), et ceci en faisant référence aux législations des pays respectifs. Par ailleurs, la définition relative au trafic international ne reprend pas le critère du siège de direction effective, mais se réfère à l'Etat de résidence de la personne qui exploite l'entreprise. La définition du trafic international inclut les transports effectués par voie terrestre (road vehicle).

En vertu de *l'article 4*, le terme de résident correspond au modèle de l'OCDE, à l'exception de l'expression de siège de direction officiel, ajouté comme critère permettant de qualifier une personne morale comme un résident d'un Etat contractant. Le paragraphe 3 de l'article diffère des dispositions de la convention modèle en ce sens qu'il stipule que si le siège de direction effective d'une personne autre qu'une personne physique ne peut être établi, la question devra être tranchée d'un accord commun entre les deux partenaires conventionnels.

La notion d'établissement stable définie à *l'article 5*, est conforme au modèle de l'OCDE à l'exception des paragraphes 3 et 5 de l'article. Selon le paragraphe 3, un chantier de construction est réputé établissement stable, si la durée du chantier en question dépasse six mois, au lieu des douze mois figurant dans le modèle de l'OCDE. Le paragraphe 5 reprend les stipulations du modèle des Nations Unies qui considèrent qu'une entreprise dispose d'un établissement stable, si une personne agissant au nom de cette entreprise, conserve habituellement un stock de marchandises ou de produits dans un Etat contractant à partir duquel ladite personne livre régulièrement des marchandises ou des produits au nom de l'entreprise. Cette disposition n'est cependant applicable qu'en cas d'abus.

Les articles 6 à 21 déterminent pour les différentes catégories de revenus les compétences fiscales respectives de l'Etat de la source ou du situs et de l'Etat de résidence. Ils sont en général conformes au modèle de l'OCDE, à l'exception des divergences plus ou moins importantes, dont question ci-dessous.

L'article 6 traite des revenus immobiliers. Il est en conformité avec le modèle de l'OCDE, mis à part le fait qu'il inclut dans sa définition les lieux de pêche de tout genre.

L'article 7 règle le droit d'imposition en matière de bénéfices des entreprises. En particulier, l'article contient au paragraphe 3 une précision apportée par le modèle des Nations Unies, disposition par ailleurs déjà appliquée par les administrations fiscales respectives d'une façon générale.

En outre, l'article ne reprend pas les paragraphes 4 et 6 du modèle de l'OCDE à propos de la détermination forfaitaire du bénéfice.

L'article 8 qui concerne les bénéfices réalisés par l'exploitation en trafic international, de navires, d'aéronefs ou de véhicules, diffère du modèle de l'OCDE en ce qu'il n'attribue pas le droit d'imposition des bénéfices à l'Etat où est situé le siège de direction effective de l'entreprise, mais à l'Etat de résidence de la personne exploitant l'entreprise. Cette alternative, prévue par les commentaires de l'OCDE, s'applique également aux bénéfices occasionnels provenant de la location coque nue de navires ou d'aéronefs, ainsi qu'aux bénéfices provenant de l'utilisation, du maniement ou de la location de conteneurs. Le paragraphe 2 du modèle de l'OCDE relatif à la navigation intérieure n'a pas été repris, faute d'intérêt. Etant donné que l'article ne reconnaît pas la notion de siège de direction effective, le paragraphe 3 du modèle de l'OCDE, qui stipule que si le siège de direction effective d'une entreprise de navigation maritime est à bord du navire – ce siège étant considéré comme situé dans l'Etat contractant où se trouve le port d'attache de ce navire, n'a pas non plus été repris, étant devenu superflu. Les modifications dans l'article 8 par rapport au modèle de l'OCDE se retrouvent également dans les articles 3 (définitions générales), 13 (gains en capital), 15 (professions dépendantes) et 22 (fortune).

Un autre changement important est l'inclusion du transport routier dans la notion de trafic international, et ceci sur demande expresse de la partie luxembourgeoise.

Le texte de *l'article 9*, visant l'imposition des entreprises associées, concorde intégralement avec le modèle de l'OCDE.

