

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
FOR
THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES
ON INCOME**

The Government of the United States of America and the Government of the Socialist Republic of Viet Nam,

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 AND GENERAL SCOPE

1. This Agreement shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Agreement.
2. This Agreement shall not restrict in any manner any benefit now or hereafter accorded:
 - (a) by the laws of either Contracting State; or
 - (b) by any other agreement to which the Contracting States are parties.
3. (a) Notwithstanding the provisions of subparagraph (b) of paragraph 2 of this Article:
 - (i) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Agreement and, in particular, whether a taxation measure is within the scope of this Agreement, shall be determined exclusively in accordance with the provisions of Article 26 (Mutual Agreement Procedure) of this Agreement; and
 - (ii) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 25 (Non-Discrimination) of this Agreement.
- (b) For the purposes of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
4. Except to the extent provided in paragraph 5, this Agreement shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 (Resident)) and its citizens. Notwithstanding the other

provisions of this Agreement, a former citizen or former long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State.

5. The provisions of paragraph 4 shall not affect:
 - (a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 1(b), 2, and 5 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support), paragraphs 1 and 2 of Article 19 (Pension Funds), and Articles 24 (Methods for Elimination of Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and
 - (b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students and Apprentices), and 28 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have been admitted for permanent residence in that State.
6. An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State 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 property.
3. The existing taxes to which this Agreement shall apply are:
 - (a) in the case of Viet Nam:
 - (i) the personal income tax; and
 - (ii) the business income tax;
 - (b) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security and

unemployment taxes), and the Federal taxes imposed on the investment income of foreign private foundations.

4. This Agreement shall also apply to any identical or substantially similar taxes that 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 changes that have been made in their respective taxation or other laws that significantly affect their obligations under this Agreement.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "Viet Nam" means the Socialist Republic of Viet Nam; when used in a geographical sense, it means its land territory, including islands, and internal waters, territorial sea and airspace above them, and the maritime areas beyond the territorial sea including seabed and subsoil thereof, over which the Socialist Republic of Viet Nam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law;
 - (b) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and any maritime areas beyond the territorial sea within which the United States may exercise sovereign rights or jurisdiction in accordance with international law; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Viet Nam or the United States as the context requires;
 - (d) the term "person" includes an individual, an estate, a trust, a partnership, 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 according to the laws of the state in which it is organized;
 - (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” of a Contracting State means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; or
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that 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 such transport is solely between places in the other Contracting State;
- (i) the term “competent authority” means:
 - (i) in Viet Nam, the Minister of Finance or his authorized representative;
 - (ii) in the United States, the Secretary of the Treasury or his delegate; and
- (j) the term “pension fund” means any person established in a Contracting State that is:
 - (i) generally exempt from income taxation in that Contracting State; and
 - (ii) substantially all of the activity of which is either:
 - (A) to administer or provide pension or retirement benefits; or
 - (B) to earn income for the benefit of one or more persons established in the same Contracting State that are generally exempt from income taxation in that Contracting State and substantially all of the activity of which is to administer or provide pension or retirement benefits.

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, or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), 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 Contracting State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, place of registration, place of management, or any other criterion of a similar nature and also includes that Contracting State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State or of profits attributable to a permanent establishment in that Contracting State.
2. The term "resident of a Contracting State" includes:
 - (a) a pension fund established in that Contracting State; and
 - (b) an organization that is established and maintained in that Contracting State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes,notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that Contracting State.
3. 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (center of vital interests);
 - (b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has a habitual abode;
 - (c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;

- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.
- 4. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is constituted or organized under the laws of one of the Contracting States or a political subdivision thereof, but not under the laws of the other Contracting State or a political subdivision thereof, such company shall be deemed to be a resident only of the first-mentioned Contracting State. In all other cases involving a dual resident company, the company shall not be treated as a resident of either Contracting State for purposes of its claiming any benefits provided by the Agreement.
- 5. Where by reason of the provisions of paragraphs 1 and 2 of this Article a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to determine the mode of application of this Agreement to that 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; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- 3. The term "permanent establishment" likewise encompasses:
 - (a) a building site, construction, exploration, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months; and

- (b) the furnishing of services, including consultancy services, in a Contracting State by an enterprise of the other Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the first-mentioned 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 delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
 - (f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) through (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has and habitually exercises in that Contracting 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 that, 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.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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 as independent agents. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he shall not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other Contracting 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 (REAL PROPERTY)

1. Income derived by a resident of a Contracting State from immovable property (real property) (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property (real property)" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property (real property), (including livestock and equipment used in agriculture and forestry), rights to which the provisions of general law respecting landed property apply, usufruct of immovable property (real property) and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property (real 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 (real property).

