

SOCIALIST REPUBLIC OF ROMANIA
DOUBLE TAXATION: TAXES ON INCOME

*Convention Signed at Washington December 4, 1973;
Ratification Advised by the Senate of the United States of America November 18, 1975;
Ratified by the President of the United States of America December 15, 1975;
Ratified by the Socialist Republic of Romania January 31, 1975;
Ratifications Exchanged at Bucharest January 26, 1976;
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Effective January 1, 1974.*

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT
OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT
OF THE SOCIALIST REPUBLIC OF ROMANIA WITH RESPECT TO TAXES ON INCOME,
SIGNED AT WASHINGTON ON DECEMBER 4, 1973

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 11, 1974.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Socialist Republic of Romania with Respect to Taxes on Income, signed at Washington on December 4, 1973.

The Convention deals mainly with Federal income taxes in the case of the United States and with generally equivalent income taxes specified in Article 1(1) (a) in the case of Romania. The provision relating to nondiscrimination applies, however, to taxes of every kind imposed at the national, state, or local level.

Largely because of Romania's extensive involvement in international commerce the Romanian tax system is relatively well developed with regard to foreign investors. The Romanian tax authorities are familiar with the concepts of income used in the United States and Western Europe and have had some experience in their application. It was, therefore, possible to conclude a convention which, as to the

basic provisions governing the taxation of business income, personal service income and real property income, as well as the administrative provisions for exchanging tax information and resolving taxpayer complaints, is similar in all substantive respects to the conventions recently concluded between the United States and Western European countries such as Belgium, France and Norway.

Romania imposes withholding taxes on dividends, interest, royalties, rentals and technical service fees. The Convention establishes the present Romanian tax rate of 10 percent on dividends as an upper limit to the tax so that in combination with any likely corporate tax (now 30 percent) the total of Romanian taxes on corporate profits would be fully creditable against the United States corporate tax. On the other items of income, the Convention provides for a reduction in Romanian withholding taxes— from 15 percent to 10 percent on interest (with exemption on interest paid on loans from, or guaranteed by, the Export-Import Bank or the Overseas Private Investment Corporation), and from 20 percent to 10 percent on copyright royalties, including films, and to 15 percent on industrial royalties. Under the Convention, the United States will observe the same limits with respect to withholding tax on dividends, interest and royalties. Moreover, equipment rentals are not to be subject to the Romanian withholding tax, but will be taxable only if connected with an office in Romania.

The Convention also eliminates a Romanian 25 percent tax on income derived by performers who will be treated under the personal services provisions of the Convention (Articles 14 and 15).

A technical memorandum explaining in detail the provisions and effect of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Foreign Relations Committee for consideration in connection with the Convention.

Upon entry into force, this Convention will be effective from January 1, 1974, and will remain in force for a minimum period of five years. After the initial five-year period it will remain in force indefinitely until terminated by either State.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

HENRY A. KISSINGER.

Enclosure: Convention.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 28, 1974.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Socialist Republic of Romania with Respect to Taxes on Income, signed at Washington on December 4, 1973.

The Convention was signed during the visit to the United States of the Romanian President, Nicolae Ceausescu. It is evidence of the continued improvement and expansion of United States-Romanian relations.

The primary purpose of this Convention is to promote economic and cultural relations between the two countries by removing many tax barriers. The convention follows generally the form and content of conventions recently concluded between this government and Western European countries.

I hope that the Senate will act favorably on this Convention at an early date.

RICHARD NIXON.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention between the United States of America and the Socialist Republic of Romania with Respect to Taxes on Income was signed at Washington on December 4, 1973, the text of which Convention, in the English and Romanian languages, is hereto annexed;

The Senate of the United States of America by its resolution of November 18, 1975, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention;

The Convention was ratified by the President of the United States of America on December 15, 1975, in pursuance of the advice and consent of the Senate, and was ratified on the part of the Socialist Republic of Romania on December 23, 1974;

It is provided in Article 27 of the Convention that the Convention shall enter into force one month after the date of the exchange of instruments of ratification, with effectiveness with respect to income of calendar years or taxable years beginning on or after January 1, 1974;

The instruments of ratification of the Convention were exchanged at Bucharest on January 26, 1976, and accordingly the Convention enters into force on February 26, 1976, effective January 1, 1974;

NOW, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Convention, to the end that it shall be observed and fulfilled with good faith on and after February 26, 1976, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-fifth day of February in the year of our Lord one thousand nine hundred seventy-six and of the Independence of the United States of America the two hundredth.

