



Double Taxation Avoidance Agreement between Finland and Vietnam

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DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST
REPUBLIC OF VIETNAM AND THE GOVERNMENT OF THE REPUBLIC
OF FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME**

**The Government of the Socialist REPUBLIC of Vietnam and the Government of
the Republic of Finland,**

Desiring to conclude an Agreement for the avoidance of double taxation and the
prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

**ARTICLE 1
PERSONS COVERED**

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 imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, 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:
 - a. in Vietnam:
 - (i) the personal income tax;
 - (ii) the profit tax; and
 - (iii) the profit remittance tax;
(hereinafter referred to as "Vietnamese tax");
 - b. in Finland:
 - (i) the state income taxes;
 - (ii) the corporate income tax;
 - (iii) the communal tax;
 - (iv) the tax withheld at source from interest; and
 - (v) the tax withheld at source from non-residents' income;
(hereinafter referred to as "Finnish 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 any 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 “Vietnam” means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea, and any area beyond and adjacent to its territorial sea, within which Vietnam by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the sea bed and its sub-soil and superjacent waters;
 - b. the term “Finland” means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;
 - c. the terms “a Contracting State” and “the other Contracting State” mean Vietnam or Finland, as the context requires;
 - d. the term “person” includes an individual, a company and any other body of persons;
 - e. the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f. 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;
 - g. 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;
 - h. the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i. the term “competent authority” means:
 - (i) in Vietnam, the Minister of Finance or his authorised representative;
 - (ii) in Finland, the Ministry of Finance, its authorised representative or the authority which, by the Ministry of Finance, is designated as competent authority.
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 purposes 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 RESIDENCE

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, place of management, place of incorporation (registration) or any other criterion of a similar nature, and also includes that State and any statutory body or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 only 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 only 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 State in which he has an habitual abode;

c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident 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 State 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, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Agreement to such person.

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;

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

g. an installation structure or equipment used for the exploration of natural resources but only where such use continues for a period more than 30 days.

3. The term “permanent establishment” likewise encompasses:

a. a building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

b. the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the territory of the other Contracting State for a period or periods aggregating more than six months within any twelve-month period.

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 occasional 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 occasional 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 7 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 State in respect of any activities which that person undertakes for the enterprise, if such person:

- a. has, and habitually exercises, in the first-mentioned 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.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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. a. The term “immovable property” shall, subject to the provisions of sub-paragraphs b) and c), have the meaning which it has under the law of the Contracting State in which the property in question is situated;
b. The term “immovable property” shall in any case include buildings, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources;
c. 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.
5. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent 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 profit of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - a. that permanent establishment;
 - b. sales to that other State of goods or merchandise of the same similar kind as those sold through that permanent establishment; or
 - c. other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

The provisions of sub-paragraphs b) and c) shall not apply if the enterprise shows that such similar sales or activities referred to in those sub-paragraphs are not related 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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Like wise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (other than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be apportionment such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. 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 AND AIR TRANSPORT

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

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

ARTICLE 9

ASSOCIATED ENTERPRISES

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.

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. 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls directly at least 70 per cent of the capital in the company paying the dividends;
 - b. 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds less than 70 per cent but at least 25 per cent of the capital of the company paying the dividends;
 - c. 15 per cent of the gross amount of the dividends in all other cases.
3. Notwithstanding the provisions of paragraphs 1 and 2, as long as an individual resident in Finland is under Finnish tax law entitled to a tax credit in respect of dividends paid by a company resident in Finland, dividends paid by a company which is a resident of Finland to a resident of Vietnam shall be taxable only in Vietnam if the beneficial owner of the dividends is a resident of Vietnam.
4. The provisions of paragraphs 1, 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term "dividends" as used in this Article means income from 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.
6. The provisions of paragraphs 1, 2 and 3 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 performs in that other State independent personal services from a fixed base situated therein, 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.

7. 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.

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 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

a. interest arising in Vietnam shall be taxable only in Finland if the interest is paid to:

(i) the State of Finland, or a local authority or a statutory body thereof;

(ii) the Bank of Finland;

(iii) the Finnish Fund for Industrial Co-operation Ltd (FINNFUND), or any other similar institution as may be agreed from time to time between the competent authorities of the Contracting States;

(iv) any resident of Finland in respect of a government supported loan or credit which is governed by internationally accepted guidelines for officially supported credits;

b. interest arising in Finland shall be taxable only in Vietnam if the interest is paid to:

(i) the State of Vietnam, or a local authority or a statutory body thereof;

(ii) the State Bank of Vietnam;

(iii) any other institution similar to those mentioned in subdivisions (i) and (ii) the capital of which is wholly owned by the State of Vietnam, or a local authority or a statutory body thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States.

4. 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, including premiums and prizes attaching to such securities, bonds or debentures. Penalties charges for late payment shall not be regarded as interest for the purpose of this Article.

5. 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 performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with a) such permanent establishment or fixed base, or with b)

business activities referred to in sub-paragraph c) of paragraph 1 of Article. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

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 or 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 received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes used for radio or television broadcasting, any computer software, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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 performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with a) such permanent establishment or fixed base, or with b) business activities referred to in sub-paragraph c) of paragraph 1 of Article 7. 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 where 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed

base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 GAINS FROM THE ALIENATION OF PROPERTY

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights in a company where more than one-half of the assets of the company consists of immovable property situated in the other Contracting State may be taxed in that other State.

3. 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.

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

5. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights, other than those referred to in paragraph 2, in a company which is a resident of the other Contracting State may be taxed in that other State, where the shares or other corporate rights alienated represent at least 15 per cent of the capital of the company.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

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 unless he has a fixed base regularly available to him in the other Contracting

State for the purpose of performing his activities, or he is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the calendar year concerned. If:

a. he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base;

b. he is so present, the income may be taxed in that other State but only so much of it as is derived from his activities performed in that other State during such period or periods.

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

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 within 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 or aircraft 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 or any other similar organ 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 theater, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, 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. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State by an entertainer or sportsman if the visit to that State is wholly or almost wholly supported by public funds of the other Contracting State or a local authority thereof. In such case, the income shall be taxable in accordance with the provisions of Article 7, Article 14 or Article 15, as the case may be.

Article 18
**PENSIONS, ANNUITIES AND
SIMILAR PAYMENTS**

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, and subject to the provisions of paragraph 2 of Article 19, pensions paid and other benefits, whether periodic or lump-sum compensation, awarded under the social security legislation of a Contracting State or under any public scheme organised by a Contracting State for social welfare purposes, or any annuity arising in a Contracting State, may be taxed in that State.
3. The term “annuity” as used in this Article means a stated sum payable periodically to an individual at stated times during his life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth (other than services rendered).

Article 19
GOVERNMENT SERVICE

1. a. Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body 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 statutory body or a local authority thereof to an individual in respect of services rendered to that State or body 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, 17 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 statutory body or a local authority thereof.

Article 20

STUDENTS, APPRENTICES AND TRAINEES

1. Payments which a student, or an apprentice or business, technical, agricultural or forestry trainee, 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. A student at a university or other institution for higher education in a Contracting State, or an apprentice or business, technical, agricultural or forestry trainee, who is or was immediately before visiting the other Contracting State a resident of the first-mentioned State and who is present in the other Contracting State for a continuous period not exceeding 183 days, shall not be taxed in that other State in respect of remuneration for services rendered in that State, provided that the services are in connection with his studies or training and the remuneration constitutes earnings necessary for his maintenance.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State. However, such items of income arising in the other Contracting State may also be taxed in that other 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
ELIMINATION OF DOUBLE
TAXATION

1. In Vietnam, double taxation shall be eliminated as follows:

Where a resident of Vietnam derives income, profits or gains which under the law of Finland and in accordance with this Agreement may be taxed in Finland, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in Finland. The amount of credit, however, shall not exceed the amount of Vietnamese tax on that income, profits or gains, as computed before the deduction is given, in accordance with the taxation laws and regulations of Vietnam.

2. Subject to the provisions of Finnish law regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Finland as follows:

a. Where a resident of Finland derives income which, in accordance with the provisions of the Agreement, may be taxed in Vietnam, Finland shall, subject to the provisions of sub-paragraph b), allow as a deduction from the Finnish tax of that person, an amount equal to Vietnamese tax paid under Vietnamese law and in accordance with the Agreement, as computed by reference to the same income by reference to which the Finnish tax is computed.

b. Dividends paid by a company being a resident of Vietnam to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

c. Where in accordance with any provision of the Agreement income derived by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on the remaining income of such person, take into account the exempted income.

d. For the purposes of sub-paragraph a), the term “Vietnamese tax paid” shall be deemed to include any amount which would have been payable as Vietnamese tax, in accordance with the provisions of the Agreement, for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under:

(i) Articles 38, 39, 43, 44 and 48 of the Law on Foreign Investment in Vietnam 1996 (as amended from time to time without affecting the general principle thereof), or

(ii) any other provision which may be enacted after the date of signature of the Agreement granting an exemption from, or reduction of, tax which is agreed by the competent authorities of the Contracting States to be of substantially similar character (as amended from time to time without affecting the general principle thereof).

e. For the purposes of sub-paragraph a), the term “Vietnamese tax paid” means, in the case of interest dealt with in Article 11 and not exempt from tax under the provisions of paragraph 3 of that Article in Vietnam (being interest paid to a company which is a resident of Finland, other than a bank or financial institution or any company in respect of a financial transaction), or, in the case of royalties dealt with in Article 12, an amount equal to 10 per cent of the gross amount of the interest or royalties. Where, however, the general rate of tax under Vietnamese law applicable to the payment of interest or royalties derived by persons not being residents of Vietnam is lower than 5 per cent of the gross amount of that payment, or where no tax on such payment is imposed under Vietnamese tax law, the amount of Vietnamese tax law, the amount of

Vietnamese tax referred to in the preceding sentence shall be an amount equal to 7 per cent of the gross amount of that payment.

f. The provisions of sub-paragraph d) shall apply only, where the tax that would have been paid but for the provisions granting the exemption from, or reduction of, tax relates to profits not being profits from banking or other financial activities and where no more than 25 per cent of the profits referred to in that sub-paragraph consist of interest and gains from the alienation of shares or bonds or consist of profits derived from third states.

g. The provisions of sub-paragraphs d) and e) shall apply for the first ten years for which the Agreement is effective. However, the competent authorities of the Contracting States may consult each other in order to determine whether such period shall be extended.

Article 23 **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.

2. 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. Where the information available to the tax authority concerned in a Contracting State is inadequate to determine the profits to be attributed to a permanent establishment of an enterprise of the other Contracting State situated in the first-mentioned State or where information to determine such profits is not available to that authority, such profits may be determined in the Contracting State in which the permanent establishment is situated by the exercise of discretion or the making of an estimate by that authority, in accordance with the tax laws and the administrative practice of the last-mentioned State, provided that such discretion shall be exercised or such estimate shall be made so that the result shall be in accordance with the principles contained in Article 7.

3. Except where the provisions of Article 9 apply, disbursements (other than interest referred to in Article 11 or royalties referred to in Article 12) 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.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith 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.

5. The provisions of paragraphs 2 and 4 shall not apply to the Vietnamese profit remittance tax which in any case shall not exceed 10 per cent of the gross amount of

profit remitted, and to the Vietnamese taxation under the Law on Agriculture Land-Use Tax.

6. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

7. Notwithstanding the provisions of this Article, for so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subjected, the imposition of such taxation shall not be regarded as breaching the terms of paragraphs 2 and 4.

8. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of a Contracting State considers that the actions 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 that person is a resident. 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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 25

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, in particular for the prevention of fraud or evasion of such taxes. 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) concerned with 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.

Article 26

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 27

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.
2. This Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:
 - a. in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;
 - b. in respect of other taxes on income, for taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.

Article 28

TERMINATION

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

following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

a. in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given;

b. in respect of other taxes on income, for taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

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

DONE in duplicate at Helsinki this 21 day of November of the year 2001 in the Vietnamese, Finnish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF
VIET NAM
(signed)

FOR THE GOVERNMENT OF
THE REPUBLIC OF
FINLAND
(signed)