L'imposition des dividendes est traitée dans *l'article 10*. Les dispositions retenues sont pour la plupart conformes à celles du modèle de l'OCDE, à l'exception des deux modifications suivantes. Bien que la répartition du droit d'imposition entre l'Etat de la source et l'Etat de résidence soit maintenue, l'article introduit des mesures unilatérales applicables individuellement à chaque partenaire conventionnel. Ainsi le taux de retenue à la source applicable pour des dividendes de source turque ne peut-il excéder, soit 10 pour cent dans le cas d'une participation d'au moins 25 pour cent, soit 20 pour cent dans tous les autres cas. Par contre, du côté luxembourgeois, le taux d'imposition applicable aux dividendes ne peut être, soit supérieur à 5 pour cent pour une participation d'au moins 25 pour cent, soit supérieur à 20 pour cent dans tous les autres cas. Dans ce contexte, il convient de préciser que l'introduction d'un taux distinct, en ce qui concerne la retenue à la source luxembourgeoise, s'est faite dans l'optique de la politique conventionnelle adoptée et suivie par le Luxembourg. D'autre part, le Luxembourg opte généralement pour un taux de 5 pour cent à l'endroit des participations importantes, alors que d'autre part, la Turquie, dans ses négociations, n'a pas encore conclu de convention fiscale appliquant un taux de retenue inférieur à 10 pour cent.

En effet, la plupart des conventions négociées par la Turquie contiennent un taux de 15 pour cent.

Une deuxième modification a trait aux bénéfices imposables réalisés par un établissement stable. La Turquie se réserve le droit d'imposer les bénéfices restants, donc après application des dispositions de l'article 7, réalisés par un établissement stable d'une entreprise luxembourgeoise situé en Turquie, au taux maximum de 10 pour cent (branch tax).

L'article 11 qui règle le droit d'imposition des intérêts, diffère sensiblement du modèle de l'OCDE en ce sens que le taux de retenue à la source diffère selon la nature des intérêts perçus. Les intérêts générés par un prêt d'une durée de plus de deux ans sont soumis à une retenue à la source de 10 pour cent. Dans tous les autres cas, le taux applicable est de 15 pour cent.

Le paragraphe 7 de l'article précise que si lors d'une vente, effectuée par un résident d'un Etat contractant à un résident de l'autre Etat contractant, de marchandises ou d'équipements industriels, commerciaux ou scientifiques, le paiement se fait, pendant une période déterminée, après réception de ces biens, aucune partie du paiement n'est à considérer comme intérêts. Dans ce cas, les dispositions des articles 5 et 7 s'appliquent.

Contrairement au modèle de convention de l'OCDE, *l'article 12* partage le droit d'imposition des redevances entre l'Etat de la source et l'Etat de résidence. Le paragraphe 2 fixe une imposition minimale dans le pays de la source de l'ordre de 10 pour cent du montant brut. Toutefois le protocole final stipule que si un paiement répond aux dispositions du paragraphe 3 de l'article 12, il sera imposé en tant que tel. Si par contre, il s'avérait qu'il s'agissait en réalité d'une plus-value réalisée sur une vente, les dispositions de l'article 13 seraient d'application.

Pour ce qui est de la définition des redevances (paragraphe 3), il importe de souligner que celle-ci est élargie à la location d'un équipement industriel, commercial ou scientifique. De plus, il y est ajouté la vente d'un droit d'auteur et il est précisé que les sommes globales en ce domaine sont visées par la notion de redevances.

En raison de l'adjonction, par rapport au texte du modèle de l'OCDE, d'une disposition prévoyant une retenue à la source sur les redevances, il a fallu en définir la source. La définition en cause, qui relève du paragraphe 5, s'inspire des dispositions du paragraphe 5 de l'article 11.

L'article 13 relatif aux gains en capital correspond au modèle de l'OCDE à l'exception de deux dispositions. Il s'agit en premier lieu du paragraphe 3 qui traite les gains réalisés par une entreprise effectuant des transports internationaux et dont il a été question au commentaire en rapport avec l'article 8. Par ailleurs, l'article présente une particularité en ce qu'il attribue le droit d'imposition des plus-values réalisées à court terme (période inférieure à 12 mois) et visées au paragraphe 4, à l'Etat de la source.

Le droit d'imposition concernant les professions indépendantes, réglé par *l'article 14*, diffère du modèle de l'OCDE, et cette différence est due au fait que la Turquie a émis une réserve, qui par ailleurs figure dans les commentaires sur l'article en question dans le modèle de l'OCDE. En effet, la Turquie se réserve le droit d'imposer les personnes exerçant une profession libérale ou une autre activité de caractère indépendant, quand celles-ci séjournent dans ce pays pendant une période d'au moins 183 jours au cours de l'année civile, même si ces personnes ne disposent pas d'une base fixe pour l'exercice de ces activités.