By the President:

GERALD R. FORD

HENRY A. KISSINGER

Secretary of State

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
THE SOCIALIST REPUBLIC OF
ROMANIA WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Socialist Republic of Romania, desiring to conclude a convention for the avoidance of double taxation of income and property and the prevention of fiscal evasion, have agreed as follows:

ARTICLE 1
Taxes Covered

(1) The taxes which are the subject of this Convention are:

(a) In the case of Romania, the income taxes imposed under Romanian law, in particular the income taxes imposed on:

- (i) wages, salaries, fees, copyrights, and income from any other source received by individuals;
- (ii) profits of mixed companies;
- (iii) enterprises other than mixed companies or state enterprises;
- (iv) agricultural activities;
- (v) rentals; and
- (vi) nonresidents.

(b) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code (other than social insurance taxes imposed by chapters 2 and 21).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.

(3) For purposes of paragraph (5) of Article 7 (Business Profits), this Convention shall also apply to taxes other than income taxes imposed at the national level of a Contracting State on insurance and reinsurance premiums paid to a resident of the other Contracting State. For the purpose of Article 22 (Nondiscrimination), this Convention shall also apply to taxes of every kind imposed at the national, state, or local level.

(4) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (1) and of the adoption of any taxes referred to in paragraph (2) by transmitting the texts of any amendments on new statutes at least once a year.

ARTICLE 2 General Definitions

(1) In this Convention:

- (a) (i) The term "Romania" means the Socialist Republic of Romania; and
(ii) When used in a geographical sense the term "Romania" also includes:
 - (A) The territorial sea thereof, and
 - (B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Romania exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied in connected with such exploration or exploitation.
- (b) (i) The term "United States" means the United States of America; and
(ii) When used in a geographical sense, the term "United States" means the states thereof and the District of Columbia. Such term also includes:
 - (A) The territorial sea thereof, and
 - (B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which the Convention is being applied is connected with such exploration or exploitation.
- (c) The term "Contracting State" means the United States or Romania, as the context requires.
- (d) The term "person" includes an individual, a partnership, a corporation, an estate, or a trust.

(e) (i) The term "Romanian corporation" means any juridical person, including a mixed corporation which is incorporated and organized under Romanian law or any other legal entity created under Romanian law which is treated as a juridical person according to Romanian taxation laws.

(ii) The term "United States corporation" means a corporation, or any entity treated as a corporation for United States tax purposes, which is created or organized under the laws of the United States or any state thereof or the District of Columbia; and

(f) The term "competent authority" means:

(i) In the case of Romania, the Minister of Finance or his delegate, and

(ii) In the case of the United States, the Secretary of the Treasury or his delegate.

(g) The term "tax" means tax imposed by the United States or Romania, whichever is applicable, to which this Convention applies by virtue of Article 1 (Taxes Covered).

(h) The term "international traffic" means any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for purposes of this Convention.

ARTICLE 3 Fiscal Residence

(1) In this Convention:

(a) The term "resident of Romania" means:

(i) A Romanian corporation (as defined in paragraph (1)(e)(i) of Article 2 (General Definitions)), or

(ii) Any other person resident in Romania, but in the case of a partnership, estate, or trust only to the extent that the income derived by such person is subject to United States tax.

(b) The term "resident of the United States" means:

(i) A United States corporation (as defined in paragraph (1)(e)(ii) of Article 2 (General Definitions)), or

(ii) Any other person resident in the United States, but in the case of a partnership, estate, or trust only to the extent that the income derived by such person is subject to United States tax.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests)

(b) If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(c) If he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) If he is a citizen of both Contracting States or of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 4

General Rules of Taxation

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded-

(a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) By any other agreement between the Contracting States.

(3) Notwithstanding any provisions of this Convention except paragraph (4), a Contracting State may tax its citizens or residents (as determined under Article 3 (Fiscal Residence)) as if this Convention had not come into effect.

