

AGREEMENT
BETWEEN
THE REPUBLIC OF AUSTRIA
AND GEORGIA

FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Austria and Georgia, desiring to promote and strengthen the economic, cultural and scientific relations by concluding an Agreement for the avoidance of double taxation with respect to taxes on income and on capital,

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 and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 this Agreement shall apply are in particular:

a) in the case of Austria:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the land tax;
- (iv) the tax on agricultural and forestry enterprises; and
- (v) the tax on the value of vacant plots;

(hereinafter referred to as "Austrian tax");

b) in the case of Georgia:

- (i) the tax on profit of enterprises;
- (ii) the tax on property of enterprises;
- (iii) the tax on income of individuals; and
- (iv) the tax on property of individuals;

(hereinafter referred to as "Georgian tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of this 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) the term "Austria" means the Republic of Austria;
- b) the term "Georgia" means the territory recognised by the international community within the state borders of Georgia, including land territory, internal waters and territorial sea, the air space above them, in respect of which Georgia exercises its sovereignty, as well as the exclusive economic zone and continental shelf adjacent to its territorial sea in respect of which Georgia may exercise its sovereign rights in accordance with the international law;
- c) the terms "a Contracting State" and "the other Contracting State" mean Austria or Georgia, as the context requires;
- 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 that is treated as a body corporate for tax purposes;
- f) the term "enterprise" applies to the carrying on of any business;
- g) 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;
- h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "competent authority" means:
 - (i) in the case of Austria: the Federal Minister of Finance or his authorised representative;
 - (ii) in the case of Georgia: the Ministry of Finance or its authorised representative;
- j) the term "national means":
 - (i) any individual possessing the nationality or citizenship of a Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

- k) the term "business" includes the performance of professional services and of other activities of an independent character;

(2) As regards the application of this 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 this 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, 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 or capital situated therein.

(2) Where by reason of the provisions of paragraph 1 of this Article 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 settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

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 or installation project constitutes a permanent establishment only if it lasts more than six 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 sub-paragraphs a) to e) of this paragraph, 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 of this Article, where a person - other than an agent of an independent status to whom paragraph 6 of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article 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.

(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 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 and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph 1 of this Article 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 of this Article shall also apply to the income from immovable property of an enterprise.

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 of this Article, 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) 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 of this Article shall preclude that 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) 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.

(6) 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.

(7) 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship

is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(3) The provisions of paragraph 1 of this Article 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 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. 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, but the tax so charged shall not exceed:

- a) 0 per cent of the gross amounts of the dividends if the beneficial owner is a company which holds directly or indirectly at least 50 per cent of the capital of the company paying the dividends and has invested more than 2 million Euro, or its equivalent in Georgian currency, in the capital of the company paying the dividends;
- b) 5 per cent of the gross amounts of the dividends if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends and has invested more than 100,000 Euro, or its equivalent in Georgian currency, in the capital of the company paying the dividends;
- c) 10 per cent of the gross amounts 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, mining shares, 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.

(4) The provisions of paragraphs 1 and 2 of this Article 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) 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 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 shall be taxable only in that other State if such resident is the beneficial owner of the interest.

(2) 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(3) The provisions of paragraph 1 of this Article 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Interest shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

(5) 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) 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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph 1 of this Article 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains 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 the Contracting State in which the place of effective management of the enterprise is situated.

(4) Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3 of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

(5) The provisions of paragraph 4 of this Article shall not affect the right of a Contracting State to levy according to its law a tax on gains from the alienation of shares of a company derived by an individual who is a resident of a Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

Article 14

INCOME FROM EMPLOYMENT

(1) Subject to the provisions of Articles 15, 17, 18 and 19, 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 of this Article, 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 the fiscal 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 which the employer has in the other State.

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

Article 15

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 16

ARTISTES AND SPORTSMEN

(1) Notwithstanding the provisions of Articles 7 and 14, 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is wholly or mainly supported by public funds of the other State or political subdivisions or local authorities thereof or by an institution which is recognised as a non-profit institution, or

if these activities are carried on under a cultural cooperation agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State in which the person is a resident.

Article 17

PENSIONS

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 18

GOVERNMENT SERVICE

- (1)
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body 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, a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body 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 14, 15, 16, and 17 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, a local authority or a statutory body thereof.