L'article 15 ayant trait aux professions dépendantes, est conforme au modèle de l'OCDE, mise à part la référence au paragraphe 1 à l'article 20 (teachers and students) de la Convention, ainsi que le paragraphe 3 relatif aux rémunérations payées par les entreprises engagées dans le trafic international.

L'article 16 relatif aux tantièmes est conforme à la convention modèle de l'OCDE.

S'agissant de *l'article 17* ayant pour objet l'imposition des artistes du spectacle et des sportifs, celui-ci correspond au modèle de l'OCDE et stipule que les revenus des artistes du spectacle ainsi que des sportifs sont imposables dans l'Etat contractant où ils exercent leurs activités, même si ces revenus sont attribués non pas à l'artiste ou au sportif lui-même, mais à une autre personne. Le paragraphe 3 cependant contient une dérogation à ce principe en prévoyant que les revenus ne sont imposables que dans l'Etat de résidence de l'artiste ou du sportif, si les activités sont supportées substantiellement par des fonds publics de l'Etat ou d'une collectivité locale du pays de résidence.

Le paragraphe 1 de *l'article 18*, concernant l'imposition des pensions payées en vertu d'un emploi antérieur, attribuant le droit d'imposition à l'Etat de résidence du bénéficiaire, est conforme au modèle de l'OCDE. Le paragraphe 2 traite des pensions et sommes payées en application de la législation sur la sécurité sociale d'un des Etats contractants. Celles-ci ne sont imposables que dans l'Etat de la source.

Quant à *l'article 19* portant sur les fonctions publiques, il ne diffère pas du modèle de l'OCDE.

La portée de *l'article 20*, réservé aux étudiants, a été étendue aux professeurs et enseignants. Le paragraphe 3 apporte une précision supplémentaire en indiquant que les rémunérations perçues par un étudiant qui est ou qui était auparavant résident d'un Etat, pour un emploi exercé dans l'autre Etat en vue d'acquérir une expérience, pendant une période ou des périodes n'excédant pas 183 jours au cours de l'année civile, ne sont pas imposables dans cet autre Etat.

L'article 21 ayant trait aux autres revenus est en conformité avec la convention modèle de l'OCDE.

L'imposition de la fortune, figurant à *l'article 22*, reprend au paragraphe 3, relatif à la fortune d'une entreprise engagée dans le trafic international, la formulation rencontrée à l'article 8.

L'article 23 renferme les dispositions applicables en vue d'éliminer la double imposition.

Le Luxembourg a opté, comme le stipule le sous-paragraphe a) du paragraphe 2, pour la méthode de l'exemption consistant à exonérer de l'impôt luxembourgeois les revenus ou la fortune de ses résidents qui sont imposables en Turquie, en en tenant compte toutefois pour le calcul du taux applicable aux revenus et à la fortune imposables au Luxembourg.

En ce qui concerne les dividendes, intérêts, redevances, ainsi que les revenus des artistes et sportifs, dont le droit d'imposition est, en vertu des articles 10, 11, 12 et 17, partagé entre l'Etat de la source et l'Etat de résidence, le Luxembourg a choisi la méthode de l'imputation consistant à intégrer ces revenus de source étrangère dans la base imposable luxembourgeoise, mais à déduire de l'impôt luxembourgeois l'impôt payé sur ces revenus en Turquie. Cette déduction ne peut néanmoins excéder l'impôt luxembourgeois correspondant aux revenus visés.

Le sous-paragraphe c) du paragraphe 2 accorde le privilège des sociétés mère et filiales aux dividendes provenant de participations d'au moins 25 pour cent détenues directement par une société résidente du Luxembourg dans une société résidente de la Turquie. Cette disposition, qui s'inspire de l'article 166 de la loi du 4 décembre 1967 concernant l'impôt sur le revenu, est également applicable en matière d'impôt sur la fortune.

La Turquie a, d'une manière générale, opté pour la méthode de l'imputation.

Les articles 24 à 31 contiennent certaines dispositions spéciales, ainsi que les dispositions finales de la Convention.