(4) The provisions of paragraph (3) shall not affect:

(a) The benefits conferred by a Contracting State under Articles 17 (Social Security Payments), 21 (Relief from Double Taxation), 22 (Nondiscrimination), and 23 (Mutual Agreement Procedure); and

(b) The benefits conferred by a Contracting State under Articles 18 (Governmental Functions), 19 (Teachers), 20 (Students and Trainees), and 25 (Members of Diplomatic Missions and Consular Offices) upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(5) The competent authorities of the two Contracting States may prescribe regulations necessary to carry out the provisions of this Convention.

ARTICLE 5

Permanent Establishment

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of one of the Contracting States is wholly or partly carried on.

(2) The term "permanent establishment" includes but is not limited to:

- (a) A branch;
- (b) An office;
- (c) A factory;
- (d) A workshop;
- (e) A warehouse;
- (f) A mine, quarry, or other place of extraction of natural resources; and
- (g) A construction or installation project which exists for more than 12-months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

- (a) The use of facilities for the purpose of storage, display, or delivery pursuant to a sales contract, of goods or merchandise belonging to the resident;
- (b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;
- (c) The maintenance of a fixed place of business for the purpose of purchasing of goods or merchandise, or for collecting information, for the resident;
- (d) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or
- (e) The maintenance of a construction or installation project which does not exist for more than 12-months.

(4) A person acting in one of the Contracting States on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to give rise to a permanent establishment in the first-mentioned Contracting State if such person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident.

(5) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or

commercial activity in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident sells at the termination of a trade fair or convention in such other Contracting State goods or merchandise which such resident displayed at such trade fair or convention.

(7) In determining whether a resident of one Contracting State has a permanent establishment in the other Contracting State there shall not be taken into account the fact that such resident may be related to either a resident of the other Contracting State or to any other person who engages in that other Contracting State.

(8) The principles set forth in paragraphs (1) through (7) shall also be applied in determining whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States.

ARTICLE 6

Income from Immovable Property

(1) Income from immovable property, including royalties and other payments in respect of the exploitation of natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties or other payments, may be taxed by the Contracting State in which such immovable property or natural resources are situated. For purposes of this Convention, interests on indebtedness secured by immovable property or secured by a right giving rise to royalties or other payments in respect of the exploitation of natural resources shall not be regarded as income from immovable property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of immovable property.

ARTICLE 7

Business Profits

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless the resident has a permanent establishment in that other Contracting State. If the resident has a permanent establishment in that other Contracting State, tax may be imposed by that other Contracting State on the industrial or commercial profits of the resident but only on so much of them as are attributable to the permanent establishment.

(2) Where a resident of one of the Contracting States has a permanent establishment in the other Contracting State, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would reasonably be expected to have been derived by it if it were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) Insurance or reinsurance premiums derived from sources within one Contracting State by a resident of the other Contracting State shall not be subject to income tax or any other tax in the first Contracting State unless such income is effectively connected with a permanent establishment of the resident in that Contracting State.

(6) The term "industrial or commercial profits" includes, but is not limited to, income derived from manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, and the rental of tangible personal (movable) property. Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity. Such term also includes any other income effectively connected with a permanent establishment which the recipient, being a resident of one of the Contracting States, has in the other Contracting State.

(7) To determine whether property or rights are effectively connected with a permanent establishment, the factors taken into account shall include whether the rights or property are used in or held for use in carrying on an activity giving rise to industrial or commercial profits through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(8) Where industrial or commercial profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supersede the provisions of this article.

ARTICLE 8
Shipping and Air Transport

(1) Notwithstanding Article 7 (Business Profits) and Article 13 (Capital Gains), income derived by a resident of one of the Contracting States from the operation in international traffic of ships or aircraft registered in that Contracting State and gains derived from the sale, exchange, or other disposition of ships or aircraft used in international traffic and which are registered in that Contracting State shall be exempt from taxation by the other Contracting State.

(2) For purposes of this article, income derived from the operation in international traffic of ships or aircraft includes-

(a) Income derived from the rental of ships or aircraft operated in international traffic if such rental income is incidental to other income described in paragraph (1); and

(b) Income derived from the use, maintenance, and lease of containers and other related equipment in connection with the operation in international traffic of ships or aircraft by the resident described in paragraph (1).

