TREATY USA - LITHUANIA

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON JANUARY 15, 1998

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 2000

ARTICLE 23
Limitation of Benefits

1) A resident of a Contracting State shall be entitled to all the benefits of this Convention only if it is a "qualified resident" as defined in this Article.

2) A resident of a Contracting State is a qualified resident for a taxable year only if it is either:

a) an individual;

b) a Contracting State, a political subdivision or a local authority thereof, or an agency or instrumentality of such State, subdivision or authority;

c) a company, if:
i) on at least half the days of the taxable year the beneficial owners of at least 50 percent of each class of the company’s shares are qualified residents by reason of subparagraphs a), b), e), or f) of this paragraph, or U.S. citizens, provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph; and
ii) amounts paid or accrued by the company during its taxable year:
A) to persons that are neither qualified residents nor U.S. citizens, and
B) that are deductible for income tax purposes in the company’s State of residence (but not including arm’s length payments in the ordinary course of business for services or tangible property), do not exceed 50 percent of the gross income of the company for that year;

d) a trust or estate, if the ownership of its beneficial interests satisfies the requirement of subparagraph c)(i) and its payments to persons who are not qualified residents or U.S. citizens satisfy the requirement of subparagraph c)(ii);

e) a person, if:

i) beneficial interests representing at least 50 percent of the value of each class of interests in that person are substantially and regularly traded on a recognized stock exchange; or
ii) the direct or indirect owners of at least 50 percent of each class of interests in that person are persons entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;

f) a person described in subparagraph 3 b) of Article 4 (Resident) provided that more than half of the beneficiaries, members or participants, if any, in such person are qualified residents; or

g) a United States Regulated Investment Company, or a similar entity in Lithuania as may be agreed by the competent authorities of the Contracting States.

3)

a) A resident of a Contracting State that is not a qualified resident shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
ii) the income is connected with or incidental to the trade or business, and
iii) the trade or business is substantial in relation to the activity in the other State generating the income.

b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.

c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.

d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.

4) A resident of a Contracting State that is not a qualified resident pursuant to the provisions of paragraph 2 may, nevertheless, be granted benefits of the Convention with respect to income arising in the other Contracting State if the competent authority of that other Contracting State so determines.

5) For the purposes of this Article, 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 U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

b) the National Stock Exchange of Lithuania (Nacionaline vertybiniu popieriu birza); and

c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

6) 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, including the publication of public guidance. The competent authorities shall, in accordance with the provisions of Article 27 (Exchange of Information and Administrative Assistance), exchange such information as is necessary for carrying out the provisions of this Article.