L'article 24, qui établit le principe de la non-discrimination, se dégage du modèle de convention de l'OCDE en deux points. D'une part, la disposition relative aux apatrides n'a pas été retenue à défaut d'intérêt, et d'autre part, la portée de l'article en question est limitée aux impôts couverts par la présente Convention.

L'article 25, qui gouverne la procédure amiable, est conforme au modèle conventionnel de l'OCDE hormis la dernière phrase du paragraphe 2 du modèle qui dispose que l'accord trouvé est applicable quels que soient les délais prévus par le droit interne des Etats contractants.

L'étendue de *l'article 26* relatif à l'échange de renseignements se limite, contrairement au modèle de l'OCDE, aux impôts visés dans la présente Convention.

En ce qui concerne *l'article 27*, celui-ci prévoit l'assistance en matière de recouvrement de l'impôt. Cet article, qui a été inséré dans la Convention suite à l'insistance de la Turquie, énonce les règles suivant lesquelles les Etats contractants peuvent se prêter mutuellement assistance dans le cadre du recouvrement. Il reste à préciser que les dispositions de l'article en question ne visent que les impôts, ainsi que les frais accessoires y relatifs, couverts par la présente Convention. Qui plus est, les sommes à recouvrer ne doivent pas rentrer dans le domaine pénal.

L'article 28 sur les membres des missions diplomatiques et postes consulaires ne diverge pas de la Convention modèle de l'OCDE.

Selon *l'article 29*, les sociétés holdings luxembourgeoises au sens de la loi du 31 juillet 1929 et de l'arrêté grand-ducal du 17 décembre 1938, sont exclues du bénéfice de la présente Convention.

L'article 30 établit les règles relatives à l'entrée en vigueur de la Convention et précise que la Convention s'appliquera:

a) en ce qui concerne les impôts retenus à la source, aux sommes payées ou attribuées le ou aprés le 1er janvier suivant immédiatement la date d'entrée en vigueur de la présente Convention;

b) en ce qui concerne les autres impôts, aux années d'imposition commençant le ou après le 1er janvier suivant immédiatement la date d'entrée en vigueur de la Convention.

L'article 31 décrit la procédure à respecter en cas de dénonciation de la Convention par l'un des Etats contractants.

La Convention a été signée dans la seule langue anglaise, ce texte faisant foi.

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AGREEMENT

between the Grand Duchy of Luxembourg and the Republic of Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Government of the Grand Duchy of Luxembourg

and

the Government of the Republic of Turkey

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

a) in the case of Luxembourg:

(i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);

(ii) the corporation tax (l'impôt sur le revenu des collectivités);

(iii) the capital tax (l'impôt sur la fortune); and

(iv) the communal trade tax (l'impôt commercial communal);

(hereinafter referred to as „Luxembourg tax");

b) in the case of Turkey:

(i) the income tax (Gelir Vergisi);

(ii) the corporation tax (Kurumlar Vergisi); and the levy imposed on the income tax and the corporation tax;

(hereinafter referred to as „Turkish tax").

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

Article 3

General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
   a) the term „Luxembourg“ means the territory of the Grand Duchy of Luxembourg;
   b) the term „Turkey“ means the Turkish territory, territorial sea, as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, pursuant to international law;
   c) the terms „a Contracting State“ and „the other Contracting State“ mean Turkey or Luxembourg as the context requires;
   d) the term „tax“ means any tax covered by Article 2 of this Agreement;
   e) the term „person“ includes an individual, a company and any other body of persons;
   f) the term „company“ means any body corporate or any entity which is treated as a body corporate for tax purposes;
   g) the term „registered office“ means the legal head office registered under the relevant laws of both Contracting States;
   h) the term „national“ means:
      (i) any individual possessing the nationality of a Contracting State;
      (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
   i) the terms „enterprise of a Contracting State“ and „enterprise of the other Contracting State“ mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
   j) the term „competent authority“ means:
      (i) in Luxembourg, the Minister of Finance or his authorized representative; and
      (ii) in Turkey, the Minister of Finance or his authorized representative;
   k) the term „international traffic“ means any transport by a ship, an aircraft or road vehicle, operated by a Turkish or a Luxembourg enterprise, except when the ship, aircraft or road vehicle is operated solely between places situated in the territory of Turkey or of Luxembourg.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purpose of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Agreement, the term „resident of a Contracting State“ means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office (registered office), place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
   a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
   b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of effective management is situated. However, where the place of effective management of such person cannot be determined, the competent authorities of the Contracting States shall determine by mutual agreement the State of which the person shall be deemed to be a resident for the purposes of this Agreement.