ARTICLE 9
Related Persons

(1) Where a person subject to the taxing jurisdiction of one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) Where a redetermination has been made by one Contracting State to the income of one of its residents in accordance with paragraph (1), then the other Contracting State shall, if it agrees with such redetermination, make a corresponding adjustment to the income of a person in such other Contracting State related to such resident. In the event the other Contracting State disagrees with such redetermination, the two Contracting States shall endeavor to reach agreement in accordance with the mutual agreement procedure in paragraph (2)(b) of Article 23 (Mutual Agreement Procedure).

(3) For purposes of this Convention, a person is related to another person if either person owns or controls directly or indirectly the other, or if a third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ARTICLE 10

Dividends

(1) Dividends paid by a corporation of one of the Contracting States to a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by the first-mentioned Contracting State on such dividends shall not exceed 10 percent of the gross amount of the dividend.

(3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, paragraph (6) of Article 7 (Business Profits) shall apply.

ARTICLE 11

Interest

(1) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of 10 percent of the gross amount of such interest.

(3) Notwithstanding paragraphs (1) and (2), interest beneficially derived by (a) one of the Contracting States, or by an instrumentality of that Contracting State, not subject to tax by that Contracting State on its income, or (b) a resident of such Contracting State with respect to indebtedness guaranteed, insured, or indirectly financed by that Contracting State or instrumentality thereof, shall be exempt from tax by the other Contracting State.

(4) Paragraph (2) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, paragraph (6) of Article 7 (Business Profits) shall apply.

(5) Where an amount is paid to a related person which would be treated as interest but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(6) The term "interest" as used in this Convention means income from bonds, Government securities, notes, or other evidences of indebtedness, whether or not secured and whether or not carrying a right to

participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

(7) Interest shall be treated as derived from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence-

(a) If the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, or

(b) If the person paying the interest is a resident of one of the Contracting States and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment,

such interest shall be deemed to be from sources within the State in which the permanent establishment is situated.

ARTICLE 12

Royalties

(1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of 10 percent of the gross amount of cultural royalties or at a rate in excess of 15 percent of the gross amount of industrial royalties.

(3) For purposes of this article-

(a) Cultural royalties are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting;

(b) Industrial royalties are payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill (know-how);

(c) Cultural royalties and industrial royalties include gains derived from the sale, exchange, or other disposition of any such property or rights to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(4) Paragraph (2) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the property or rights giving rise to the royalty is effectively connected with such permanent establishment. In such a case, paragraph (6) of Article 7 (Business Profits) shall apply.

(5) Where an amount is paid to a related person which would be treated as royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(6) Royalties shall be treated as income from sources within a Contracting State only to the extent that such royalties are payments made as consideration for the use of, or the right to use, property or rights described in paragraph (3)(a) and (b) within that Contracting State or gains described in paragraph (3)(c) from the sale, exchange, or other disposition of such property or rights.

ARTICLE 13

Capital Gains

(1) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets (whether acquired by inheritance, gift, or any other manner) unless-

(a) The recipient of the gain, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the property giving rise to the gain is effectively connected with such permanent establishment, or

(b) The recipient of the gain, being an individual who is a resident of one of the Contracting States is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) In the case of gains described in paragraph (1)(a), paragraph (6) of Article 7 (Business Profits) shall apply.

ARTICLE 14

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity may be taxed by that Contracting State.

(2) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity in the other Contracting State may also be taxed by that other Contracting State, but only if the individual-

(a) Is present in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year,

(b) Maintains a permanent establishment in the other Contracting State with which the income is effectively connected, or

(c) Is an entertainer, such as a theater, motion picture, radio or television artist, a musician, or an athlete, and is present in that other Contracting State for a period or periods aggregating more than 90 days in the taxable year or the gross income derived from his personal services as an entertainer in an independent capacity in that other Contracting State exceeds in the aggregate 3,000 United States dollars or its equivalent in Romanian lei during the taxable year.

(3) Paragraph (2)(c) shall not apply to an entertainer described in paragraph (2)(c) who is a resident of one of the Contracting States and who is present in the other Contracting State pursuant to a specific arrangement agreed to by the two Contracting States.

ARTICLE 15

Dependent Personal Services

(1) Except as provided in Article 18 (Governmental Functions), 19 (Teachers), and 20 (Students and Trainees), wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State. Except as provided by paragraphs (2) and (3), such remuneration derived from labor or personal services performed in the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if-

(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year;

(b) He is an employee of a resident of the first-mentioned Contracting State or of a permanent establishment maintained in the first-mentioned Contracting State by a resident of the other Contracting State;

(c) remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State; and

(d) In the case of an entertainer, such as a theater, motion picture, radio or television artist, a musician, or an athlete, he is present in that other Contracting State for a period or periods aggregating less than 90 days in the taxable year and the gross income he derives as an employee in that other Contracting State aggregates less than 3,000 United States dollars or its equivalent in Romanian lei during the taxable year.

(3) Paragraph (2)(d) shall not apply to an entertainer described in paragraph (2)(d) who is a resident of one of the Contracting States and who is present in the other Contracting State pursuant to a specific arrangement agreed to by the two Contracting States.

(4) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

ARTICLE 16

Private Pensions and Annuities

(1) Except as provided in Article 18 (Governmental Functions), pensions and other similar remuneration paid to an individual in consideration of past employment shall be taxable only in the Contracting State of which he is a resident.

(2) Alimony and annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) A resident of one Contracting State who receives child support payments from a resident of the other Contracting State shall be exempt from tax on such payments in both Contracting States.

(4) The term "pensions and other similar remuneration," as used in this article, means periodic payments other than social security payments covered in Article 17 (Social Security Payments) made

- (a) by reason of retirement or death in consideration for services rendered, or
- (b) by way of compensation for injuries received in connection with past employment.

(5) The term "annuities," as used in this article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(6) The term "alimony," as used in this article, means periodic payments made pursuant to a decree of divorce or compulsory support, separate maintenance agreement, or support or separation agreement which is taxable to the recipient under the internal laws of the Contracting State of which he is a resident.

(7) The term "child support payments," as used in this article, means periodic payments for the support of a minor child made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

ARTICLE 17

Social Security Payments

Social security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State shall be exempt from tax in both Contracting States. This article shall not apply to payments described in Article 18 (Governmental Functions).

ARTICLE 18

Governmental Functions

Wages, salaries, and similar remuneration, including annuities or similar benefits, paid from public funds of one of the Contracting States to a citizen of that Contracting State for labor or personal services performed as an employee of the national government of that Contracting State, or any agency thereof, in the discharge of functions of a governmental nature shall be exempt from tax by the other Contracting State. Labor or personal services performed by a citizen of one of the Contracting States shall be treated by the other Contracting State as performed in the discharge of governmental functions if such labor or personal services would be treated under the internal laws of both Contracting States as so performed.

ARTICLE 19

Teachers

(1) Where a resident of one of the Contracting States is invited by the Government of the other Contracting State, a political subdivision, or a local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed 2 years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university for a period not exceeding 2 years from the date of his arrival in that other Contracting State.

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

ARTICLE 20

Students and Trainees

- (1) (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of-

(i) Studying at a university or other recognized educational institution in that other Contracting State, or
(ii) Securing training required to qualify him to practice a profession or professional specialty, or
(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization, shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) are-

(i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(ii) The grant, allowance, or award; and

(iii) Income from personal services performed in that other Contracting State in an amount not in excess of 2,000 United States dollars or its equivalent in Romanian lei for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a research of the first-mentioned Contracting State, for the primary purpose of-

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or

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

shall be exempt from tax by that other Contracting State on his income from personal services for a period not exceeding 1 year and only in an amount not exceeding in the aggregate 5,000 United States dollars or its equivalent in Romanian lei.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Romanian lei.

(4) The benefits provided under Article 19 (Teachers) and paragraph (1) of this article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits; as may reasonably or customarily be required to effectuate the purpose of the visit. The benefits provided under Article 19 (Teachers) shall not be

available to an individual if, during the immediately preceding period, such individual enjoyed the benefits of paragraph (1) of this article.

ARTICLE 21
Relief from Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of Romania (as it may be amended from time to time without changing the general principles hereof), Romania shall allow to a citizen or resident of Romania as a credit against Romanian tax the appropriate amount of income taxes paid to the United States. Such appropriate amount shall be based upon the amount of tax paid to the United States but shall not exceed the portion of Romanian tax which such citizen's or resident's net income from sources within the United States bears to his entire net income for the same taxable year.

