

AGREEMENT
BETWEEN
THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF TURKEY
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Republic of Austria and the Republic of Turkey, desiring to conclude an Agreement for the Avoidance of Double Taxation 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 political subdivisions or 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 in particular:

a) in Austria:

- i. the income tax (die Einkommensteuer);
- ii. the corporation tax (die Körperschaftsteuer);

(hereinafter referred to as "Austrian tax");

b) in Turkey:

- i. the income tax;
- ii. the corporation tax;

(hereinafter referred to as "Turkish tax").

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

Article 3

GENERAL DEFINITIONS

- (1) For the purposes of this Agreement, unless the context otherwise requires:
- a) (i) the term "Austria" means the territory under the sovereignty of the Republic of Austria in accordance with international law;
 - (ii) the term "Turkey" means the Turkish territory including territorial sea and air space above it, as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law;
 - b) the terms "a Contracting State" and "the other Contracting State" mean Austria or Turkey, as the context requires;
 - c) the term "tax" means any tax covered by Article 2 of this Agreement;
 - 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 which is treated as a body corporate for tax purposes;
 - f) the term "legal head office" means the statutory seat (Kanuni merkez, Sitz) within the meaning of the Turkish Code of Commerce, or within the meaning of the Austrian Fiscal Code, respectively;
 - 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 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;
 - i) the term "competent authority" means:
 - (i) in Austria: the Federal Minister of Finance or his authorised representative;
 - (ii) in Turkey: the Minister of Finance or his authorised representative;
 - j) 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;

(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

RESIDENT

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision 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 States shall endeavour to 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 by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided by the Agreement.

Article 5

PERMANENT ESTABLISHMENT

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

(2) The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities continue for a period of more than 6 months;

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture (including the breeding and cultivation of fish) 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; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise 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 profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

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

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

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

Article 8

SHIPPING AND AIR TRANSPORT

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

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

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

Article 9

ASSOCIATED ENTERPRISES

(1) Where

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

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

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

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

Article 10

DIVIDENDS

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

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

a) in the case of Austria:

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

(ii) 15 per cent of the gross amount of the dividends in all other cases;

b) in the case of Turkey:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends provided that such dividends are exempt from tax in Austria;

(ii) 15 per cent of the gross amount of the dividends in all other cases.

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

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

(4) Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated, but the tax so charged shall not exceed 5 per cent of the remaining amount.

(5) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or 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.

(6) Subject to the provisions of paragraph 4 of this Article, 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:

- a) 5 per cent of the gross amount of the interest paid in respect of a loan or credit made, guaranteed or insured for the purposes of promoting export by the Oesterreichische Kontrollbank AG or a similar Turkish public entity the objective of which is to promote the export;
- b) 10 per cent of the gross amount of the interest if the interest is derived by a bank;
- c) 15 per cent of the gross amount of the interest in all other cases.

(3) Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is paid to the other Contracting State or the Central Bank of that other State.

(4) However, income from rights or debt claims carrying a right to participate in the profits, including the income derived by a sleeping partner from his participation as a sleeping partner or from participating loans and participating bonds, may also be taxed in the Contracting State in which it arises and according to the laws of that State.

(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 and prizes attaching to such securities, bonds or debentures.

(6) The provisions of paragraphs 1, 2, 3 and 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 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 or Article 14, 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, 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 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.

Article 12

ROYALTIES

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

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

(3) The term "royalties" as used in this Article means payments of any kind 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 recordings for radio and television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use, industrial, commercial or scientific equipment.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or 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 such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

Article 13

CAPITAL GAINS

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

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

(3) Gains derived by 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.

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

Article 14**INDEPENDENT PERSONAL SERVICES**

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

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

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

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

- a) the enterprise has a permanent establishment in that other State through which the services or activities are performed; or
- b) the period or periods during which the services are performed exceed in the aggregate 183 days in any continuous period of 12 months.

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

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

Article 15

INCOME FROM EMPLOYMENT

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

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 17

ARTISTES AND SPORTSMEN

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

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

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

Article 18

PENSIONS

(1) Subject to the provisions of paragraph 2 of Article 19 of this Agreement, pensions and other similar remuneration paid in consideration of past employment and any payments made under the social security scheme of either Contracting State, and annuities as defined in paragraph 2 of this Article shall be taxable only in the State of which the recipient is a resident.

(2) The term "annuity" means a stated sum payable periodically at stated times during 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.

Article 19

GOVERNMENT SERVICE

- (1)
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2)
 - a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

(3) The provisions of Articles 15, 16, 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 political subdivision or a local authority thereof.

(4) The provisions of paragraphs 1 and 3 of this Article shall likewise apply in respect of remuneration paid to the Austrian Foreign Trade Commissioner in Turkey and to the members of the staff of that Austrian Foreign Trade Commissioner and in respect of remuneration paid by the Turkish Chamber of Commerce to an individual in respect of services rendered to that Chamber of Commerce.

Article 20

STUDENTS

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

(2) Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship carried out in the first-mentioned State.

Article 21

OTHER INCOME

(1) Items of income arising from a Contracting State, which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in that State.

(2) Items of income arising outside the two Contracting States shall be taxable only in the Contracting State of which the person receiving the income in question is a resident.