Article 5

Permanent establishment

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

2. The term „permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

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

3. A building site, a construction, assembly or installation project constitutes a permanent establishment only if it lasts more than six months.

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

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

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

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise. The provisions of the foregoing sentence shall not apply, unless it is proved that in order to avoid taxation in the first-mentioned State, such person undertakes not only the regular delivery of the goods or merchandise, but also undertakes virtually all the activities connected with the sale of the goods or merchandise except for the actual conclusion of the sales contract itself.

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

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

Article 6

Income from immovable property

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

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

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

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

Article 7

Business profits

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated

or elsewhere. No deductions shall be allowed for sums which are paid (other than the reimbursement of expenses actually incurred) by the permanent establishment to the head office or any other permanent establishment of the enterprise situated abroad as royalties, fees or other similar payments in respect of the use of licences, patents or other rights, as commission for services rendered or for management, or, except in the case of a banking enterprise, as interest on sums lent to the permanent establishment.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping, air and land transport

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

2. For the purposes of this Article, profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall include inter alia profits derived from the use or rental of containers, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where

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

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations 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 by the first-mentioned State claimed to be 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, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

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

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

a) In the case of Turkey:

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

ii) 20 per cent of the gross amount of the dividends in all other cases.

b) in the case of Luxembourg:

i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

ii) 20 per cent of the gross amount of the dividends in all other cases.

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

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

4. Profits of a company which is a resident of Luxembourg carrying on business in Turkey through a permanent establishment therein may, after having been taxed under Article 7, be the remaining amount in Turkey and the tax so charged not exceed 10 per cent of the remaining amount.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or, in the case of a resident of Turkey, performs in Luxembourg independent personal services from a fixed base situated in Luxembourg, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. Notwithstanding the provisions of this paragraph, Turkey may impose tax according to paragraph 4 of this Article.

Article 11

Interest

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

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

a) 10 per cent of the gross amount of the interest if it is paid on a loan made for a period of more than two years;

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

3. The term „interest“ as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, as well as other income assimilated to income from money lent by the taxation law on the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or, in the case of a resident of Turkey, performs in Luxembourg independent personal services from a fixed base situated in Luxembourg, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

7. Where a resident of one of the States sells industrial, commercial or scientific goods, equipment or merchandise to a resident of the other State, and the payments for such sales are made in a specified period after the delivery of such goods, equipment or merchandise, then not any part of such payments shall be regarded as interest for the purpose of this Article. In such case, the provisions of Articles 5 and 7 shall apply.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or, in the case of a resident of Turkey, performs in Luxembourg independent personal services from a fixed base situated in Luxembourg, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property giving use to the royalties is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article 13

Capital Gains

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

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

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft or road vehicles operated in international traffic, or movable property pertaining to the operation of such ships, aircraft or road vehicles, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident. However, the capital gains mentioned in the foregoing sentence and derived from the other Contracting State, may be taxed in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) he has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or

b) he is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

2. Income derived by an enterprise of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) the enterprise has a permanent establishment in that other State through which the services or activities are performed; or

b) the period or periods during which the services are performed exceed in the aggregate 183 days in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case, the enterprise may elect to be taxed in that other State in respect of such income in accordance with the provisions of Article 7 of this Agreement as if the income were attributable to a permanent establishment of the enterprise situated in that other State. This election shall not affect the right of that other State to impose a withholding tax on such income.

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

Article 15

Dependent personal services

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

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

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16

Directors' fees

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

Article 17

Artistes and sportsmen

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

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

3. Income derived by an entertainer or a sportsman from activities exercised in a Contracting State shall be exempt from tax in that State, if the visit to that State is supported wholly or mainly by public funds of the other Contracting State a political subdivision or a local authority thereof.

Article 18

Pensions

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

2. Notwithstanding the provisions of paragraph 1, pensions, annuities and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

Article 19

Government service

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

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

      (i) is a national of that State; or

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

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

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

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

Article 20

Teachers and students

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

2. Likewise, remuneration received by a teacher or by an instructor who visits a Contracting State and who is or was immediately before such visit a resident of the other Contracting State and who is present in the first-mentioned State for the primary purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempt from tax in that State on his remuneration from personal services for teaching or research, provided that such payments arise from sources outside that State.

3. Remuneration which a student or a trainee who is or formerly was a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding 183 days in a calendar year, in order to obtain practical experience related to his education or formation shall not be taxed in that other State.

Article 21

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

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

Article 22

Capital

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

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

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

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

Article 23

Elimination of double taxation

1. In the case of Turkey, double taxation shall be avoided as follows:

Where a resident of Turkey derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Luxembourg, Turkey shall, subject to the provisions of Turkish taxation laws regarding credit for foreign taxes which shall not affect the general principle hereof, allow as a deduction from the tax on income or on capital of that resident, an amount equal to the tax on income or on capital paid in Luxembourg.

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

2. Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Turkey, Luxembourg shall, subject to the provisions of sub-paragraph b), exempt such income or capital from tax.

b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12 and 17 may be taxed in Turkey, Luxembourg shall allow as a deduction from the income tax on individuals (corporation tax) of that resident an amount equal to the tax paid in Turkey. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Turkey.

c) Where a company which is a resident of Luxembourg derives dividends from a company which is a resident of Turkey, Luxembourg shall exempt such dividends from tax, provided that the company which derives the dividends holds directly at least 25 per cent of the capital of the company paying the dividends. The above-mentioned shares in the Turkish company are under the same conditions, exempt from the Luxembourg capital tax.

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

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Subject to the provisions of paragraph 4 of Article 10, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

4. These provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

6. The provisions of this Article shall apply to taxes covered by this Agreement.

Article 25

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

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

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

Article 27

Assistance in collection

1. The Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Agreement relates, together with the interest, costs, and additions to the taxes and fines not being of a penal character.

2. Such application must be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes being collected are due.

3. At the request of the competent authority of a Contracting State, the competent authority of the other Contracting State will ensure, according to the provisions of laws and regulations applied to collection of the above-mentioned taxes in the last State, collection of fiscal claims covered by the first paragraph, which are recoverable in the first State. These claims shall not enjoy any privilege in the requested State and the latter is not obliged to apply means of execution which are not authorized by the provisions of laws and regulations of the requested State.

4. The provisions of Article 26, paragraph 1, shall apply equally to all information brought, for the application of the preceding paragraphs of the present Article, to the knowledge of the competent authority of the requested State.

Article 28

Members of diplomatic missions and consular posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Exclusion of certain companies

This Agreement shall not apply to holding companies (sociétés holdings) within the meaning of special Luxembourg laws, currently the Act (loi) of 31 July 1929 and the Decree (arrêté grand-ducal) of 17 December 1938. Neither shall it apply to income derived from such companies by a resident of Turkey nor to shares or other rights in such companies owned by such a person.

Article 30

Entry into force

1. Each Contracting State shall notify to the other completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:
   a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which this Agreement enters into force; and
   b) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which this Agreement enters into force.

Article 31

Termination

1. This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement.

2. In such event, the Agreement shall cease to have effect:
   a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of calendar year in which such notice is given; and
   b) with regard to other taxes, in respect of taxable years beginning after the end of calendar year in which such notice is given.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have signed the present Agreement.

DONE in duplicate at Ankara this 9th day of June 2003, in the English language.

For the Government of the Grand Duchy of Luxembourg,

For the Government of the Republic of Turkey,

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PROTOCOL

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, this day concluded between the Republic of Turkey and the Grand Duchy of Luxembourg, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. ad Article 2

In respect of Article 2 of the Agreement, if subsequently to the signature of the Agreement Turkey introduces a tax equivalent to the Luxembourg capital tax, the Agreement will automatically apply to that tax, unless the competent authorities of the Contracting States otherwise decide.

II. ad Articles 12 and 13

In respect of Articles 12 and 13 of the Agreement, it is understood that in the case of any payment received as a consideration for „the sale“ as meant in paragraph 3 of Article 12, the provisions of Article 12 shall apply, unless it is proved that the payment in question is a payment for a genuine alienation of the said property. In such case the provisions of Article 13 shall apply.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have signed the present Protocol.

DONE in duplicate at Ankara this 9th day of June 2003, in the English language.

For the Government of the Grand Duchy of Luxembourg,

For the Government of the Republic of Turkey,

(suivent les signatures)

Service Central des Imprimés de l'Etat