Article 19**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, provided that such payments arise from sources outside that State.

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

Article 20**PROFESSORS, TEACHERS AND SCIENTIFIC RESEARCHERS**

(1) A professor, teacher or scientific researcher who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college, school or other establishment for teaching or research in that State, and who immediately before that visit was a resident of the other Contracting State, shall be taxable only in that other State on any remuneration for such teaching or research. However, this paragraph shall apply only for a period not exceeding two years from the date the individual first visits the first-mentioned State for such purpose.

(2) The provisions of this Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

Article 21**OTHER INCOME**

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 and the right or

property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 22

CAPITAL

(1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by 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 may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

(1) In Austria:

- a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Georgia, Austria shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax.
- b) Where a resident of Austria derives items of income which, in accordance with the provisions of Article 10, may be taxed in Georgia, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Georgia. 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 Georgia.
- c) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may

nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

(2) In Georgia:

Where a resident of Georgia derives items of income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Austria, Georgia shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in Austria.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Austria.

Article 24

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) 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 5 of Article 11, or paragraph 4 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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.

(6) The provisions of this Article shall apply to the taxes which are the subject of this Agreement.

Article 25

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 24, 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 this 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 this 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 this 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 26

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 of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. 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. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominantly legitimate interests of another person or predominantly public interests.

(2) In no case shall the provisions of paragraph 1 of this Article 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), or to internationally accepted principles, in particular in the area of data protection.

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) Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by its law for the entry into force of this Agreement.

(2) This Agreement shall enter into force on the first day of the third month next following the receipt of latter notification from the Contracting States indicating the completion of the legal procedures necessary for the entry into force of this Agreement. This Agreement shall have effect in respect of taxes for any fiscal year beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

Article 29

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either of the Contracting State may after the expiration of a period of five years from the date of its entry into force, terminate this Agreement, by giving written notice of termination to the other Contracting State through the diplomatic channels at least six months before the expiration of calendar year. In such event, this Agreement shall cease to have effect in respect of the taxes for any fiscal year beginning on or after 1 January in the calendar year next following that 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 ***, on the *** day of 2005, in the German, Georgian and English languages. All texts being equally authentic. In case of any divergence between the German and Georgian texts, the English text shall prevail.

For the Republic of Austria:

For Georgia:

PROTOCOL

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

1. With reference to paragraph 1 of Article 2:

It is understood that in the case of Georgia the term "political subdivisions" means territorial-administrative subdivisions.

2. With reference to subparagraph k) of paragraph 1 of Article 3:

It is understood that in the case of Georgia the term "business" has the same meaning as "economic activities".

3. With reference to paragraph 1 of Article 3:

It is understood that the term "capital" means movable and immovable property. It includes especially, but is not limited to, cash, shares or other documents evidencing property rights and bonds or other debt liabilities. It also includes patents, trade marks, copyrights or similar rights and property.

4. With reference to Article 7:

It is understood that the term "profits" includes the profits derived by any partner from his participation in any partnership.

5. With reference to paragraph 5 of Article 13:

It is understood that the taxation right of the Contracting State where the taxpayer was a resident is limited to the increase in value of shares that has accumulated during the period the taxpayer was a resident of that State.

6. With reference to paragraph 3 of Article 16:

It is understood that paragraph 3 shall also apply to legal entities which carry on orchestras, theatres, ballet groups as well as to members of such cultural entities if such legal entities are non-profit making entities and if this is certified by the competent authority of the State of residence.

7. With reference to Article 21:

- a) 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. For the purposes of the provisions of this sub-paragraph such remuneration shall also include remuneration for damage resulting from crimes, vaccinations or similar reasons.
- b) The income mentioned in sub-paragraph a) shall not be taken into consideration when applying the exemption with progression method.

8. Interpretation of the Agreement:

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD Model Convention on Income and on Capital shall generally be expected to have the same meaning as expressed in the OECD Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

- a) any reservations or observations to the OECD Model or its Commentary by either Contracting State;
- b) any contrary interpretations in this Protocol;
- c) any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The OECD Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention of 23 May 1969 on the Law of Treaties.

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

DONE in duplicate at *** , on the *** day of 2004 , in the German, Georgian and English languages. All texts being equally authentic. In case of any divergence between the German and Georgian texts, the English text shall prevail.