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property (real property) of an enterprise and to income from immovable property (real 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 Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as are attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits that 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 that are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
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 such that the result shall be in accordance with the principles contained in this Article.
5. For the purposes 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.

6. Where profits include items of income that 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.
7. In applying this Article, paragraph 5 of Article 10 (Dividends), paragraph 6 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains from the Alienation of Property) and paragraph 2 of Article 22 (Other Income), any income or gain attributable to a permanent establishment during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

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. For purposes of this Article, profits from the operation of ships or aircraft in international traffic include:
 - (a) profits from the rental of ships or aircraft on a full (time or voyage) basis in international traffic;
 - (b) profits from the rental on a bareboat basis of ships or aircraft in international traffic if the rental income is incidental to profits from the operation of ships or aircraft in international traffic.
3. 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

1. Where
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those that would be made between independent enterprises, then any profits that, but for those conditions, would have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

- 2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

- 1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:
 - (a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns:
 - (i) directly at least 25 percent of the voting stock of the company paying the dividends, if such company is a resident of the United States; or

(ii) directly at least 25 percent of the capital of the company paying the dividends, if such company is a resident of Viet Nam;

(b) 15 percent of the gross amount of the dividends in all other cases.

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

3. (a) Subparagraph (a) of paragraph 2 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a U.S. Real Estate Investment Trust (REIT) or a Vietnamese Real Estate Investment Fund (VREIF). In the case of dividends paid by a RIC, subparagraph (b) of paragraph 2 shall apply. In the case of dividends paid by a REIT or a VREIF, subparagraph (b) of paragraph 2 shall apply only if:

(i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT or the VREIF;

(ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock or the VREIF's stock; or

(iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT or the VREIF and the REIT or the VREIF is diversified.

(b) For purposes of this paragraph, a REIT or a VREIF shall be "diversified" if the value of no single interest in immovable property (real property) exceeds 10 percent of its total interests in immovable property (real property). For the purposes of this rule, foreclosure property shall not be considered an interest in immovable property (real property). Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in immovable property (real property) corresponding to its interest in the partnership.

4. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as other income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 through 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 Contracting 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, except as provided in paragraph 7, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.
7. (a) A company that is a resident of one of the Contracting States and that has a permanent establishment in the other State or that is subject to tax in the other Contracting State on a net basis on its income that may be taxed in the other Contracting State under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Gains from the Alienation of Property) may be subject in that other Contracting State to a tax in addition to the tax allowable under the other provisions of this Agreement.
 - (b) Such tax, however, may be imposed:
 - (i) on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income referred to in subparagraph (a) that is subject to tax under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Gains from the Alienation of Property) that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of Viet Nam, is an amount that is analogous to the dividend equivalent amount; and
 - (ii) at a rate not in excess of the rate specified in paragraph 2(a).

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 Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting 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 percent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest described in paragraph 1 shall be taxable only in the Contracting State in which the recipient is a resident if the beneficial owner of the interest is a resident of that Contracting State, and the interest is paid by the Contracting State in which the interest arises or by the central bank, a political subdivision or a local authority thereof.
4. Notwithstanding the provisions of paragraph 2:
 - (a) interest arising in a Contracting State that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the beneficial owner is a resident of the other Contracting State, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest; and
 - (b) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each Contracting State in accordance with its domestic law.
5. 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 or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in

Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

6. The provisions of paragraphs 1 through 4 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 Contracting 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 such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or entity thereof, a local authority or 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 Contracting State in which the permanent establishment or fixed base is situated.
8. 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.
9. The excess, if any, of the amount of interest allocable to the profits of a company resident in a Contracting State that are:
 - (a) attributable to a permanent establishment in the other Contracting State (including gains under paragraph 3 of Article 13 (Gains from the Alienation of Property)); or
 - (b) subject to tax in the other Contracting State under Article 6 (Income from Immovable Property (Real Property)) or paragraph 1 of Article 13 (Gains from the Alienation of Property),over the interest paid by that permanent establishment, or in the case of profits subject to tax under Article 6 (Income from Immovable Property

(Real Property)) or paragraph 1 of Article 13 (Gains from the Alienation of Property), over the interest paid by that company shall be deemed to arise in that other Contracting State and be beneficially owned by a resident of the first-mentioned Contracting State. The tax imposed under this Article on such interest shall not exceed the rate provided in paragraph 2.

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 Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 5 percent of the gross amount of the royalties described in subparagraph (a) of paragraph 3;
 - (b) 10 percent of the gross amount of the royalties described in subparagraph (b) of paragraph 3.
3. The term "royalties" as used in this Article means:
 - (a) payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment. Notwithstanding the preceding sentence, the term "royalties" shall not include the following payments to which the provisions of Article 7 (Business Profits) shall apply:
 - (i) payments for the rental on a bareboat basis of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee; or
 - (ii) payments for the use, maintenance or rental of containers (including trailers, barges, and related equipment for the transport of containers), except to the extent that those containers are used for transport solely between places within the other Contracting State;
 - (b) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including cinematographic films, films or tapes used for radio or

television broadcasting), any patent, trademark, design or model, plan, secret formula or process.

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 Contracting 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 such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or entity thereof, a local authority or a resident of that Contracting 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 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 Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

GAINS FROM THE ALIENATION OF PROPERTY

1. Gains derived by a resident of a Contracting State from the alienation of immovable property (real property) referred to in Article 6 (Income from Immovable Property (Real Property)) and situated in the other Contracting State may be taxed in that other Contracting State.

2. In addition to paragraph 1:
 - (a) gains from the alienation of a United States real property interest may be taxed in the United States; and
 - (b) gains from the alienation of shares of capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consist directly or indirectly principally of immovable property (real property) situated in Viet Nam may be taxed in Viet Nam. For the purposes of this subparagraph (b), "principally" in relation to ownership of immovable property (real property) means the value of such immovable property (real property) exceeding 30 percent of the aggregate value of all assets owned by the company, partnership, trust or estate.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment that 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 Contracting State.
4. Gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in the following circumstances, when such income may also be taxed in the other Contracting State:
 - (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that

case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

- (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the taxable year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.
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 (Directors' Fees), 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) and 20 (Government Service), 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 Contracting 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 Contracting State if:
 - (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned,
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an

enterprise of a Contracting State in international traffic shall be taxable only in that Contracting State.

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), 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 Contracting State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed five thousand United States dollars (\$5,000) or its equivalent in Viet Nam Dong for the taxable year of the payment.
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 14 (Independent Personal Services) and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised unless that other person or the entertainer or sportsman establishes that neither the entertainer or sportsman nor any person related thereto participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsmen who are residents of a Contracting State from activities in the other Contracting State under a plan of cultural exchange

between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

ARTICLE 18

PENSIONS, SOCIAL SECURITY, ANNUITIES, ALIMONY, AND CHILD SUPPORT

1. (a) Subject to the provisions of paragraph 2 of Article 20 (Government Service), pensions and other similar remuneration beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.
(b) Notwithstanding subparagraph (a), the amount of any such pension or remuneration arising in a Contracting State that, when received, would be exempt from taxation in that Contracting State if the beneficial owner were a resident thereof shall be exempt from taxation in the Contracting State of which the beneficial owner is a resident.
2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation or under a public pension scheme of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned Contracting State.
3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that Contracting State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).
4. Alimony paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the Contracting State of which the recipient is a resident.
5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a

Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 19
PENSION FUNDS

1. Where an individual who is a resident of a Contracting State is a member or beneficiary of, or participant in, a pension fund established in the other Contracting State, income earned by the pension fund may be taxed as income of that individual only when, and, subject to paragraph 1 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) of this Agreement, to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other Contracting State in a transfer that qualifies as a tax-deferred transfer under the laws of that other Contracting State).
2. Where a citizen of the United States who is a resident of Viet Nam is a member or beneficiary of, or participant in, a pension fund established in Viet Nam, the United States may tax the income earned by the pension fund only when, and, subject to paragraph 1 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) of this Agreement, to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in Viet Nam in a transfer that qualifies as a tax-deferred transfer as may apply under the laws of Viet Nam).

ARTICLE 20
GOVERNMENT SERVICE

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Entertainers and Sportsmen), and 21 (Students and Apprentices):
 - (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting 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 Contracting State and the individual is a resident of that Contracting State who:

- (i) is a national of that Contracting State; or
 - (ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support):
- (a) Pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority (other than a payment to which paragraph 2 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) applies) shall, subject to the provisions of subparagraph (b) of this paragraph, be taxable only in that Contracting State;
 - (b) Such pensions or other similar remuneration, however, shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Entertainers and Sportsmen) and 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) shall apply to salaries, wages, and other similar remuneration and to pensions and other similar remuneration, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

STUDENTS AND APPRENTICES

1. Payments, other than compensation for personal services, that a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or for his training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided such payments arise from sources outside that Contracting State. The exemption from tax provided by this paragraph shall apply to a business apprentice only for a period of time not exceeding two year(s)

from the date the business apprentice first arrives in the first-mentioned Contracting State for the purpose of training.

2. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), a student or business apprentice within the meaning of paragraph 1 shall be exempt from tax by the Contracting State in which the individual is temporarily present with respect to income from personal services in an aggregate amount equal to ten thousand United States dollars (\$10,000) or its equivalent in Viet Nam Dong annually. The competent authorities shall, every five years, adjust the amount provided in this subparagraph to the extent necessary to take into account changes in the U.S. personal exemption and the standard deduction.
3. For purposes of this Article, a business apprentice is an individual:
 - (a) who is temporarily in a Contracting State for the purpose of securing training required to qualify the individual to practice a profession or professional specialty; or
 - (b) who is temporarily in a Contracting State as an employee of, or under contract with, a resident of the other Contracting State, for the primary purpose of acquiring technical, professional, or business experience from a person other than that resident of the other Contracting State (or a person related to such resident of the other Contracting State).

ARTICLE 22

OTHER INCOME

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to the income, other than income from immovable property (real property) as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

ARTICLE 23

LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Agreement otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2.
2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:
 - (a) an individual;
 - (b) a Contracting State, or a political subdivision or local authority thereof;
 - (c) a company, if:
 - (i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:
 - (A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or
 - (B) the company's primary place of management and control is in the Contracting State of which it is a resident; or
 - (ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
 - (d) a person described in paragraph 2 of Article 4 (Resident) of this Agreement, provided that, in the case of a person described in clause

(A) of clause (ii) of subparagraph (j) of paragraph 1 of Article 3 (General Definitions), more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

(e) a person other than an individual, if:

(i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Agreement under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and

(ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's Contracting State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Agreement under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Agreement in the person's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. (a) A resident of a Contracting State shall be entitled to benefits of the Agreement with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

(b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other

Contracting State from a related person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or related person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

- (c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.
- 4. If a resident of a Contracting State is neither a qualified person pursuant to paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article, the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Agreement, or benefits with respect to a specific item of income, if such resident demonstrates that its establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Agreement.
 - 5. For purposes of this Article:
 - (a) the term "recognized stock exchange" means:
 - (i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
 - (ii) the Hanoi Stock Exchange (HNX) and the Ho Chi Minh City Stock Exchange (HOSE); and

- (iii) any other stock exchange agreed upon by the competent authorities;
 - (b) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;
 - (c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company; and
 - (d) a company's "primary place of management and control" shall be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that Contracting State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that Contracting State than in any other state.
6. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Agreement shall not apply to that income if the profits of that permanent establishment are subject to a combined aggregate effective rate of tax in the first-mentioned Contracting State and third state that is less than 60 percent of the general rate of company tax applicable in the first-mentioned Contracting State. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other

provision of the Agreement. The provisions of this paragraph shall not apply if:

- (a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or
- (b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

ARTICLE 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the case of Viet Nam, double taxation shall be eliminated as follows:
 - (a) Where a resident of Viet Nam derives income, profits or gains which under the law of the United States and in accordance with this Agreement may be taxed in the United States, Viet Nam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid to the United States. The amount of credit, however, shall not exceed the amount of the Vietnamese tax on that income, profits or gains computed in accordance with the taxation laws and regulations of Viet Nam.
 - (b) In the case of a Vietnamese company owning at least 10 percent of the voting stock of a company that is a resident of the United States and from which the Vietnamese company receives dividends, Viet Nam shall allow as a credit against its tax on the income an amount equal to the tax paid to the United States by or on behalf of the payer with respect to the profits out of which the dividends are paid.
 - (c) Where a resident of Viet Nam derives income, profits or gains that, in accordance with any provision of the Agreement, is taxable only in the United States, Viet Nam may nevertheless, in calculating the amount of tax on the remaining income, profits or gains of such resident in Viet Nam, take into account the exempted income.
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 principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:

- (a) the income tax paid or accrued to Viet Nam by or on behalf of such resident or citizen; and
- (b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of Viet Nam and from which the United States company receives dividends, the income tax paid or accrued to Viet Nam by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.

- 3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that, under this Agreement, may be taxed in Viet Nam shall be deemed to be income from sources in Viet Nam.
- 4. Where a United States citizen is a resident of Viet Nam:
 - (a) with respect to items of income that under the provisions of this Agreement are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Viet Nam who is not a United States citizen, Viet Nam shall allow as a credit against Vietnamese tax, only the tax paid, if any, that the United States may impose under the provisions of this Agreement, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (Persons Covered and General Scope);
 - (b) for purposes of applying paragraph 2 to compute United States tax on those items of income referred to in subparagraph (a), the United States shall allow as a credit against United States tax the income tax paid to Viet Nam after the credit referred to in subparagraph (a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Vietnamese tax in accordance with subparagraph (a); and
 - (c) for the exclusive purpose of relieving double taxation in the United States under subparagraph (b), items of income referred to in subparagraph (a) shall be deemed to arise in Viet Nam to the extent necessary to avoid double taxation of such income under subparagraph (b).

ARTICLE 25

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 that is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.
3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Contracting 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 Contracting State to any taxation or any requirement connected therewith that is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.
5. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that Contracting State any of the personal allowances, reliefs and reductions for tax purposes due to civil obligations or family duties granted by that Contracting State to its residents.

6. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 7 of Article 10 (Dividends) and paragraph 9 of Article 11 (Interest).
7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for such person in taxation not in accordance with the provisions of this Agreement, such person may, irrespective of the remedies provided by the domestic law of those Contracting States, and the time limits prescribed in such laws for presenting claims for refunds, present its case to the competent authority of the Contracting State of which that person is a resident or, if his case comes under paragraph 1 of Article 25 (Non-Discrimination), to the competent authority of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor 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 also may agree to adjust any specific monetary threshold as referred to in the Agreement to reflect economic or monetary developments.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes of every kind and description imposed by the Contracting States insofar as the taxation thereunder is not contrary to the Agreement, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes. The exchange of information is not restricted by paragraph 1 of Article 1 (Persons Covered and General Scope) or Article 2 (Taxes Covered).
2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection, or administration of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to above, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information that 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 that 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.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information requested by the other Contracting State because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interest in a person.
6. 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 and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the extent such depositions and documents can be obtained under the laws and administrative practice of such other Contracting State with respect to its own taxes.
7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Agreement from taxation imposed by that other Contracting State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.

ARTICLE 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 29

ENTRY INTO FORCE

1. This Agreement shall be subject to ratification or approval in accordance

with the applicable procedures of Viet Nam and the United States. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

2. The Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article. The provisions of this Agreement shall have effect:
 - (a) with respect to taxes withheld at source on amounts paid or credited on or after the first day of January of the year immediately following the year in which this Agreement enters into force; and
 - (b) with respect to other taxes:
 - (i) in Viet Nam, for taxable years beginning on or after the first day of January of the year immediately following the year in which this Agreement enters into force;
 - (ii) in the United States, for taxable periods beginning on or after the first day of January of the year immediately following the year in which this Agreement enters into force.
3. Notwithstanding paragraph 2 of this Article, the provisions of Article 27 (Exchange of Information and Administrative Assistance) shall have effect from the date of entry into force of this Agreement, without regard to:
 - (i) in Viet Nam, the taxable year to which the matter relates;
 - (ii) in the United States, the taxable period to which the matter relates.

ARTICLE 30

TERMINATION

1. This Agreement shall remain in force for a period of at least five years from the date of its entry into force, and shall continue in force thereafter indefinitely unless terminated in accordance with paragraph 2.
2. Either Contracting State may terminate this Agreement by giving to the other Contracting State, through diplomatic channels, a written notice of termination not later than the thirtieth day of June of any calendar year following the conclusion of the initial five-year period. In such event, this Agreement shall terminate on the date of the written notification. Notwithstanding such termination, this Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source on amounts paid or credited on or after the first day of January of the year immediately following the year in which the notice of termination has been given; and
- (b) with respect to other taxes:
 - (i) in Viet Nam, for taxable years beginning on or after the first day of January of the year immediately following the year in which the notice of termination has been given;
 - (ii) in the United States, for taxable periods beginning on or after the first day of January of the year immediately following the year in which the notice of termination has been given.

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

DONE at *Washington* in duplicate, in the English language, this *7th* day of *July*, 2015. A Vietnamese language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes between the Contracting States confirming its conformity with the English language text.

**FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA**

Catherine A. Novelli

**FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF
VIET NAM**

Truong

**PROTOCOL TO THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

On signing the Agreement between the Government of the United States of America and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as “the Agreement”), the two Contracting States have agreed to the following provisions:

1. With reference to paragraph 3(b) of Article 2 (Taxes Covered) of the Agreement, it is understood that the Federal tax imposed on the investment income of foreign private foundations shall not be imposed on dividends, interest or royalties derived by private foundations organized in Viet Nam at a rate in excess of the rates provided for in Articles 10 (Dividends), 11 (Interest), and 12 (Royalties) of the Agreement, respectively. It is also understood that such tax may be imposed on other income derived by private foundations organized in Viet Nam under Article 22 (Other Income).
2. With reference to subparagraph (j) of paragraph 1 of Article 3 (General Definitions) of the Agreement, the term “pension fund” includes the following:
 - (a) in the case of the United States, a trust providing pension or retirement benefits under an Internal Revenue Code section 401(a) qualified pension plan (which includes a Code section 401(k) plan and a profit sharing or stock bonus plan); a Code section 403(a) qualified annuity plan; a Code section 403(b) plan; a trust that is an individual retirement account under Code section 408; a Roth individual retirement account under Code section 408A; a simple retirement account under Code section 408(p); a trust providing pension or retirement benefits under a simplified employee pension plan under Code section 408(k); a trust described in Code section 457(g) providing pension or retirement benefits under a Code section 457(b) plan; and the Thrift Savings Fund (Code section 7701(j)). A group trust described in Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67, Revenue Ruling 2011-1, and Revenue Ruling 2014-24, qualifies as a pension fund only if substantially all of its activity is to earn income for the benefit of pension funds that are

themselves entitled to benefits under the Agreement as a resident of the United States; and

- (b) in the case of Viet Nam, the Social Security Funds established under the Law No. 71/2006/QH11 dated June 29th 2006 on Social Security; and
 - (c) any plan, fund or arrangement modified by or created pursuant to legislation enacted by a Contracting State after the date of signature of the Agreement that the competent authorities agree satisfies the definition of "pension fund" in subparagraph (j) of paragraph 1 of Article 3 (General Definitions) of the Agreement.
3. With reference to paragraph 2 of Article 7 (Business Profits) of the Agreement, when an enterprise resident in Viet Nam carries on business in the United States through a permanent establishment situated therein, Section 864(c)(3) of the Internal Revenue Code shall not apply to treat as profits attributable to the permanent establishment all income, gain, or loss from sources within the United States other than income, gain, or loss to which Section 864(c)(2) applies.
 4. With reference to Article 10 (Dividends) of the Agreement, notwithstanding paragraph 2 of Article 10, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if:
 - (a) the beneficial owner of the dividends is a pension fund that is a resident of the other Contracting State; and
 - (b) such dividends are not derived from the carrying on of a trade or business by the pension fund or through an associated enterprise.
 5. With reference to paragraph 3 of Article 10 (Dividends) of the Agreement, paragraph 4 of this Protocol shall apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC), U.S. Real Estate Investment Trust (REIT), and Vietnamese Real Estate Investment Fund (VREIF). However, in the case of dividends paid by a REIT or a VREIF, paragraph 4 of this Protocol shall only apply if one or more of the conditions in subparagraphs 3(a)(i) through 3(a)(iii) of Article 10 (Dividends) of the Agreement are met.
 6. With reference to paragraph 3 of Article 10 (Dividends) of the Agreement, if the competent authorities of the Contracting States agree that an entity created pursuant to legislation enacted by Viet Nam after the date of signature of the Agreement is equivalent to a U.S. Regulated Investment

Company (RIC), paragraph 3 of Article 10 shall apply to dividends paid by such an entity.

7. With reference to Article 11 (Interest) of the Agreement, paragraph 4 of Article 11 applies to interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law.
8. With reference to paragraph 2 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) of the Agreement, in the case of the United States, the phrase "similar legislation" is intended to refer to tier 1 Railroad Retirements benefits.
9. With reference to paragraph 1 of Article 25 (Non-Discrimination), for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as nationals of Viet Nam who are not residents of the United States.

This Protocol shall enter into force on the date of entry into force of the Agreement and shall be an integral part thereof.

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

DONE at Washington in duplicate, in the English language, this 7th day of July, 2015. A Vietnamese language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes between the Contracting States confirming its conformity with the English language text.

**FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA**

Catherine A. Norelli

**FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF
VIET NAM**

Trương