(2) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principles hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid to Romania. Such appropriate amount shall be based upon the amount of tax paid to Romania, but the credit shall not exceed the portion of United States tax which such citizen's or resident's net income from sources within Romania or on income from sources outside of the United States bears to his entire net income for the same taxable year. For purposes of applying the United States credit in relation to taxes paid to Romania, the taxes referred to in paragraph (1)(a) of Article 1 (Taxes Covered) shall be considered to be income taxes.

ARTICLE 22
Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A citizen of one of the Contracting States who is a resident of the other Contracting State or a permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than are generally imposed in that other Contracting State or citizens or permanent establishments of residents of third States carrying on the same activities. However, this paragraph shall not require a Contracting State to grant to citizens or permanent establishments of residents of the other Contracting State tax benefits granted by special agreements to citizens or permanent establishments of a third State.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected with taxation which is other or more burdensome than the taxation and requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly or partly owned or controlled by one or more residents of a third State, is or may be subjected.

However, this paragraph shall not require a Contracting State to grant to corporations which are wholly or partly owned by residents of the other Contracting State tax benefits granted by special agreements to corporations which are wholly or partly owned by residents of a third State.

ARTICLE 23

Mutual Agreement Procedure

Where a resident of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of Contracting State of which he is a resident or a citizen. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with the provisions of this Convention.

(2) The competent authorities of Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree-

- (a) To the same attribution of industrial or commercial profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;
- (b) To the same allocation of income, deductions, credits, or allowances between a resident of one of the Contracting States and any related person and to the readjustment of taxes imposed by each Contracting State to reflect such allocation;
- (c) To the same determination of the source of particular items of income; or
- (d) To the same characterization of particular items of income.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income, and refund or credit of taxes shall be allowed, by the Contracting States in accordance with such agreement.

ARTICLE 24
Exchange of Information

(1) The competent authorities shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions concerning taxes to which this Convention applies provided the information is of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

- (2) Any information so exchanged shall be treated as secret, except that such information may be-
- (a) Disclosed to any person charged with the assessment, collection, or enforcement of, or litigation with respect to, the taxes to which this Convention applies, or
 - (b) Made part of a public record with respect to the assessment, collection, or enforcement of, or litigation with respect to, the taxes to which this Convention applies.

(3) No information shall be exchanged which would be contrary to public policy.

(4) If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this article in the form of depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings) to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(5) Depositions and evidence which may be furnished in accordance with this article shall not be withheld by reason of any doctrine of law under which international judicial assistance is not accorded in tax matters.

(6) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

ARTICLE 25
Members of Diplomatic Missions and Consular Offices

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular offices under the general rules and norms of international law or under the provisions of special agreements.

ARTICLE 26
Assistance in Collection

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this article be construed so as to impose upon a Contracting State the obligations to carry out measures at variance with the laws or administrative practices of either Contracting State with respect to the collection of its own taxes.

ARTICLE 27
Entry into Force

This Convention shall be subject to ratification and instruments of ratification shall be exchanged at Bucharest as soon as possible. It shall enter into force 1-month after the date of exchange of the instruments of ratification. The provisions shall for the first time have effect with respect to income of calendar years or taxable years beginning (or in the case of taxes payable at the source, payments made) on or after January 1, 1974.

ARTICLE 28
Termination

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that notice of termination has been given through diplomatic channels at least 6-months prior to the end of the calendar year. In such event, the Convention shall cease to have force and effect as respects income of calendar years or taxable years beginning (or, in the case of taxes payable at the source, payments made) on or after January 1, next following the expiration of the 6-month period.

(2) Notwithstanding the provisions of paragraph (1) and upon prior notice to be given through diplomatic channels, the provisions of Article 17 (Social Security Payments) may be terminated by either Contracting State at any time after this Convention enters into force.

DONE at Washington, in duplicate, in the English and Romanian languages, the two texts having equal authenticity, this *fourth* day of *December*, 1973.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF ROMANIA

(s) George P. Schultz.

(s) Manea Manescu