For the Republic of Austria:

For Georgia:

PROTOCOL

BETWEEN

GEORGIA

AND

THE REPUBLIC OF AUSTRIA

AND ADDITIONAL PROTOCOL
AMENDING THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED AT VIENNA
ON 11 APRIL 2005

Georgia and the Republic of Austria desiring to conclude a Protocol and an Additional Protocol amending the Agreement for the avoidance of double taxation with respect to taxes on income and on capital, signed at Vienna on 11 April 2005 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

Article 1

Article 10 of the Agreement shall be replaced by the following:

“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) a) 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 10 per cent of the gross amount of the dividends.

b) If the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends, such dividends shall be taxable only in the Contracting State of which the beneficial owner of the dividends is a resident.

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, mining shares, 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.

(4) The provisions of paragraphs 1 and 2 of this Article 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) 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 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 2

Article 26 of the Agreement shall be replaced by the following:

“ARTICLE 26
Exchange of Information

(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 to the administration or enforcement 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.

(2) Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominantly legitimate interests of another person or predominantly public interests. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(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 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*) or to the fundamental rights granted by a State, in particular in the area of data protection.

(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 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 solely 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 interests in a person.”

Article 3

The Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the receipt of the latter of the notifications referred to above. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

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

DONE in duplicate at..... on in the Georgian, German and English languages, all the texts being equally authentic. In case of any divergences of interpretation, the English text shall prevail.

For Georgia:

For the Republic of Austria:

ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Agreement for the avoidance of double taxation with respect to taxes on income and on capital signed at Vienna on 11 April 2005, this day concluded between Georgia and the Republic of Austria, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

Ad Article 26:

(i) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(ii) It is understood that the exchange of information provided in Article 26 does not include measures which constitute “fishing expeditions”.

(iii) It is understood that paragraph 5 of Article 26 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

(iv) It is understood that – in addition to the above mentioned principles – for the interpretation of Article 26 the principles established in the OECD Commentaries including the technical note prepared by the OECD Secretariat, which is added as an Annex to this Additional Protocol, shall be considered as well.

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

DONE in duplicate at on in the Georgian, German and English languages, all the texts being equally authentic. In case of any divergences of interpretation, the English text shall prevail.

For Georgia:

For the Republic of Austria:

Technical note on paragraph 5 of Article 26 of the OECD Model Tax Convention

Paragraph 5 of Article 26 of the OECD Model Tax Convention provides that bank secrecy cannot be an obstacle to exchange of information for tax purposes. Article 26 also provides for important safeguards in order to protect the confidentiality of taxpayers' information.

The standard requires information exchange on request only. Where information is requested, it must be exchanged only where it is "foreseeably relevant" to the administration or enforcement of the domestic laws of the treaty partner. Countries are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, competent authorities should demonstrate the foreseeable relevance of the requested information. It would, for instance, not be possible for a State to request information randomly on bank accounts held by its residents in banks located in the other State. Also, even when auditing a taxpayer, a tax administration would not request information on a specific taxpayer when no transaction or indication of possible transactions has been identified as involving a nexus with the other state. On the other hand, for example, when a tax administration assesses the tax liability of a specific taxpayer and suspects that this taxpayer has a bank account in the other State, then the competent authority may request information on this specific taxpayer. This could also be the case where a number of taxpayers have been identified, for example, as holding offshore credit cards from banks located in the other state. The requesting State should, however, have pursued all domestic means to access the requested information. For further details, you may wish to consult the commentaries to the Article 26 of the OECD Model Tax Convention and Article 5 of the Model Agreement on Exchange of Information.

Where information is exchanged it is subject to strict confidentiality rules. It is expressly provided in Article 26 that information communicated shall be treated as secret. It can only be used for the purposes provided for in the convention. Sanctions for the violation of such secrecy are governed by administrative and penal laws in all states. Typically, unauthorised disclosure of tax related information received from another country is a criminal offence punishable by a jail sentence.

As you can see from these explanations, which you can find in the OECD Model Tax Convention commentary, as well as in the OECD Manual on Information exchange, bank secrecy is not incompatible with effective exchange of information for tax purposes. All countries have bank secrecy or confidentiality rules. Meeting the internationally agreed standard on exchange of information requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy.