

TREATY USA - ISRAEL

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE STATE OF ISRAEL WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON NOVEMBER 20, 1975

GENERAL EFFECTIVE DATE UNDER ARTICLE 31: 1 JANUARY 1995

ARTICLE 25

Investment or Holding Companies

A corporation of one of the Contracting States deriving dividends, interest, royalties or capital gains from sources within the other Contracting State shall not be entitled to the benefits of Articles 12 (Dividends), 13 (Interest), 14 (Royalties) or 15 (Capital Gains) if:

- a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits, and
- b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned, directly or indirectly, by one or more persons who are not individual resident of the first-mentioned Contracting State (or, in the case of an Israeli corporation, who are citizens of the United States).

PROTOCOL 2

ARTICLE XII

Article 25 (Investment or Holding Companies) of the Convention shall be deleted and replaced with the following:

ARTICLE 25

Limitation on Benefits

- 1) A person that is a resident of a Contracting State and derives income from sources within the other Contracting State shall not be entitled, in that other Contracting State, to the benefits of this Convention if:

- a) 50 percent or more of the beneficial interest in such person (or in the case of a company, 50 percent or more of the voting power or value of the company's stock) is owned, directly or indirectly, by any combination of one or more individuals who are not residents of a Contracting State and who are not citizens of a Contracting State taxable in that Contracting State on income derived outside that Contracting State; or
 - b) 50 percent or more of the gross income of such person is used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a State other than a Contracting State, and who are not citizens of a Contracting State taxable in that Contracting State on income derived outside that Contracting State.
- 2) If a company is a resident of a Contracting State and there is outstanding a class of stock of that company or of another company that controls that company, and that class of stock entitles its holders, by a dividend distribution or by any other means, to a disproportionately high share of the income derived in the other Contracting State from certain assets that are located in that other Contracting State or from activities that are performed there, and 50 percent or more of the shares of that class of stock are owned, directly or indirectly, by any individual or combination of individuals who are neither residents of a Contracting State nor citizens of a Contracting State who are subject to tax in that Contracting State on income derived outside that Contracting State, then the benefits of this Convention will not apply with respect to any income that is attributable to those assets or activities.
- 3) The provisions of paragraphs (1) and (2) shall not apply if the person deriving the income is one of the following:
 - a) an individual;
 - b) an entity described in subparagraphs (a), (b) or (c) of paragraph (2) of Article 22 (Governmental Functions);
 - c) 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, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;
 - d) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or
 - e) an entity that is a not-for-profit organization and that, by virtue of that status, 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 persons that are entitled, under this Article, to the benefits of this Convention.

4)

- a) A person that is not entitled to the benefits of the Convention pursuant to the preceding provisions of this Article may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.
- b) If one of the Contracting States proposes to deny benefits to a resident of the other Contracting State by reason of this Article, the competent authorities of the Contracting States shall, upon request of a competent authority, consult each other.
- c) The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article.

5) For purposes of subparagraph (d) of paragraph (2), the term “recognized stock exchange” means:

- a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;
- b) the Tel Aviv Stock Exchange and any other Israeli exchange that may be approved by the Minister of Finance; and
- c) any other stock exchange agreed upon by the competent authorities of the Contracting States.”