

TREATY USA - UKRAINE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, WITH PROTOCOL, SIGNED AT WASHINGTON ON MARCH 4, 1994

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 2001

ARTICLE 22 Limitation on Benefits

- 1) A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other State only if such person is:
 - a) an individual;
 - b) engaged in the active conduct of business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from that other State is connected with, or is incidental to, that business;
 - c) a company the shares of which are traded in the first-mentioned State' on a substantial and regular basis on an officially recognized securities exchange or a company which is wholly owned, directly or indirectly, by another company that is a resident of the first-mentioned State and the shares of which are so traded;
 - d) a not-for-profit organization that is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or
 - e) a person that satisfies both of the following conditions:
 - i) more than 50 percent of the beneficial interest in such person, or in the case of a company, more than 50 percent of the number of shares of each class of the company is owned directly or indirectly by persons entitled to the benefits of this Convention under subparagraphs a), c) or d), and
 - ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or

royalties) to persons not entitled to the benefits of this Convention under subparagraphs a), c) or d).

- 2) A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines.
- 3) For purposes of subparagraph (e) (ii) of paragraph 1, the term "gross income" means gross receipts, or where a person is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

PROTOCOL

6. With regard to Article 22:

The term "officially recognized securities exchange" means the NASDAQ System owned by the National Association of Securities Dealers, Inc., of the United States, any stock exchange registered with the U.S. Securities Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934, and any other exchanges agreed to by the competent authorities of both Contracting States.