Article 22

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

(1) In Austria:

- a) Where a resident of Austria derives income which, in accordance with the provisions of this Agreement, may be taxed in Turkey, Austria shall, subject to the provisions of subparagraphs b) to e), exempt such income from tax.
- b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraph 2 of Article 10, paragraphs 2 and 4 of Article 11, paragraph 2 of Article 12, second sentence of paragraph 4 of Article 13 and paragraph 1 of Article 21, may be taxed in Turkey, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Turkey. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Turkey.
- c) Dividends in the sense of subparagraph b) (i) of paragraph 2 of Article 10 paid by a company which is a resident of Turkey to a company which is a resident of Austria shall be exempt from tax in Austria, subject to the relevant provisions of the domestic law of Austria, as it may change from time to time without affecting the general character of those provisions, but irrespective of any deviating minimum holding requirements provided for by that law.
- d) Where in accordance with any provision of the Agreement income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
- e) Where a resident of Austria derives interest or royalties from Turkey and such interest or royalties are taxed in Turkey at a rate of tax which is, in the case of interest less than the rates provided for in subparagraphs a) to c) of paragraph 2 of Article 11 and in the case of royalties less than 10 per cent then there shall be allowed as a deduction from the Austrian tax on the interest or royalties, as the case may be, an amount equal to, in the case of interest 5 per cent, 10 per cent or 15 per cent, as the case may be, and in the case of royalties 10 per cent of the gross amount of such interest or royalties.

(2) In Turkey:

- a) Subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax of tax payable in a territory outside Turkey, Austrian tax payable under the laws of Austria and in accordance with this Agreement in respect of income (including profits and chargeable gains) derived by a resident of Turkey from sources within Austria shall be allowed as a deduction from the Turkish tax on such income. Such deduction, however, shall not exceed the

amount of Turkish tax, as computed before the deduction is made, attributable to such income.

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

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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(2) Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

(3) Subject to the provisions of paragraph 4 of Article 10, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(5) 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.

Article 24

MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. 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 concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. 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 referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 26

ASSISTANCE IN THE COLLECTION OF TAXES

The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not enure to the benefit of persons not entitled thereto, provided that:

- a) the requesting State must produce a copy of a document certified by its competent authority specifying that the sums referred to for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;
- b) a document produced in accordance with the provisions of this Article shall be rendered enforceable in accordance with the laws of the requested State. It is specified that under current Austrian legislation, such documents must be rendered enforceable by the competent tax office;
- c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State. In the Republic of Austria, judicial execution shall be requested by the Finanzprokuratur or by the tax office delegated to act on his behalf; and
- d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

The provisions of this Article shall not impose upon either Contracting State the obligation to carry out administrative measures different from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy or its essential interests.

Article 27**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 28**ENTRY INTO FORCE**

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) The Agreement shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect in respect of taxes for any taxable period beginning after December 31 of the calendar year in which the exchange of instruments of ratification takes place.

(3) The Agreement between the Republic of Austria and the Republic of Turkey for the avoidance of double taxation and for the settlement of certain other questions with respect to taxes on income and on capital, signed in Vienna on 3 November 1970, shall cease to have effect from the date on which this Agreement becomes effective in accordance with paragraph 2 of this Article.

Article 29**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 written notice of termination on or before the thirtieth day of June in a calendar year after the fifth year from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect in respect of the taxes for any taxable period beginning after December 31 in the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Agreement.

Done in duplicate at Vienna on this 28th day of March 2008, in the German, Turkish and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Republic of Austria

Wilhelm Molterer m.p.

For the Republic of Turkey

Kemal Unakitan m.p.

P R O T O C O L

At the moment of signing the Agreement between the Republic of Austria and the Republic of Turkey for the avoidance of double taxation with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. ad (i) of subparagraph b) of paragraph 2 of Article 10

In respect of subparagraph b) (i) of paragraph 2 of Article 10, the competent authority of Austria shall certify whether or not the conditions for exemption of the dividends under the domestic laws of Austria are met.

2. ad Articles 12 and 13

In respect of Articles 12 and 13 of the Agreement it is understood that in the case of any payment received as a consideration for the sale of the property, the provisions of Article 13 shall apply, unless it is proved that the payment in question is not a payment for genuine alienation of the said property. In such case the provisions of Article 12 shall apply.

3. ad Article 21

Income derived by a resident of a Contracting State from the other Contracting State under a legal claim to maintenance may not be taxed in the first-mentioned State if such income would be exempt from tax according to the laws of the other Contracting State.

4. ad subparagraph e) of paragraph 1 of Article 22

It is understood that subparagraph e) of paragraph 1 of Article 22 will not apply if the form of a transaction giving rise for the application of those provisions was mainly chosen with a view to avoid taxes.

5. ad paragraph 2 of Article 24

It is understood that with respect to paragraph 2 of Article 24 the taxpayer must in the case of Turkey claim the refund resulting from such mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

Done in duplicate at Vienna on this 28th day of March 2008, in the German, Turkish and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Republic of Austria

Wilhelm Molterer m.p.

For the Republic of Turkey

Kemal Unakitan m.p.